

HERMANTOWN ECONOMIC DEVELOPMENT AUTHORITY

AGENDA

Thursday, July 28, 2022 at 5:00 p.m.
Council Chambers
Governmental Services Building

1. ROLL CALL

2. MINUTES – Approval or correction

2.1 June 8, 2022 Joint City Council - HEDA Minutes

3. MOTIONS

3.1 Motion to establish the amount of bond at \$300,000 required to be provided by the Treasurer

3.2 Motion to approve a report to the City

3.3 Motion to approve for submission to the City Council a budget for the succeeding year of HEDA

3.4 Motion to approve a report to the City Council on the Enabling Resolution

3.5 Motion to appoint depositories

3.6 Motion to approve an audit to submit to the City Council

4. RESOLUTIONS

4.1 **2022-06H** Resolution Approving A Consent Related To The Development Contract Between The Hermantown Economic Development Authority, The City Of Hermantown And KTJ 360, LLC For The Pillars Of Hermantown Senior Living Project

4.2 **2022-07H** Resolution Approving An Agreement For Consulting Services To Provide An Alternative Urban Areawide Review With Braun Intertec Corporation In An Amount Not To Exceed \$86,925.00

4.3 **2022-08H** Resolution Approving An Agreement For Consulting Services With Mammoth Sports Construction To Design And Develop A Multi Use Development In An Amount Not To Exceed \$110,000.00

5. WORK SESSION

Discussion on P& R Properties

6. RECESS

HERMANTOWN ECONOMIC DEVELOPMENT AUTHORITY

June 8, 2022

5:00 p.m.

JOINT MEETING OF CITY COUNCIL AND HERMANTOWN ECONOMIC DEVELOPMENT AUTHORITY - MEETING CONDUCTED IN PERSON

ROLL CALL: Commissioners Geissler, Nelson, Ronchetti, Haapanen, Hauschild, Mayor Boucher

CITY STAFF: John Mulder, City Administrator; Eric Johnson, Community Development Director; Steve Overom, Attorney

ABSENT: Commissioner Peterson

VISITORS: Heidi Timm-Bijold

City Council Meeting

Mayor Boucher called the City Council meeting to order.

Roll call: Councilors Geissler, Nelson, Hauschild, Mayor Boucher. Councilor Peterson, absent.

Motion by Councilor Geissler, seconded by Councilor Nelson, to combine City Council public hearing with HEDA public hearing with the Mayor acting as the Chair of the combined public hearing and recess the City Council meeting to the combined public hearing: Motion passed unanimously on a voice vote: 4-0. Councilor Peterson, absent.

HEDA Meeting

Chair Boucher called the HEDA meeting to order.

Roll call: Commissioners Geissler, Nelson, Ronchetti, Haapanen, Hauschild, Mayor Boucher. Commissioner Peterson, absent.

Motion Commissioner Ronchetti, seconded by Commissioner Haapanen, to combine the HEDA public hearing with the City Council public hearing with the Mayor acting as Chair of the combined public hearing and recess the HEDA meeting to the combined public hearing Motion passed unanimously on a voice vote:

Mayor Boucher called for the combined public hearing:

Motion by Commissioner Hauschild, second by Commissioner Nelson to reconvene the City Council meeting: Motion passed unanimously on a voice vote: 6-0. Commissioner Peterson, absent.

CITY RESOLUTIONS

2022 – 80 Resolution Approving An Amendment To The Hermantown Business Subsidy Policy, A Business Subsidy Agreement, A Property Tax Abatement, A Development Contract And An Assessment Agreement For The Pillars Of Hermantown Senior Living Project

HERMANTOWN ECONOMIC DEVELOPMENT AUTHORITY

June 8, 2022

5:00 p.m.

Motion by Councilor Nelson, seconded by Counselor Geissler to adopt Resolution 2022 – 80 Resolution Approving An Amendment To The Hermantown Business Subsidy Policy, A Business Subsidy Agreement, A Property Tax Abatement, A Development Contract And An Assessment Agreement For The Pillars Of Hermantown Senior Living Project. Roll Call vote: Councilors Geissler, Nelson, Hauschild, Mayor Boucher, aye. Councilor Peterson, absent. Motion carried 4-0.

Motion by Councilor Geissler, second by Councilor Hauschild to recess the City Council meeting. Motion passed unanimously on a voice vote: 4-0. Councilor Peterson, absent.

HEDA RESOLUTIONS

Motion by Commissioner Haapanen, seconded by Commissioner Nelson to reconvene the Hermantown Economic Development Authority meeting: Motion passed unanimously on a voice vote: 6-0. Commissioner Peterson, absent.

2022 - 05H Resolution Approving An Amendment To The Hermantown Business Subsidy Policy, Business Subsidy Agreement And Development Contract Between The Hermantown Economic Development Authority, The City Of Hermantown And KTJ 360, LLC For The Pillars Of Hermantown Senior Living Project

Motion by Commissioner Ronchetti, second by Commissioner Nelson, to adopt Resolution 2022 - 05H Resolution Approving An Amendment To The Hermantown Business Subsidy Policy, Business Subsidy Agreement And Development Contract Between The Hermantown Economic Development Authority, The City Of Hermantown And KTJ 360, LLC For The Pillars Of Hermantown Senior Living Project. Roll Call vote: Commissioners Ronchetti, Haapanen, Geissler, Nelson, Hauschild, Chair Boucher, aye. Commissioner Peterson, absent. Motion carried 6-0.

RECESS

Motion by Commissioner Geissler, second by Commissioner Hauschild, to recess the Hermantown Economic Development Authority meeting at 5:35 p.m. Motion passed unanimously on a voice vote: 6.0. Commissioner Peterson, absent.

Recorded by:

John Mulder, City Administrator

Hermantown Economic Development Authority
Resolution No. 2022-06H

HEDA Commissioner _____ introduced the following resolution and moved its adoption:

RESOLUTION APPROVING A CONSENT RELATED TO THE DEVELOPMENT CONTRACT BETWEEN THE HERMANTOWN ECONOMIC DEVELOPMENT AUTHORITY, THE CITY OF HERMANTOWN AND KTJ 360, LLC FOR THE PILLARS OF HERMANTOWN SENIOR LIVING PROJECT

WHEREAS, the Pillars of Hermantown LLC (“Developer”) is the owner of certain real estate described on Exhibit A attached hereto (“Property”); and

WHEREAS, KTJ 360, LLC (“Original Developer”) has proposed to construct an 105 unit senior living project (“Project”) on the Property; and

WHEREAS, Colliers Fund LLC (“Lender”) is providing funds pursuant to a Construction Loan Agreement (“Loan”) to Developer which is evidenced by a Promissory and a Mortgage (collectively “Loan Documents”) to finance the Project; and

WHEREAS, Original Developer, the City of Hermantown (“City”), the Hermantown Economic Development Authority (“HEDA”) entered in a Development Contract (“Development Contract”) dated July 8, 2022 and recorded on July 11, 2022 with the St. Louis County Recorder of St. Louis County, Minnesota as Document No. 01447162; and

WHEREAS, the Development Contract requires that Original Developer provide security to City and HEDA to guarantee that the Project will be contracted pursuant to the terms of the Stormwater Certificate and the Development Contract; and

WHEREAS, HEDA has agreed to issue a HEDA PAYG Note to Original Developer upon receipt of the documents identified in Section 10.7 of the Development Contract; and

WHEREAS, as security for the Loan Original Developer assigned its interests under the Development Contract and HEDA PAYG Note to Lender; and

WHEREAS, Article Five of the Development Contract requires that Original Developer provide a consent to the City and HEDA of the related to any matters affecting the ownership of the Property, entity control of Original Developer and for the purpose of obtaining financing; and

WHEREAS, Original Developer has requested that City and HEDA consent to the sale of the Property to Developer, the assignment of Development Contract to Developer, the grant of the Loan Documents, the collateral assignment of the Development Contract; and that Lender may, but

is not obligated to, complete some or all of the performance of conditions under the Development Contract; and

WHEREAS, a proposed Consent Related to Development Contract is attached hereto as Exhibit B; and

WHEREAS, the HEDA Commissioners have reviewed the Consent Related to Development Contract and hereby believe that it is in the best interests of HEDA that the Consent Related to Development Contract be approved.

NOW THEREFORE, BE IT RESOLVED by the Commissioners of HEDA as follows:

1. The Consent Related to Development Contract substantially in the form of the one attached hereto as Exhibit B is hereby approved.

The motion for the adoption of the foregoing resolution was duly seconded by HEDA Commissioner _____ and, after full discussion thereof and upon a vote being taken thereon, the following HEDA Members voted in favor thereof:

and the following voted against the same:

Whereupon said resolution was declared duly passed and adopted.

Dated this ____ day of _____, 2022.

HEDA Administrator

EXHIBIT A
LEGAL DESCRIPTION

Real property in the City of Hermantown, County of St. Louis, State of Minnesota, described as follows:

Parcel 1:

The South Half of the West Half of the Southwest Quarter of the Southwest Quarter (S 1/2 of W 1/2 of SW 1/4 of SW 1/4), Section Fourteen (14), Township Fifty (50), Range Fifteen (15), St. Louis County, Minnesota.

(Abstract Property)

Parcel 2:

Non-exclusive access and utility easements as set forth in the Easement Agreement dated September 23, 2020, recorded October 09, 2020, as Document No. 01392559.

EXHIBIT B

CONSENT RELATED TO DEVELOPMENT CONTRACT

THIS CONSENT RELATED TO DEVELOPMENT CONTRACT (this “Agreement”) is made and entered into effective as of _____, 2022, by and among PILLARS OF HERMANTOWN LLC, a Delaware limited liability company (“Borrower” or “Developer”), KTJ 360, LLC, a Minnesota limited liability company (“Original Developer”), COLLIERS FUNDING LLC, a Delaware limited liability company (the “Lender”), the CITY OF HERMANTOWN, a Minnesota municipal corporation (“City”), and the HERMANTOWN ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority created under Chapter 469 of the Minnesota Statutes (“HEDA”).

PRELIMINARY STATEMENT OF FACT:

A. Borrower owns fee simple title to certain real property described in Exhibit A attached hereto (“Premises”). Borrower proposes to construct on the Premises certain improvements, including but not limited to a senior housing facility containing approximately 37 independent living units, 48 assisted living units, and 20 memory care units (collectively with the Premises, the “Project”).

B. Pursuant to a Construction Loan Agreement dated of even date herewith between Borrower and Lender (as may be amended, amended and restated, or otherwise modified from time to time, the “Loan Agreement”), Lender is making a construction loan to Borrower in an amount not to exceed \$29,000,000.00 to finance the Project (“Loan”).

C. The Loan is evidenced by a Promissory Note dated of even date herewith executed and delivered by Borrower to Lender in the maximum principal sum of Twenty-Nine Million and No/100 Dollars (\$29,000,000.00) (as may be amended, amended and restated, or otherwise modified from time to time, the “Note”).

D. In order to secure the repayment of the Loan, Borrower is, among other things, executing and delivering to the Lender its Mortgage and Security Agreement and Fixture Financing Statement of even date herewith mortgaging to Lender the Project and granting to Lender a security interest in the Project (as may be amended, amended and restated, or otherwise modified from time to time, the “Mortgage”).

E. The Loan Agreement, the Note, the Mortgage and the other loan documents and security agreements executed and delivered by the Borrower in connection with the Loan are herein collectively referred to as the “Loan Documents.”

F. The Original Developer, the City and HEDA have entered into that certain Development Contract dated July 8, 2022 (“Development Contract”), a true and correct copy of which is attached hereto as Exhibit B. The Original Developer has assigned its rights and obligations under the Development Contract to the Borrower.

G. Under the Development Contract, the Original Developer agreed to make certain improvements to the Premises consisting of the Water Improvements (as defined in the Development Contract) and the Trail Easement (as defined in the Development Contract).

H. The Development Contract requires that Borrower provide security to the City in the form of a cash deposit in the amount of \$275,000.00 (“Development Contract Deposit”). Further, subject to the terms of the Development Contract and the documents referenced therein, HEDA has agreed to execute and deliver to the Original Developer its Tax Abatement Pay-As-You-Go Revenue Note, Series 2022 (HEDA PAYG Note) in the original principal amount of \$600,000.00 (“HEDA Note”).

I. As security for the Loan, the Borrower, among other things, has collaterally assigned its right, title and interest in the Development Contract, the Development Contract Deposit and the HEDA Note to the Lender.

J. The Original Developer and the Borrower have requested that the City and HEDA: (a) consent to the sale of the Premises to the Borrower; (b) consent to the assignment of the Development Contract to the Borrower; (c) consent to the granting of the Mortgage and Assignment of Rents to the Lender and the enforcement of the Lender’s remedies thereunder; (d) consent to the collateral assignment of the Development Contract, the Development Contract Deposit and the HEDA Note to the Lender; and (e) acknowledge that the Lender may but is not obligated to complete some or all of the performance obligations under the Development Contract. The City is willing to do so subject to the terms and conditions stated herein.

NOW, THEREFORE, for value received, the Borrower, the Original Developer, the Lender, the City and HEDA agree as follows:

1.

CONSENTS OF CITY AND HEDA

1.1 The City and HEDA (a) consent to the sale of the Premises to the Borrower, (b) consent to the assignment of the Development Contract to the Borrower, (c) consent to the granting of the Mortgage and Assignment of Rents to the Lender and the enforcement of the Lender’s remedies thereunder, (d) consent to the collateral assignment of the Development Contract, the Development Contract Deposit and the HEDA Note to the Lender, and (e) acknowledge that the Lender may but is not obligated to complete some or all of the performance obligations under the Development Contract. To the extent that the conditions under the Development Contract for the issuance of the HEDA Note are satisfied, HEDA will issue the HEDA Note to the Borrower.

2.

LENDER RIGHT TO PERFORM
ORIGINAL DEVELOPER/BORROWER OBLIGATIONS

2.1 The City agrees and acknowledges that the Lender may but is not obligated to perform some or all of the obligations of the Original Developer as assigned to the Borrower. Nothing herein shall obligate the Lender to perform any such obligations and Lender’s

performance of some of such obligations shall not be deemed to create an obligation to perform any additional obligation of the Original Developer or the Borrower as assigned to the Lender. The City agrees that, in the event that the Lender elects to enforce its rights with respect to the collateral assignment, the Lender, without the consent or participation of the Borrower, may provide proof and documentation required for the release of any portion of the "Security" as provided in Section 2.9 of the Development Contract or the delivery of the HEDA Note pursuant to Section 6.1 of the Development Contract and upon delivery of such proof, any such portion of the Security that is otherwise payable to the Borrower as assignee of the Original Developer shall be paid to the Lender and the original HEDA Note shall be delivered to Lender. The City agrees that any notice that the City is required to provide to the Original Developer and/or the Borrower shall also be provided to the Lender at the same time that such notice is provided to the Original Developer and/or the Borrower.

3.

MISCELLANEOUS PROVISIONS

3.1 This Agreement embodies and constitutes the entire understanding among the parties with respect to the transactions provided herein. Neither this Agreement nor any provision hereof may be waived, amended or terminated except by an instrument signed by the party against whom the enforcement of such waiver, amendment or termination is sought, and then only to the extent set forth in such instrument.

3.2 Whenever in this Agreement one of the parties hereto is named or referred to, the heirs, legal representatives, successors and assigns of such parties shall be included and all covenants and agreements contained in this Agreement by or on behalf of the Borrower or by or on behalf of the Lender shall bind and inure to the benefit of their respective heirs, legal representatives, successors and assigns, whether so expressed or not.

3.3 Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

3.4 Any notices and other communications permitted or required by the provisions of this Agreement (except for telephonic notices expressly permitted) shall be in writing and shall be deemed to have been properly given or served by depositing the same with the United States Postal Service, or any official successor thereto, designated as Certified Mail, Return Receipt Requested, bearing adequate postage, or deposited with a reputable private courier or overnight delivery service, and addressed as hereinafter provided. Each such notice shall be effective three (3) days after being deposited or delivered as aforesaid. The time period within which a response to any such notice must be given, however, shall commence to run from the date of receipt of the notice by the addressee thereof. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice sent. By giving to the other party hereto at least ten (10) days' notice thereof, either party hereto shall have the right from time to time to change its address and shall have the right to specify as its address any other address within the United States of America.

Each notice to Lender shall be addressed as follows:

Colliers Funding LLC
90 South Seventh Street, Suite 4300
Minneapolis, Minnesota 55402
Attention: Vice President - Loan Servicing

With a copy to:

Fox Rothschild LLP
Two22 Building – Suite 2000
222 South Ninth Street
Minneapolis, Minnesota 55402
Attention: Steven W. Meyer

Each notice to Borrower or Original Developer shall be addressed as follows:

Pillars of Hermantown LLC
c/o Oppidan Senior Living
400 Water Street, Suite 200
Excelsior, Minnesota 55331
Attention: Shannon Rusk
David Scott

Each notice to the City shall be addressed as follows:

City of Hermantown
5105 Maple Grove Road
Hermantown, Minnesota 55811
Attention: John Mulder, City Administrator

Each notice to HEDA shall be addressed as follows:

Hermantown Economic Development Authority
5105 Maple Grove Road
Hermantown, Minnesota 55811
Attention: John Mulder, City Administrator

3.5 Regardless of the place of execution of this instrument, the parties to this instrument have contracted for Minnesota law to govern this instrument and it is agreed that this instrument is made pursuant to and shall be construed and governed by the laws of the State of Minnesota without regard to the principles of conflicts of law.

3.6 Each party to this Agreement submits and consents to personal jurisdiction of the courts of the State of Minnesota and courts of the United States of America sitting in such state for the enforcement of this instrument and waives any and all personal rights under the laws of any state or the United States of America to object to jurisdiction in the State of Minnesota.

Litigation may be commenced in any state court of general jurisdiction for the State of Minnesota or the United States District Court located in that state.

3.7 This instrument may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one instrument, but in making proof hereof it shall only be necessary to produce one such counterpart. The signatures to this instrument may be executed on separate pages and when attached to this instrument shall constitute one complete document.

3.8 THE PARTIES TO THIS INSTRUMENT WAIVE TRIAL BY JURY IN ANY JUDICIAL PROCEEDING TO WHICH ANY PARTIES TO THIS INSTRUMENT ARE INVOLVED DIRECTLY OR INDIRECTLY AND ANY MATTER IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS INSTRUMENT OR THE RELATIONSHIP ESTABLISHED HEREUNDER, AND WHETHER ARISING OR ASSERTED BEFORE OR AFTER THE DATE OF THIS INSTRUMENT.

[Signature pages follow]

IN WITNESS WHEREOF, this Agreement was executed as of the date first above-written.

PILLARS OF HERMANTOWN LLC,
a Delaware limited liability company

By: _____

David Scott

Its: Authorized Signatory

KTJ 360, LLC,
a Minnesota limited liability company

By: _____
David Scott
Its: Authorized Signatory

COLLIERS FUNDING LLC,
a Delaware limited liability company

By: _____
Gregory A. Bolin
Its: Senior Vice President

CITY OF HERMANTOWN,
a Minnesota municipal corporation

By: _____
Name: _____
Its: _____

**HERMANTOWN ECONOMIC
DEVELOPMENT AUTHORITY,**
an economic development authority created under
Chapter 469 of the Minnesota Statutes

By: _____
Name: _____
Its: _____

EXHIBIT A

LEGAL DESCRIPTION

Real property in the City of Hermantown, County of St. Louis, State of Minnesota, described as follows:

Parcel 1:

The South Half of the West Half of the Southwest Quarter of the Southwest Quarter (S 1/2 of W 1/2 of SW 1/4 of SW 1/4), Section Fourteen (14), Township Fifty (50), Range Fifteen (15), St. Louis County, Minnesota.

(Abstract Property)

Parcel 2:

Non-exclusive access and utility easements as set forth in the Easement Agreement dated September 23, 2020, recorded October 09, 2020, as Document No. 01392559.

EXHIBIT B

DEVELOPMENT CONTRACT

(See attached)

TO: HEDA
FROM: Eric Johnson, Community
Development Director



DATE: July 21, 2022 **Meeting Date:** July 28, 2022

SUBJECT: Approve contract with Braun **Agenda Item: 12-x**
Intertec for Alternative Urban
Areawide Review

REQUESTED ACTION

Approve Contract with Braun Intertec Corporation (Braun) for the Alternative Urban Areawide Review (AUAR) associated with the Highway 53 Business Park project.

BACKGROUND

The City prepared a Request for Proposals for qualified planning/engineering firms to provide a proposal to prepare an Alternative Urban Areawide Review (AUAR) associated with the Highway 53 Business Park project. The City received proposals from Braun and WSB. City staff reviewed the proposals from the two firms and after consideration is recommending Braun for the contract in the amount not to exceed of \$86,925.00.

City staff is recommending Braun based on their past working relationship with the firm as well Braun's previous work with the desktop analysis of the Highway 53 Business Park land area.

The funds for the AUAR will come from HEDA fund 230-465100-319. There may be the opportunity to recapture a portion of these costs from the underlying property owner at the time of site development within the Business Park.

SOURCE OF FUNDS (if applicable)

HEDA 230-465100-319

ATTACHMENTS

- Resolution
- Braun Proposal
- Agreement for Consultant Services

Hermantown Economic Development Authority

HEDA's mission is to intentionally lead economic growth, creating a vibrant and prosperous community.

Hermantown Economic Development Authority
Resolution No. 2022-07H

HEDA Commissioner _____ introduced the following resolution and moved its adoption:

RESOLUTION APPROVING AN AGREEMENT FOR CONSULTING SERVICES TO PROVIDE AN ALTERATIVE URBAN AREA WIDE REVIEW WITH BRAUN INTERTEC CORPORATION IN AN AMOUNT NOT TO EXCEED \$86,925.00

WHEREAS, the Hermantown Economic Development Authority (“HEDA”) duly advertised for proposals for an Alternative Urban Area wide Review (“AUAR”) of a proposed business park consisting of nine tax parcels and 137 acres of existing commercial, light industrial and undeveloped land located between Abrahamson Road and Lavaque Bypass Road on the north side of Trunk Highway 53 (“Project”); and

WHEREAS, proposals on such Project were reviewed by HEDA staff on July 15, 2022; and

WHEREAS, proposals were received from Braun Intertec Corporation (“Braun”) and WSB (“WSB”); and

WHEREAS, HEDA’s staff reviewed the proposals and on the basis of such review, HEDA’s staff has recommended that Braun be awarded the contract for Project; and

WHEREAS, a form of proposed Consulting Agreement to be entered into between Braun and HEDA for the Project is attached hereto as Exhibit A; and

WHEREAS, the HEDA Commissioners have reviewed the recommendation of the HEDA staff and the Consulting Agreement and believe that it is in the best interests of HEDA that the contract for the Project be awarded to Braun and the form of Consulting Agreement be approved.

NOW THEREFORE, BE IT RESOLVED by the Commissioners of HEDA as follows:

1. The proposal of Braun is in the amount of \$86,925.00 for the Project shall be and hereby is accepted.
2. The Consulting Agreement substantially in the form of the one attached hereto as Exhibit A is hereby approved.
3. Upon execution of such Consulting Agreement by Braun and its submission of a certificate of insurance acceptable to HEDA’s Attorney, the work pursuant to the Consulting Agreement may proceed.

The motion for the adoption of the foregoing resolution was duly seconded by HEDA Commissioner _____ and, after full discussion thereof and upon a vote being taken thereon, the following HEDA Members voted in favor thereof:

and the following voted against the same:

Whereupon said resolution was declared duly passed and adopted.

Dated this _____ day of _____, 2022.

HEDA Administrator

EXHIBIT A

AGREEMENT FOR CONSULTING SERVICES

THIS AGREEMENT FOR CONSULTING SERVICES (“Agreement”) is made effective as of the ____ day of _____, 2022 by and between the **Hermantown Economic Development Authority** (“Owner”) and **Braun Intertec Corporation** (“Consultant”) in response to the following situation:

A. Owner desires to obtain consulting services for the purposes of preparing an Alternative Urban Areawide Review (AUAR) with respect to the development of property located between Abrahamson Road and Lavaque Bypass Road on the north side of Trunk Highway 53 (“Project”).

B. Consultant is willing to provide consulting services to Owner pursuant to these terms of this Agreement.

NOW, THEREFORE, Owner and the Consultant do mutually agree as follows:

1. **Services to be Performed.**

1.1. Travis Fristed will be the Project Manager for the services to be performed by Consultant.

1.2. The scope of services to be provided to Owner by Consultant is as set forth on Exhibit A attached hereto.

2. **Personnel.** Consultant will secure, at its own expense, all personnel required to perform the services under this Agreement, and such personnel shall not be the employee(s) of, nor have a contractual relationship with, Owner.

3. **Assignability.** Consultant shall not assign any interest in this Agreement, shall not contract with others to perform Consultant’s services and shall not transfer any interest in this Agreement without the prior written approval of Owner.

4. **Agreement Period.** This Agreement shall be effective as of the date hereof and shall continue until terminated as provided in paragraph 5 hereof.

5. **Termination of Agreement.** Either Consultant or Owner may, by giving written notice specifying the effective date which shall not be less than thirty (30) days from the date such notice is given, terminate this Agreement in whole or in part. In the event of termination, all property and finished or unfinished documents and other writings prepared by the Consultant under this Agreement shall be delivered to Owner and Consultant shall be entitled to compensation for time expended and expenses incurred to the date of termination.

6. **Independent Contractor.** The relationship between the Consultant and Owner shall be that of an independent contractor. Nothing herein shall in any way make or create any employer employee relationship between Owner and Consultant.

7. **Consultant Agreement Insurance Requirements.** Standard of Performance and Insurance; Indemnity. All services to be performed by Consultant hereunder shall be performed in a skilled, professional and non-negligent manner. Consultant shall obtain and maintain at his/her/its cost and expense:

7.1. Comprehensive general liability insurance that covers the consultant services performed by Consultant for Owner with a combined single limit of liability of at least One Million Dollars (\$1,000,000.00).

7.2. Worker's compensation insurance covering Consultant (if an individual) all of Consultant's employees with coverages and limits of coverage required by law.

7.3. In addition to the coverages listed above, Consultant shall maintain a professional liability insurance policy in the amount of \$2,000,000. Said policy need not name the City as an additional insured. It shall be Consultant's responsibility to pay any retention or deductible for the professional liability insurance. Consultant agrees to maintain the professional liability insurance for a minimum of two (2) years following termination of this Agreement.

Consultant shall indemnify and hold harmless Owner from and against all errors, omissions and/or negligent acts causing claims, damages, liabilities and damages arising out of the performance of his/her/its services hereunder.

Consultant certifies that Consultant is in compliance with all applicable worker's compensation laws, rules and regulations. Neither Consultant (if an individual) nor Consultant's employees and agents will be considered Owner employees. Any claims that may arise under any worker's compensation laws on behalf of any employee of Consultant and any claims made by any third party as a consequence of any act or omission on the part of Consultant or any employee of Consultant are in no way Owner's obligation or responsibility. By signing this Agreement, Consultant certifies that Consultant is in compliance with these laws and regulations.

Consultant shall deliver to Owner, concurrent with the execution of this Agreement, one or more certificate(s) of insurance evidencing that Consultant has the insurance required by this Agreement in full force and effect. Owner shall be named as additional insured under such Consultant's comprehensive general liability policy. The insurer will provide at least thirty (30) days prior written notice to Owner, without fail, of any cancellation, non-renewal, or modification of any of the Consultant's comprehensive general liability policy or coverage evidenced by said certificate(s) for any cause, except for nonpayment of premium. The insurer will provide at least ten (10) days prior written notice to Owner, without fail, of any cancellation of any of the Consultant's comprehensive general liability policy or coverage evidenced by said certificate(s) for nonpayment of premium. Consultant shall provide Owner with appropriate endorsements to Consultant's comprehensive general liability policy reflecting the status of

Owner as an additional insured and requiring that the foregoing required notice of cancellation, material alteration or non-renewal be provided Owner by the insurance company providing such insurance policy to Consultant.

The Consultant shall require any subcontractor permitted by Owner to perform work for Consultant on the Project to have in full force and effect the insurance coverage required of the Consultant under this Agreement before any subcontractor(s) begin(s) work on the Project.

Consultant shall require any such subcontractor to provide to Consultant a Certificate of Insurance evidencing that such subcontractor has the insurance required by this Agreement in full force and effect. The Consultant and Owner shall be named as additional insureds under such policies. The insurer will provide 30 day written notice to Owner and Consultant, without fail, of any cancellation, non-renewal, or modification of the subcontractor's comprehensive general liability policy or coverage evidenced by said certificate(s) for any cause, except for nonpayment of premium. The insurer will provide at least ten (10) days prior written notice to Owner, without fail, of any cancellation of any of the subcontractor's comprehensive general liability policy or coverage evidenced by said certificate(s) for nonpayment of premium. Owner shall also be provided with appropriate endorsements to subcontractor's comprehensive general liability policy reflecting the status of Owner as an additional insured and requiring that the foregoing required notice of cancellation, material alteration or non-renewal be provided Owner by the insurance company providing subcontractor's comprehensive general liability policy.

8. **Compensation.** Consultant shall be compensated for the services to be performed hereunder as set forth in Exhibit A. Consultant shall submit to Owner itemized statements of services rendered during each month setting forth the date such services were rendered, a description of the services rendered, the person performing such services and the amount of time expended in performing such services.

9. **Recordkeeping.** Consultant hereby agrees:

9.1. To maintain all books, documents, papers, accounting records and other evidence pertaining to the fees and expenses for which it seeks payment or reimbursement hereunder and appropriate records with respect to the services performed by it under this Agreement.

9.2. To make such materials available at its office at all reasonable times during the Agreement Term and for three (3) years from the date of final payment under this Agreement for inspection by Owner and copies thereof shall be furnished to Owner upon request by Owner.

10. **No Prohibited Interest.** Consultant represents and warrants to Owner that no employee, officer or agent of Owner, any member of the family of any such person, any partner of any such person or any organization which employs or is about to employ any of the above has a financial or other interest in the business of Consultant.

11. **Confidentiality.** Consultant agrees that, at all times, both during the term of this Agreement and after the termination of this Agreement, it will be faithful to Owner by not divulging, disclosing or communicating to any person, firm or corporation, in any manner whatsoever, except in furtherance of the business of Owner or as required by any applicable law, rule, regulation or ordinance of Owner or any other governmental authority, any information of any kind, nature or description concerning any matters affecting or relating to the business, employees, agents, customers of Owner, or parties contracting with Owner.

12. **Intellectual Property Rights.** For the purposes of this Agreement, Project Materials means copyrights and all works developed in the performance of this Agreement, including, but not limited to, the finished product and any deliverables, including any software or data. Project Materials do not include any materials that Consultant developed, acquired or otherwise owned or had a license to use prior to the date of this Agreement. All Project Materials are agreed by Consultant to be “works made for hire” as defined under 17 U.S.C. §101, for which Owner has the sole and exclusive right, title and interest, including all rights to ownership and copyright and/or patent. In addition, Consultant hereby assigns all right, title and interest, including rights of ownership and copyright in the Project Materials to Owner no matter what their status might be under federal law. Consultant shall provide Owner with copies of all Project Materials. Upon request by Consultant, Owner may authorize Consultant to use specified Project Materials to evidence Consultant’s progress and capability. In all such uses of Project Materials by Consultant, reference shall be made to Owner and the Project and that the Project Materials are owned by Owner. Consultant also acknowledges and agrees that all names and logos provided to Consultant by Owner for use in connection with the Project are and shall remain the sole and exclusive property of Owner.

13. **Notices.** Any notice required to be given under this Agreement shall be deemed sufficient if in writing, sent by mail to the last known office address of Consultant, or to Owner at 5105 Maple Grove Road, Hermantown, MN 55811.

14. **Miscellaneous.** This Agreement constitutes the sole and complete agreement relating to the subject matter of this Agreement between the parties, superseding any and all other agreements between the parties and no verbal or other statements, inducements or representations have been made or relied upon by either party. No modifications hereof shall be binding upon either party unless in writing and properly executed.

15. **No Contractual Authority.** Consultant shall have no authority to enter into any contracts or agreements binding upon Owner or to create any obligations on the part of Owner.

16. **Data Practices Act.** Consultant acknowledges that Owner is subject to the provisions of the Minnesota Government Data Practices Act. Consultant must comply with the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, as it applies to all data provided by Owner in accordance with this Agreement and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by Consultant in accordance with this Agreement. The civil remedies of Minnesota Statutes § 13.08, apply to Consultant and Owner. Minnesota Statutes, Chapter 13, provides that all government data are public unless otherwise classified. If Consultant receives a request to release the data referred to in this

Section, Consultant must immediately notify Owner and consult with Owner as to how Consultant should respond to the request. Consultant's response shall comply with applicable law, including that the response is timely and, if Consultant denies access to the data, that Consultant's response references the statutory basis upon which Consultant relied. Consultant does not have a duty to provide public data to the public if the public data is available from Owner.

17. **Choice of Law and Venue.** All matters relating to the validity, construction, performance, or enforcement of this Agreement shall be determined in accordance with the laws of the State of Minnesota. All legal actions initiated with respect to or arising from any provision contained in this Agreement shall be initiated, filed and venued in the State of Minnesota District Court located in the City of Duluth, County of St. Louis, State of Minnesota.

18. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall together constitute one and the same instrument.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, Owner and Consultant have executed this Agreement for Consulting Services as of the date first above written.

OWNER:

**Hermantown Economic Development
Authority**

By _____
Its President

And By _____
Its Secretary

CONSULTANT:

Braun Intertec Corporation

By _____
Its _____

EXHIBIT A

BRAUN **INTERTEC**

The Science You Build On.



ALTERNATIVE URBAN AREAWIDE REVIEW (AUAR) FUTURE BUSINESS PARK SITE – HERMANTOWN, MN

July 15, 2022

July 15, 2022

Mr. Eric Johnson
Community Development Director
City of Hermantown
5105 Maple Grove Road
Hermantown, MN 55811

**Re: Proposal for Alternative Urban Areawide Review
Future Business Park Site
Hermantown, Minnesota**

Dear Mr. Johnson and Members of the Selection Committee:

As the City of Hermantown moves forward with planning efforts for the proposed Future Business Park Site, it is important that you select an experienced consulting firm and project team with demonstrated experience with projects requiring environmental review and specifically through the Alternative Urban Areawide Review (AUAR) process. The following outlines the advantages to selecting Braun Intertec Corporation for this project:

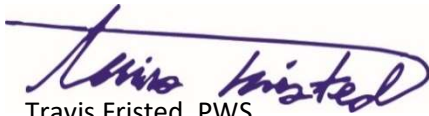
- Braun Intertec was instrumental in preparing the previous desktop study document for the City of Hermantown and is very familiar with the existing information for the Site and is committed to using the information to the maximum degree to promote project efficiencies and minimize AUAR preparation costs.
- Travis Fristed will serve as Braun Intertec's Project Manager and is very experienced with environmental review projects including AUARs. His internal project team includes Kelly Garvey, Jennifer Wolff, and Ben Ruhme who also have experience on environmental review projects throughout Minnesota. It is noted that Jennifer is very knowledgeable of the conditions of the Future Business Park Site through work on the previous Desktop Study Document.
- Jeff Shopek, PE with Loucks Associates will provide senior level civil engineering and related environmental review project support. Jeff is president of Loucks and a principal civil engineer with 38 years of experience. Jeff's collaborative work style and wealth of experience facilitate smooth project coordination and implementation. Jeff is extremely familiar with the EAW/EIS/AUAR process and has written and managed the environmental process for 23 different projects.

Thank you for the opportunity to submit our proposal for AUAR services on this exciting project. Please contact Travis Fristed at 952-995-2027 with any questions or requests for additional information.

Sincerely,

BRAUN INTERTEC CORPORATION


Kenneth Larsen, PE, PG
Vice President


Travis Fristed, PWS
Group Manager, Principal Scientist



1

GENERAL INFORMATION

The Braun Intertec Corporation and Loucks Associates (Loucks) project team (collectively, the “team”) is excited for this opportunity to provide environmental review services for the Future Business Park Site in Hermantown, Minnesota. Throughout the proposal, it will be evident that we have assembled a highly qualified team that has extensive experience performing environmental review projects of all types and specifically including those utilizing the Alternative Urban Areawide Review (AUAR) process.

Braun Intertec Braun Intertec is a 100% employee-owned and Minnesota-based company established in 1957. Our company’s commitment to serving public clients began early in our history and included drilling soil borings for the fledgling interstate highway system. Today, we are a full-service professional geotechnical, environmental consulting, and testing firm with a team of more than 800 engineers, scientists and field personnel specializing in more than 50 technical disciplines throughout our offices in Minnesota and the Central US. Underlying this growth, providing services to counties, cities, state agencies and a variety of other public entities have always been a top priority and focus at our firm. We have strong track record helping our public clients address and resolve environmental issues on many successful and time sensitive projects of all types, ranging in size from small single parcel projects to large-scale multi-parcel acquisitions, redevelopments, and infrastructure improvement projects. The primary point-of-contact for **Braun Intertec** on the project is:

Travis Fristed, PWS

Project Manager / Principal Scientist

tfristed@braunintertec.com

952.995.2027 (office); 952-500.1180 (cell)

Loucks Associates is a premier, multidisciplinary consulting firm that inspires clients to make the best use of their land. Their portfolio is a solid mix of private and public work, which helps them effectively serve both sectors. Loucks’ wide range of offerings includes civil engineering, land surveying, landscape architecture, land planning, and environmental services (including services supporting environmental review/AUAR projects). They are known for being interactive project partners dedicated to helping owners and developers create more remarkable projects. Loucks’ collaborative approach and ongoing interaction throughout the life of the project sets them apart from their peers and is the reason for their outstanding record of successful projects and high client satisfaction. Loucks was founded in 1976 and is located in Maple Grove, Minnesota. The primary point of contact for **Loucks Associates** on this project:

Jeff Shopek, PE

President/ Principal Engineer

jshopek@loucksinc.com

763.496.6715 (office); 612.237.8506 (cell)



2 PROJECT UNDERSTANDING

The City of Hermantown is proposing to complete an Alternate Urban Areawide Review (AUAR) for a proposed future business park comprised of nine individual tax parcels and 137 acres of existing commercial, light industrial and undeveloped land in Hermantown, Minnesota (the proposed business park). The proposed business park is located between Abrahamson Road and Lavaque Bypass Road on the north side of Trunk Highway (TH) 53.

The AUAR will be used to promote and attract development in this area and will also act as a planning tool for the City of Hermantown to guide future site-specific development scenarios and will be key to assisting with environmental planning for development within the AUAR study area. Environmental review may still be necessary for future individual site-specific projects (depending on the size and type of projects). However, the completion of an AUAR will streamline the individual site environmental review processes, expediting land acquisition and construction schedules.

Environmental Review occurs early in the planning process and provides analysis on how different development scenarios will affect the natural resources and community before development begins. Additional steps, such as public engagement and outreach, marketability, and permitting considerations are also critical considerations during the planning phase.

It is our understanding that the City of Hermantown seeks professional services to assist in all aspects of the AUAR process: Master planning, AUAR preparation, public outreach, communication with the public and partners, and Responsible Government Unit (RGU) assistance. Our proposed approach is discussed below in Section 3, Project Approach.





3 PROJECT APPROACH

APPROACH OVERVIEW

For the purposes of scoping the AUAR, we assume that the City of Hermantown will be the Responsible Governmental Unit (RGU) for oversight, acceptance, and processing of the AUAR and that federal-level environmental review will not be required due to the project's scope, size, and absence of federal funding and federal permits that would require Federal NEPA environmental review.

The scope of work for the AUAR will be to collect, evaluate, and draft information required for the AUAR in accordance with the rules and intent of the guidelines set forth by the Minnesota Environmental Quality Board (EQB) (MN Rules Part 4410.3610, Subparts 3- 5). It is our understanding that no specific development has been proposed for the area to be studied, and therefore a public comment period for scoping the AUAR will not be required.

As part of this effort, we will need to understand the proposed options for site and building developments that could occur in the study area and analyze them relative to current conditions and potential environmental impacts. The following shows the overall steps to successfully complete this work:

TASK DETAILS

- 1 • Study Area Definition, Scoping Meetings
- 2 • Master Planning
- 3 • Data Collection and Analysis
- 4 • Community and Stakeholder Engagement
- 5 • Draft AUAR/Mitigation Plan Preparation and RGU Review
- 6 • AUAR Availability Notice to EQB Monitor, Press Release, and Provide Copies to EQB Distribution List
- 7 • Respond to Public Comments, Optional Public Meeting, Public Open House
- 8 • Prepare Draft Final AUAR and Mitigation Plan
- 9 • Distribute Final AUAR to State Agencies and Stakeholders
- 10 • Adoption of final AUAR and Mitigation Plan

Task 1: Study Area Definition, Scoping Meetings

The AUAR process will require close coordination with the City of Hermantown to determine the area to be studied and understand the potential developments that could occur within the study area. This task will include meeting with City staff to understand existing and proposed conditions and any known community concerns and considerations. One in-person project kick-off meeting with the City and project team is anticipated with several follow-up emails, calls, or meetings (as needed). Braun Intertec will develop a detailed AUAR schedule that will be used to identify anticipated AUAR milestones and track the approval process of the AUAR after the project kick-off meeting.

Task 2: Master Planning

We will examine the existing site conditions, and opportunities and constraints, affecting the subject property. Our work would include:

- a. Conduct a site visit.
- b. Using HEDA past work on the site, we will update the base map showing MNTopo, property boundaries, and conditions of the property. An aerial photograph showing existing conditions.

LAND PLANNING:

We will create three development scenarios focusing on various mixes of light industrial, warehouse, office showroom, distribution facilities, and potentially small commercial/retail uses. This will include a mix of larger buildings and smaller building. The land planning process will be based on:

- a. Wetland setbacks and buffer requirements.
- b. Site grading evaluation
- c. Rough storm water ponding criteria
- d. Phased development constraints

CONCEPT MASTER PLANS:

Clear, easy-to-understand illustrations are critical to the marketing and future sale of the property. Our illustrations are prepared to highlight future development opportunities and may be adjusted based on your preferences.

Upon completion of the three Master Plan scenarios, we will evaluate them with the City of Hermantown and stakeholders to decide if one of the Master Plans or parts of each one will be developed into the Final Master Plan to be used for AUAR process.

Task 3: Data Collection and Analysis

Data Collection will involve collecting existing information necessary for the identification and analysis of potential environmental impacts from the proposed development scenarios. The format of the AUAR is similar to an Environmental Assessment Worksheet (EAW), which is a state issued document. The potential environmental impacts must be evaluated and discussed for each question relevant to the proposed development scenarios construction and post-construction conditions.

These potential impacts include (but are not limited to) those to:

- a. wetlands and water resources
- b. hazardous substances
- c. fisheries resources
- d. current and previous land use
- e. wildlife and ecologically sensitive resources
- f. air/greenhouse gas emissions
- g. soils
- h. cumulative impacts
- i. groundwater
- j. storm water runoff
- k. historical and/or archaeological resources
- l. visual impacts
- m. climate change

The AUAR primarily utilizes desktop methods and available data sets. However, information gathered from previous work and field studies will also be incorporated into the AUAR. Wetlands appear to have a significant impact on the overall development of the Master Plan. We have included in the fees an on-site field visual review of potential wetland areas as well as historical aerial photo and soil condition review to better understand the overall wetland impacts.

We would highly recommend a wetland delineation be completed at the start of the AUAR process, including regulatory review and confirmation of the wetland boundaries and types. This effort provides significant credentials to the Master Plan development knowing the wetland limits. A delineation will also more clearly define the potential wetland impacts anticipated by the Master Plan. If requested, Braun Intertec will provide an optional fee to complete a certified wetland delineation.

Inquiries will be made to the State Historic Preservation Office (SHPO) and relevant Tribal Historic Preservation Offices (THPO) for input on historic and cultural resources. Queries will be made of Minnesota Department of Natural Resources (MnDNR) and US Fish & Wildlife Service (USFWS) databases for information on rare species and natural features in the vicinity of the AUAR Study Area. No field studies are planned for any resources for purposes of the AUAR.

Once the information has been collected and reviewed, Braun Intertec will also prepare a separate environmental issues map which will identify potential environmental impacts and site considerations. This internal map may be utilized by the project team to help facilitate future discussions regarding site layout, configurations, and infrastructure/utility corridors within and adjacent to the sites within the study area.

Task 4: Community and Stakeholder Engagement

Successfully completing environmental review projects, especially for larger or more controversial projects, often require enhanced and proactive stakeholder engagement activities. While the public notice period (and, possibly, the public meeting) for the AUAR meets the minimum requirements, we've found the engaging with the community and other interested stakeholders early in the process can help answer questions and address concerns. This proactive investment in stakeholder engagement often saves significant time and resources at the "back end" of the process. The Braun Intertec team has many years of experience working with proven engagement tools to understand the needs and interest of stakeholders and minimize delays. For this project, the project team members will work with City staff to identify stakeholder engagement opportunities and a plan to incorporate these stakeholders into Task 7 activities. This experience and insight should prove to be very helpful for the successful completion of this project.

Task 5: Draft AUAR/Mitigation Plan Preparation and RGU Review

We will use the information we receive from the numerous sources discussed to analyze existing conditions and potential environmental impacts of the proposed development scenarios. We will then create a working draft of the AUAR including relevant maps, tables, and figures. In addition, we will review applicable EQB and environmental rules, regulations, and permit requirements to determine areas of concern and identify appropriate mitigation or other actions, if any, for the AUAR Mitigation Plan. The Mitigation Plan describes mitigation measures which must be completed for each new project within the study area. Upon completion of our working drafts, we will submit the draft to the project team for review and comment prior to officially submitting the information the City of Hermantown for the RGU evaluation.

This task will also involve submitting the AUAR and Mitigation Plan to the City as RGU for their review and processing. The RGU has the obligation to evaluate the completeness of the information and identification of potential environmental impacts in the AUAR and Mitigation Plan, and to adopt the AUAR and Mitigation Plan as their work product. As the judgment of completeness is somewhat subjective, it is possible that after their initial review the RGU will request additional information or clarification of specific items contained in the draft AUAR or Mitigation Plan. We will work with the project team and the RGU to assemble and submit any such information requested. We anticipate three (3) virtual meetings between the Project Team and City staff. The City staff meeting may include outside reviewing agencies if there are any outstanding issues to discuss. We do not expect to conduct any individual meetings with reviewing agencies.

Task 6: AUAR Availability Notice to EQB Monitor, Press Release, Provide Copies to EQB Distribution List

Once the City (as RGU) has determined that the draft AUAR and Mitigation Plan are complete, Braun Intertec will prepare a 50-word AUAR summary and after review and approval by the City will submit the summary for publication in the weekly EQB publication (the Environmental Monitor) for public notice. Braun Intertec will also prepare a press release regarding the availability of the AUAR and Mitigation Plan for public review and comment and submit to a local newspaper for publication early on during the 30-day public comment period.

In conjunction with submitting the AUAR summary to EQB for public notice of AUAR and Mitigation Plan availability, we will prepare and distribute the required copies to those currently listed on the EQB Distribution List. This task will be done within 5 days of publication in the EQB Monitor. We will also make hard copies and one electronic copy (.pdf file unless instructed otherwise) and deliver to the required local offices.

Task 7: Respond to Comments, Optional Public Meeting, Public Open House

Braun Intertec will review comments received by the City during the public comment period and prepare draft responses to the comments. Draft responses will be forwarded to the City for review and comment, prior to officially submitting to the City for formal review and comment. Once the comments are received, responses will be finalized and distributed to all commenters within the timeline in EQB rules and guidance.

The environmental review rules of the EQB do not require a public meeting, but it is common to include either a public meeting or a public informational meeting on the AUAR during the public comment period. If the City elects to have a public meeting, Braun Intertec staff will participate in this meeting and provide information as requested by the City. Our understanding is the HEDA has determined that an Open House/Public meeting is needed for the AUAR. Braun Intertec and Loucks staff members will attend one public open house.

Task 8: Prepare Draft Final AUAR and Mitigation Plan

After applying the criteria outlined by EQB rules to the completed AUAR, Braun Intertec will prepare a draft final AUAR and Mitigation Plan for review by City staff. The draft final AUAR and Mitigation Plan will summarize the development scenarios, detail the impacts, and contain responses to all comments received during the 30-day comment period and public meeting (if held).

Task 9: Distribute Final AUAR to State Agencies and Stakeholders

After the draft resolution is approved by the City, Braun Intertec will prepare the final AUAR and Mitigation Plan for final comments. The final documents will be distributed to State Agencies and stakeholders as required by the EQB. These agencies have 10 days from receipt of the final AUAR documents to file an objection.

Task 10: Adoption of Final AUAR and Mitigation Plan

After the final review period has passed, and any objections have been resolved, the City can adopt the final AUAR and mitigation plan. Notice of the completion of the final AUAR and Mitigation Plan will be submitted to the EQB Monitor for publication as well as to all commenters and any others who requested a copy.



4 PROPOSED PROJECT TEAM AND EXPERIENCE

TEAM OVERVIEW

The Braun Intertec team assigned to this project will consist of sr. scientist; engineers; and environmental specialists with decades of experience working on complex permitting and environmental review projects. Travis Fristed, Braun Intertec’s Natural Resources Group Manager, will lead the team.

Travis Fristed brings more than 17 years of environmental compliance and natural resource consulting experience in public and private markets throughout the Midwest. Travis has worked with private developers, energy clients, municipalities, county governments, and state agencies to acquire a broad professional experience in both diversity of regulatory programs and their application to a variety of client types, facilities, and geographies. His responsibilities at Braun Intertec include project scoping for environmental regulations and compliance, natural resource field studies, environmental review, environmental permitting/compliance, project management, and client development. Travis’s technical strength lies in interpreting environmental regulations and planning for projects, with specific expertise in wetland regulation/permitting, stormwater management techniques and stormwater pollution prevention plans, best management plan implementation, environmental review, site due-diligence, and unique environmental work specific to transportation corridors, linear projects, and large project areas.

Jeffrey Shopek, PE, fNSPE is president of Loucks Associates and a principal civil engineer with 38 years of experience. Jeff’s collaborative work style and wealth of experience facilitate smooth project coordination and implementation. Throughout his career, Jeff’s expertise has been respected by his peers, including recognition as the 2011 MSPE Engineer of the Year, 2012 Distinguished Engineer Award, and designation as one of seventeen NSPE Fellows of the National Society of Professional Engineers in the State of Minnesota. Jeff is extremely familiar with the EAW/EIS/AUAR process and has written and managed the environmental process for 23 different projects. Jeff worked on the Allianz Soccer Stadium and the 35-acre development surrounding the stadium and was responsible for design, permitting, and construction for over 40 million dollars of private and public infrastructure. Other EAW/AUAR projects involved various housing projects and/or corporate headquarters. Examples include Allianz Life USA | 600,000 square foot office in Golden Valley; Boston Scientific | 850,000 square foot campus in Maple Grove; Abbott (formerly St. Jude) | 200,000 square foot Expansion in Little Canada; and Gateway Village | 560 multifamily units in Saint Paul.

Kelly Garvey has over 30 years’ experience as a MEPA and National Environmental Policy Act (NEPA) specialist. Kelly’s past projects have included several large developments in Minnesota which required the preparation of Environmental Assessment Worksheets (EAW) and Environmental Impact Statements (EIS). Her role in this project will be that of a senior reviewer of the draft AUAR and responder of public comments received.

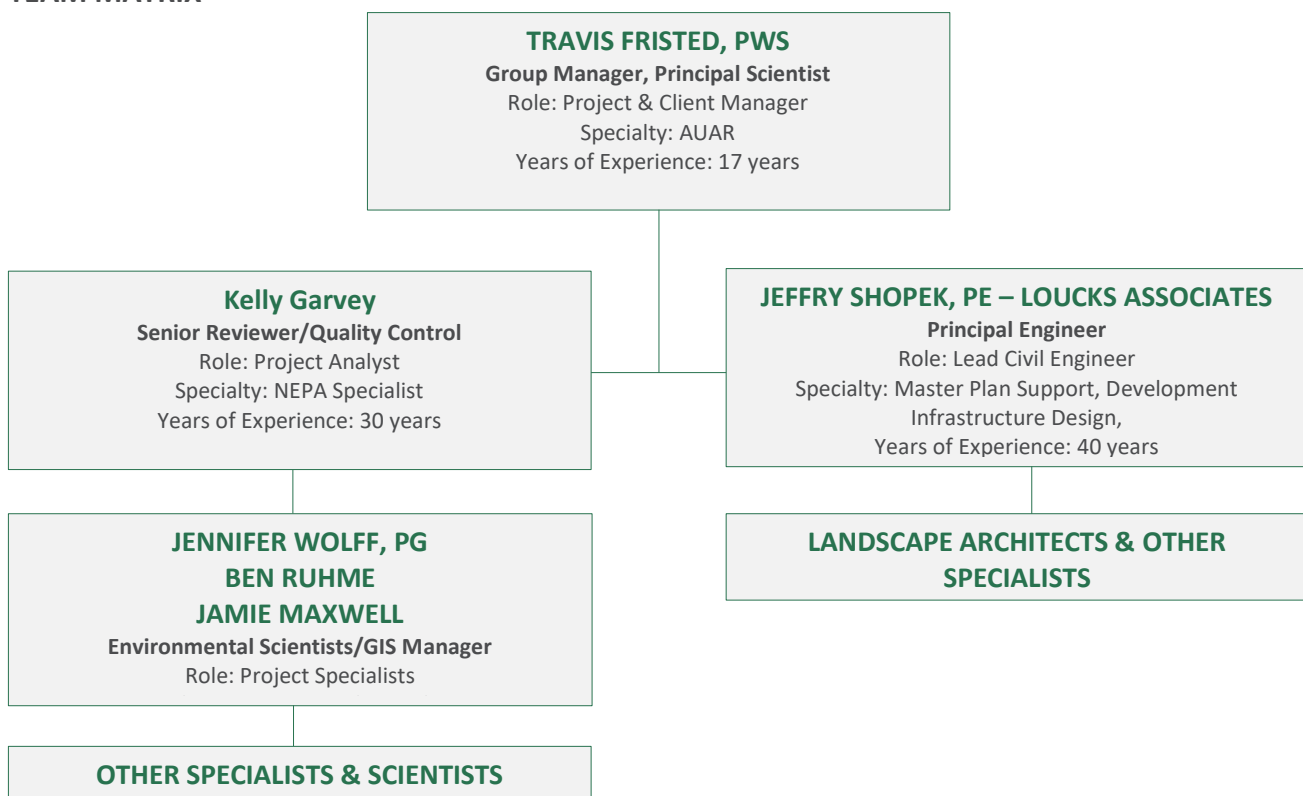
Jennifer Wolff has over 29 years’ experience as an environmental consultant. She specializes in environmental permitting, environmental compliance, environmental compliance evaluations and audits, National Environmental Policy Act (NEPA) environmental evaluations, disaster relief environmental project management, Phase I Environmental Site Assessments, contamination investigation and remediation, and brownfield redevelopment. Jennifer is very knowledgeable of the conditions of the Future Business Park Site through work on the previous Desktop Study Document.

Benjamin Ruhme has over six years of experience in environmental consulting and is primarily responsible for the drafting of reports and associated field work for environmental review projects, wetland delineations, Threatened and Endangered Species reviews and assessments, Phase I & II Environmental Site Assessments (ESA), remedial investigations, and construction oversight projects.

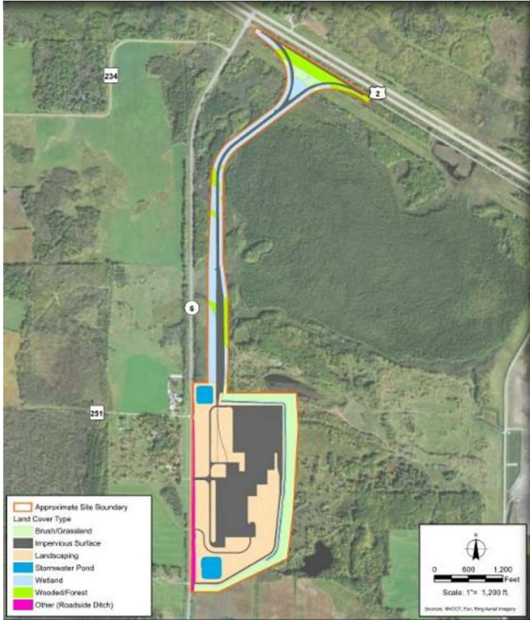
Jamie Maxwell is the Geographic Information Science (GIS) Manager in the Geospatial Operations group at Braun Intertec. He has eight years of professional GIS experience in the Environmental Consulting and Architecture, Engineering, and Construction (AEC) industries. Jamie has expertise in complex map generation, geographic data analysis, mobile data collection, high-accuracy GNSS systems, cloud GIS, and most Esri platforms. Jamie is also an FAA Part 107 certified UAV pilot with experience in imagery capture and 3D modeling.

One-page resumes for key team members Travis Fristed and Jeff Shopek are provided in **Attachment 1**. Resumes for the other team members are available upon request.

TEAM MATRIX



PROJECT EXAMPLES – BRAUN INTERTEC



Frontier Project, Cohasset, MN: The Braun Intertec environmental review team lead the preparation and development of an EAW for the industrial project in Cohasset from 2021 to 2022. The proposed 750,000 square-foot oriented strand board (OSB) manufacturing facility will occupy approximately 159 acres of agricultural and undeveloped lands. One new rail spur would be constructed to an existing rail line along U.S. Highway 2. The rail spur will support raw material deliveries and product shipments, in addition to those made by road transport. New utilities would be constructed to service the new facility. Braun Intertec assisted the RGU with coordinating stakeholder and agency involvement, including the EAW review process and public meetings. The EAW process was completed in early 2022 with the issuance of a Negative Declaration by the City of Cohasset and is currently undertaking environmental permitting for construction to proceed.

Adelmann Family Properties, Elko New Market, MN: Mr. Fristed worked with the proposed developer to craft an AUAR for the 242-acre mixed use development. Several conceptual layouts were reviewed and analyzed for potential environmental impacts and needed infrastructure improvements. A mitigation plan was also developed, which discussed potential management strategies for the anticipated environmental impacts. Field studies were also completed early on in the process to better understand the natural resources that may be affected and the regulatory implications resulting from each conceptual layout. The AUAR was finalized, and development is slated to begin in portions of the AUAR study area in the near future.



Fox Meadows Development, Eagle Lake, MN: 60 acres of farmland east of Eagle Lake is proposed for multi and single-family residential development, which required an EAW. Braun Intertec collaborated with the developer’s engineer and city to prepare an EAW that addresses the potential environmental and infrastructure impacts/needs of the project. The EAW is currently pending public notice with an anticipated completion in September 2022.

PROJECT EXAMPLES - LOUCKS



LOUCKS provides oversight of EAW and AUAR preparation and coordinates with regulatory agencies to successfully complete the document review process. This process takes months of document preparation and regulatory review (without the ability to obtain development permits), which makes relevant experience and schedule management essential to securing regulatory approvals.

In order to address potential concerns that may arise during the review process, it is imperative to retain a consultant that can provide both technical and regulatory expertise. Loucks has the background and experience to oversee the review process from start to finish, and provides the following advantages:



- Relevant project experience, including more than 50 EAW/AUARs
- Current project experience includes the completion of six (6) documents in 2019-2020
 - Cold Spring Brewing Co. | Cold Spring, MN
 - Duffey 2.0 | Minneapolis, MN
 - Gertens | Inver Grove Heights, MN
 - Minnesota Health Village | Maple Grove, MN
 - Parkway Residences | St. Louis Park, MN
 - West Crow River Heights | Hanover, MN
- Solid understanding of the Minnesota Environmental Review Program, and a strong working knowledge of local, state, and federal regulatory programs



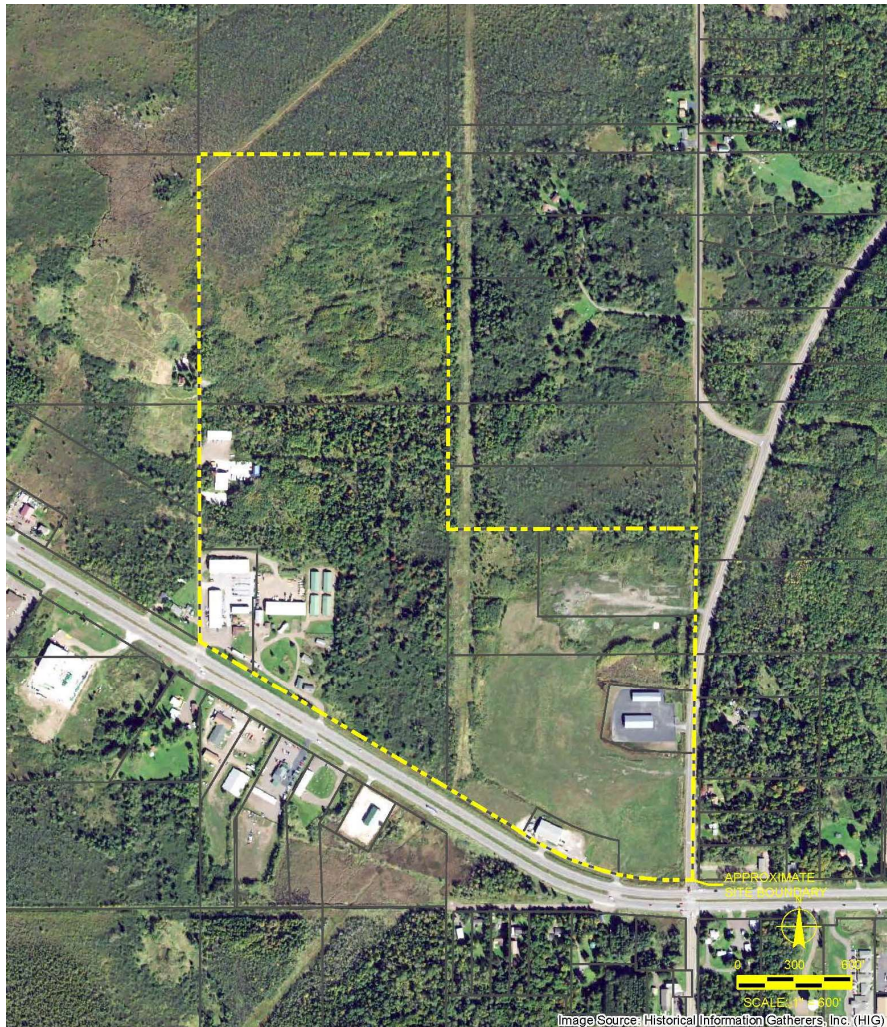
Given the timing and scheduling required in an AUAR, our approach is to identify and address key issues upfront in order to keep the process running smoothly and on schedule. We do this by working collaboratively with the ownership, design, and project teams.

5 SCHEDULE

AUAR SCHEDULE

Braun Intertec understands the importance of timing and is committed to move quickly if selected. It is our understanding that this AUAR could start in September, and we are prepared to dedicate the resources to this project once authorization is received. The AUAR will be staffed with experienced personnel and scheduled such that the proposed dates are met on time. The following is a discussion on general timelines for the AUAR process. Please note that additional steps for “Specific Large Projects” may be required depending on the AUAR Study Area. Braun Intertec will develop a detailed AUAR schedule that will be used to identify anticipated AUAR milestones and track the approval process of the AUAR after the project kick-off meeting.

AUAR timelines include some items with mandatory timelines and some that have more flexibility to complete, which make the overall timeline more complex. In general, the estimated time to complete the AUAR process is 30 weeks. This timeline does not include other studies that might have to be completed as part of the AUAR, such as wetlands or threatened and endangered species surveys.



6 ADDITIONAL INFORMATION

ASSUMPTIONS & EXCLUSIONS

The City of Hermantown or Property Owners will provide past reports and/or documentation in digital format for our use in completing the AUAR. Site and project information such as concept plans, soil borings, soil report, environmental reports, existing utility information with watermain pressure and flow rates, sewer locations and depths, previous traffic evaluations, airport restrictions, and other pertinent data that may be available from the City or Property Owners will be forwarded to us, by either.

Traffic analysis will project estimated traffic generation based on the selected master plan. New site entrance locations will be identified with potential improvements to existing roads. Potential traffic control upgrades will be identified but intersection configuration is beyond the scope of the AUAR. A Traffic Impact Study is not included in the Scope of Work.

It is our assumption that:

- a. The existing commercial/industrial facilities that exist within the AUAR scoping area will remain operating “as is.”
- b. Wetland filling will not exceed a few acres of the approximate 47 wetland acres as identified on the Northland Consulting Engineers Desktop review.
- c. Stormwater management will be done on an individual development basis and not a comprehensive stormwater plan.
- d. Watermain pressure and flow rates are great enough to meet fire sprinkler code without supplemental boosters.
- e. Sanitary sewer depth is adequate to serve the properties without lift stations.

7 TOTAL CONSULTANT COST

PROJECT COST ESTIMATE

Braun Intertec will complete the work described above on a Not-To-Exceed a time and materials basis, in accordance with the hourly rates and terms of the City of Hermantown’s current Master Services Agreement with Braun Intertec. The following estimated costs will not be exceeded without prior additional authorization:

Tasks/Services	Estimated Cost
1. Study Area Definition, Scoping Meetings	\$9,793
2. Master Planning	\$15,439
3. Data Collection and Analysis	\$9,816
4. Community and Stakeholder Engagement	\$2,466
5. Draft AUAR/Mitigation Plan Preparation and RGU Review	\$28,107
6. AUAR Availability Notice to EQB Monitor, Press Release, Provide Copies to EQB Distribution List	\$1,654
7. Respond to Public Comments, Optional Public Meeting, Public Open House	\$13,299
8. Prepare Draft Final AUAR and Mitigation Plan	\$3,777
9. Distribute Final AUAR to State Agencies and Stakeholders	\$1,895
10. Adoption of Final AUAR and Mitigation Plan	\$679
Total Estimated Cost	\$86,925

The cost estimates provided for each task include project management, vehicle and mileage-expenses, and printing expenses. Project management tasks include general phone and email correspondence, project tasks and budget tracking, management of staff, and up to six (6) project update meetings (4 virtual and 2 in-person).

Hourly billing rates for the anticipated project team members are provided below:

- Travis Fristed: \$195/hr.
- Jeff Shopek (Loucks): \$230/hr.
- Jennifer Wolff: \$175/hr.
- Kelly Garvey \$159/hr.
- Benjamin Ruhme: \$126/hr.
- Jamie Maxwell \$102/hr.

These hourly rates will apply to the planned scope of services and also to additional services completed by these individuals (if needed, and only as approved in advance by the City of Hermantown). Comprehensive Fee Schedules for both Braun Intertec and Loucks Associates are provided in **Attachment 2**.

As stated previously, additional supporting services/field studies (and associated costs) may become necessary to support the AUAR that are outside of the scope of this proposal (non-scope items). Examples of potential non-scope items include mobile air and noise emission modeling, cultural resources studies, and environmental field studies. If such a need arises, Braun Intertec will provide a separate scope of work and cost estimate for these efforts.

ATTACHMENT 1
KEY TEAM MEMBER RESUMES

EDUCATION

Minnesota State University – Mankato
(B.S. Aquatic Ecology)

PROFESSIONAL REGISTRATIONS

Professional Wetland Scientist (PWS, #2360)

CERTIFICATIONS

MWPCP Certified Wetland Delineator
(MN #1169)

NPDES Construction Site Manager (MN)

NPDES Construction SWPPP Designer (MN)

Mine Safety & Health Administration- Part 46
& 48

PROFESSIONAL AFFILIATIONS

National Association of Environmental
Professionals- MN Chapter
(Director-At-Large 2019)

Minnesota Wetland Professionals Association
(2011-2013 Treasurer, current voting member)

Travis brings 15+ years of environmental compliance and natural resources consulting experience in public and private markets throughout the Midwest and Western U.S.. He has worked with private developers, energy clients, municipalities, county governments, and state agencies to acquire a broad professional experience in both diversity of regulatory programs and their application to a variety of client types and facilities. His responsibilities at Braun Intertec include project scoping for environmental regulations and compliance, natural resource field studies, environmental review (MEPA/NEPA), environmental permitting/compliance, project management, and client development. Travis's technical strength lies in interpreting environmental regulations and planning for projects, with specific expertise in wetland regulation/permitting, stormwater management techniques and stormwater pollution prevention plans (SWPPP), best management plan implementation, environmental review, site due-diligence, and unique environmental work specific to transportation and linear projects.

Select environmental review project examples, include:

- Fox Meadows Development, Blue Earth County, MN (2022-Present)
- Huber Engineered Woods Facility EAW, Itasca County, MN (2021-2022)
- HCMC Purple Ramp Expansion EAW, Minneapolis, MN (2021-2022)
- Brookston Campground EAW, St. Louis County, MN (2021-2022)
- Faribault Housing & Redevelopment Authority HUD EA, Faribault, MN (2022)
- Hoot Lake Solar EAW, Fergus Falls, MN (2020-2021)
- Adelman Family Property AUAR, Scott County, MN (2018-2019)*
- West Bridge Street Reconstruction EA, Steele County, MN (2019)*
- TruShrimp Harbor Facility EAW, Rock County, MN (2017-2018)*
- Split Rock Wilds EAW, Lake County, MN (2017-2018)*
- Prospectors Loop Trail EAW, St. Louis & Lake County, MN (2016-2017)*
- Minnesota Valley OHV Park EAW, Renville County, MN (2015-2016)*
- Pullet Connection EAW, Renville, MN (2016)*
- Viracon Building Addition EAW, Owatonna, MN (2015)*
- Rembrandt Foods EAW, Renville, MN (2015)*
- Greater East Mankato Infill Service District AUAR update, Mankato, MN (2015-2017)*

**While employed by another firm.*

JEFFREY A. SHOPEK, PE, fNSPE

CEO | Principal Engineer



PROFESSIONAL PROFILE

Jeff Shopek is CEO of Loucks and a principal civil engineer with 38 years of experience. He works closely with owners and developers to provide site development solutions, including the design of surface water hydrology, sanitary and watermain design, conveyance systems, environmental studies, grading design, earthwork computations, construction plan preparation, and construction management.

His expertise includes site reconnaissance and investigation for soil conditions, drainage patterns, street access, project compatibility studies, and remediation. Mr. Shopek's collaborative work style and experience facilitates smooth project design coordination with city, county and state representatives, other consulting engineers, architects, planners, and other governing agencies.



PROJECT EXPERIENCE

Corcoran Farms Industrial Park Corcoran, MN

Loucks provided site design services for this 77,000 sq. ft. industrial park located on 68 acres six miles NW of Plymouth Industrial Market. Municipal water and sewer is available with truck court depth of 120' to 130'.

Beacon Bluff Industrial Redevelopment Complex Saint Paul, MN

This 61-acre site represents the largest brownfield redevelopment the Saint Paul Port Authority has undertaken in 30 years. The existing 3M Saint Paul campus included over 2,000,000 square feet of interconnected buildings, including the main heating plant for the entire campus.

Mr. Shopek managed \$39 million of construction contracts to prepare the site for development and included the following: demolition plans, public and private infrastructure plans, bidding, construction administration, construction staking, and record drawings.

As part of the project, a land remnant was used to create one of the most innovative storm sewer treatment systems in the State of Minnesota. Loucks' "Next Generation" stormwater management system treats previously untreated stormwater from 163 acres and includes provisions for monitoring round water recharge and water quality impacts.

Gopher Resource Industrial Park Saint Paul, MN

Mr. Shopek has worked with Gopher Resource for more than 15 years. Past project work includes: two major warehouse expansions, eight loading docks for the direct loading and unloading of rail cars, the connection of a new 800-foot rail spur to a 40,000 square-foot addition with three loading docks, and construction of new access on Yankee Doodle Road, which included two turn lanes, median islands, and main road reconfiguration.

Specific to Gopher Resource's distribution and truck movement, Loucks provided design solutions as Gopher Resource expanded its operations, and truck maneuvering and staging became critical to the company's growth strategy.

EDUCATION

Bachelor of Science in Civil Engineering | University of Minnesota

REGISTRATIONS

Minnesota | South Dakota | North Dakota

AWARDS

2011 MSPE Engineer of the Year | 2012 MFESTS Charles W. Britzius Distinguished Engineer Award | Fellow Member National Society of PE

ATTACHMENT 2
COMPREHENSIVE FEE SCHEDULES



The Science You Build On.

BRAUN INTERTEC

FEE SCHEDULE – HERMANTOWN AUAR
Effective June 1, 2022 – December 31, 2023

Table with 2 columns: LABOR CATEGORY and HOURLY RATE. Lists various consultant and scientist roles with their respective hourly rates.

Charges for expert witness, emergency, litigation support related depositions, court appearances, and trial testimony will be billed at the above rates plus 100%.

Table with 1 column: OTHER DIRECT COSTS. Lists items like Rental Equipment, Travel, Food and Lodging, Mileage, and Braun Intertec Field Equipment with their billing methods.

OUTSIDE PROFESSIONALS & SERVICES
Outside services, equipment, and facilities provided by Braun Intertec will be billed at At Cost.

INVOICES
Invoices will be generated and submitted monthly, at a minimum, and are payable upon receipt. Additional payment terms are presented in the Consulting Agreement.

HOURLY RATE FEE SCHEDULE

Effective January 1, 2022



Services performed on an hourly basis will be invoiced based on actual hours worked in accordance with the following itemized staffing descriptions. Reimbursable external expenses including, but not limited to, sub-consultants, duplication, messenger service, travel, postage and expendable field supplies will be billed to the client at the actual rate, plus 10%.

DISCIPLINE	JOB CLASSIFICATION	HOURLY RATE
Planning	Senior Planner	\$212
	Senior Site Designer	156
Landscape Architecture	Principal Landscape Architect	215
	Associate Landscape Architect	195
	Senior Landscape Architect.....	185
	Landscape Architect.....	157
	Site Design Technician	140
Engineering	Principal Engineer.....	230
	Associate Engineer.....	206
	Senior Project Engineer.....	195
	Project Engineer Manager.....	181
	Engineer In Training (EIT).....	151
	Senior Engineering Technician.....	143
	Engineering Technician	120
	Senior Construction Representative	165
Construction Representative.....	114	
Surveying	Principal Surveyor.....	221
	Associate Surveyor	197
	Senior Surveyor	186
	Project Surveyor	160
	Land Surveyor in Training.....	146
	Senior Survey Technician.....	148
	Survey Technician.....	124
	Survey Crew Chief.....	145
	Survey Field Technician	112
	Two Person Survey Crew*.....	260
One Person Survey Crew*.....	187	
Scanning	3D Imaging Crew Chief with Scanner	310
	3D Imaging Technician.....	170
Graphics	Graphic Designer.....	144
	Graphic Artist	125
Administration	Administration Assistance (Clerical).....	110
	*For Projects Requiring Certified Health & Safety Training Add Per Employee	63
Reimbursable Expenses	Mileage.....	per mile 0.64
	Mylar Film	each 28.00

EXHIBIT B

7 TOTAL CONSULTANT COST

PROJECT COST ESTIMATE

Braun Intertec will complete the work described above on a Not-To-Exceed a time and materials basis, in accordance with the hourly rates and terms of the City of Hermantown’s current Master Services Agreement with Braun Intertec. The following estimated costs will not be exceeded without prior additional authorization:

Tasks/Services	Estimated Cost
1. Study Area Definition, Scoping Meetings	\$9,793
2. Master Planning	\$15,439
3. Data Collection and Analysis	\$9,816
4. Community and Stakeholder Engagement	\$2,466
5. Draft AUAR/Mitigation Plan Preparation and RGU Review	\$28,107
6. AUAR Availability Notice to EQB Monitor, Press Release, Provide Copies to EQB Distribution List	\$1,654
7. Respond to Public Comments, Optional Public Meeting, Public Open House	\$13,299
8. Prepare Draft Final AUAR and Mitigation Plan	\$3,777
9. Distribute Final AUAR to State Agencies and Stakeholders	\$1,895
10. Adoption of Final AUAR and Mitigation Plan	\$679
Total Estimated Cost	\$86,925

The cost estimates provided for each task include project management, vehicle and mileage-expenses, and printing expenses. Project management tasks include general phone and email correspondence, project tasks and budget tracking, management of staff, and up to six (6) project update meetings (4 virtual and 2 in-person).

Hourly billing rates for the anticipated project team members are provided below:

- Travis Fristed: \$195/hr.
- Jeff Shopek (Loucks): \$230/hr.
- Jennifer Wolff: \$175/hr.
- Kelly Garvey \$159/hr.
- Benjamin Ruhme: \$126/hr.
- Jamie Maxwell \$102/hr.

These hourly rates will apply to the planned scope of services and also to additional services completed by these individuals (if needed, and only as approved in advance by the City of Hermantown). Comprehensive Fee Schedules for both Braun Intertec and Loucks Associates are provided in Attachment 2.

As stated previously, additional supporting services/field studies (and associated costs) may become necessary to support the AUAR that are outside of the scope of this proposal (non-scope items). Examples of potential non-scope items include mobile air and noise emission modeling, cultural resources studies, and environmental field studies. If such a need arises, Braun Intertec will provide a separate scope of work and cost estimate for these efforts.

Hermantown Economic Development Authority
Resolution No. 2022-08H

HEDA Commissioner _____ introduced the following resolution and moved its adoption:

RESOLUTION APPROVING AN AGREEMENT FOR CONSULTING SERVICES WITH MAMMOTH SPORTS CONSTRUCTION TO DESIGN AND DEVELOP A MULTI USE DEVELOPMENT IN AN AMOUNT NOT TO EXCEED \$110,000.00

WHEREAS, the Hermantown Economic Development Authority (“HEDA”) staff have been working on a comprehensive design for the property owned by RBI Group and the City of Hermantown, commonly known as Stebner Farms; and

WHEREAS, a proposal was received from Mammoth Sports Construction (“Mammoth”) with regard to a development of Stebner Farms (“Project”); and

WHEREAS, HEDA’s staff reviewed the proposal and on the basis of such review, HEDA’s staff has recommended that Mammoth be awarded a contract for Project; and

WHEREAS, a form of proposed Consulting Agreement to be entered into between Mammoth and HEDA for the Project is attached hereto as Exhibit A; and

WHEREAS, the HEDA Commissioners have reviewed the recommendation of the HEDA staff and the Consulting Agreement and hereby believe that it is in the best interests of HEDA that the contract for the Project be awarded to Mammoth and the Consulting Agreement be approved.

NOW THEREFORE, BE IT RESOLVED by the Commissioners of HEDA as follows:

1. The proposal of Mammoth for a payment in the amount of \$110,000.00 from HEDA for the Project shall be and hereby is accepted.
2. The Consulting Agreement substantially in the form of the one attached hereto as Exhibit A is hereby approved.
3. Upon execution of such Consulting Agreement by Mammoth and its submission of a certificate of insurance acceptable to HEDA’s Attorney, the work pursuant to the Consulting Agreement may proceed.

The motion for the adoption of the foregoing resolution was duly seconded by HEDA Commissioner _____ and, after full discussion thereof and upon a vote being taken thereon, the following HEDA Members voted in favor thereof:

and the following voted against the same:

Whereupon said resolution was declared duly passed and adopted.

Dated this ____ day of _____, 2022.

HEDA Administrator

EXHIBIT A

AGREEMENT FOR CONSULTING SERVICES

THIS AGREEMENT FOR CONSULTING SERVICES (“Agreement”) is made effective as of the ____ day of _____, 2022 by and between the **Hermantown Economic Development Authority** (“Owner”) and **Mammoth Sports Construction** (“Consultant”) in response to the following situation:

A. Owner desires to obtain consulting services for the design and development of a multi-faceted development to be constructed in Hermantown, Minnesota (“Project”).

B. Consultant is willing to provide consulting services to Owner pursuant to these terms of this Agreement.

NOW, THEREFORE, Owner and the Consultant do mutually agree as follows:

1. **Services to be Performed.**

1.1. Matt Keys will lead the architectural services for the Project and Matt Hohn will lead the preconstruction/estimating services for the Project.

1.2. The scope of services to be provided to Owner by Consultant is as set forth on Exhibit A attached hereto.

2. **Personnel.** Consultant will secure, at her own expense, all personnel required to perform the services under this Agreement, and such personnel shall not be the employee(s) of, nor have a contractual relationship with, Owner.

3. **Assignability.** Consultant shall not assign any interest in this Agreement, shall not contract with others to perform Consultant’s services and shall not transfer any interest in this Agreement without the prior written approval of Owner.

4. **Agreement Period.** This Agreement shall be effective as of the date hereof and shall continue until terminated as provided in paragraph 5 hereof.

5. **Termination of Agreement.** Either Consultant or Owner may, by giving written notice specifying the effective date which shall not be less than thirty (30) days from the date such notice is given, terminate this Agreement in whole or in part. In the event of termination, all property and finished or unfinished documents and other writings prepared by the Consultant under this Agreement shall be delivered to Owner and Consultant shall be entitled to compensation for time expended and expenses incurred to the date of termination.

6. **Independent Contractor.** The relationship between the Consultant and Owner shall be that of an independent contractor. Nothing herein shall in any way make or create any employer employee relationship between Owner and Consultant.

7. **Standard of Performance and Insurance; Indemnity.** All services to be performed by Consultant hereunder shall be performed in a skilled, professional and non-negligent manner. Consultant shall obtain and maintain at his/her/its cost and expense:

7.1. Commercial general liability insurance that covers the consultant services performed by Consultant for Owner with a per occurrence limit/general aggregate limit of liability of at least Two Million Dollars (\$2,000,000.00).

7.2. Worker's compensation insurance covering Consultant (if an individual) all of Consultant's employees with coverages and limits of coverage required by law.

Consultant shall indemnify and hold harmless Owner from and against all errors, omissions and/or negligent acts causing claims, damages, liabilities and damages arising out of the performance of his/her/its services hereunder.

Consultant certifies that Consultant is in compliance with all applicable worker's compensation laws, rules and regulations. Neither Consultant (if an individual) nor Consultant's employees and agents will be considered Owner employees. Any claims that may arise under any worker's compensation laws on behalf of any employee of Consultant and any claims made by any third party as a consequence of any act or omission on the part of Consultant or any employee of Consultant are in no way Owner's obligation or responsibility. By signing this Agreement, Consultant certifies that Consultant is in compliance with these laws and regulations.

Consultant shall deliver to Owner, concurrent with the execution of this Agreement, one or more certificate(s) of insurance evidencing that Consultant has the insurance required by this Agreement in full force and effect. Owner shall be named as additional insured under such Consultant's commercial general liability policy. The insurer will provide at least thirty (30) days prior written notice to Owner, without fail, of any cancellation, non-renewal, or modification of any the policy(ies) or coverage evidenced by said certificate(s) for any cause, except for nonpayment of premium. The insurer will provide at least ten (10) days prior written notice to Owner, without fail, of any cancellation of any of the policy(ies) or coverage evidenced by said certificate(s) for nonpayment of premium. Consultant shall provide Owner with appropriate endorsements to its policy(ies) reflecting the status of Owner as an additional insured and requiring that the foregoing required notice of cancellation, material alteration or non-renewal be provided Owner by the insurance company providing such insurance policy to Consultant.

The Consultant shall require any subcontractor permitted by Owner under Section 3 hereof to perform work for Consultant on the Project to have in full force and effect the insurance coverage required of the Consultant under this Agreement before any subcontractor(s) begin(s) work on the Project. Consultant shall require any such subcontractor to provide to Consultant a Certificate of Insurance evidencing that such subcontractor has the insurance required by this Agreement in full force and effect. The Consultant and Owner shall be named as

additional insureds under such policies. The insurer will provide thirty (30) day written notice to Owner and Consultant, without fail, of any cancellation, non-renewal, or modification of the policy(ies) or coverage evidenced by said certificate(s) for any cause, except for nonpayment of premium. The insurer will provide at least ten (10) days prior written notice to Owner, without fail, of any cancellation of any of the policy(ies) or coverage evidenced by said certificate(s) for nonpayment of premium. Owner shall also be provided with appropriate endorsements to its policy(ies) reflecting the status of Owner as an additional insured and requiring that the foregoing required notice of cancellation, material alteration or non-renewal be provided Owner by the insurance company providing such insurance policy(ies).

8. **Compensation.** Consultant shall be compensated for the services to be performed hereunder as set forth in Exhibit A. Consultant shall submit to Owner itemized statements of services rendered during each month setting forth the date such services were rendered and expenses incurred, a description of the services rendered, the person performing such services and the amount of time expended in performing such services and a description of the expenses.

9. **Recordkeeping.** Consultant hereby agrees:

9.1. To maintain all books, documents, papers, accounting records and other evidence pertaining to the fees and expenses for which it seeks payment or reimbursement hereunder and appropriate records with respect to the services performed by it under this Agreement.

9.2. To make such materials available at its office at all reasonable times during the Agreement Term and for three (3) years from the date of final payment under this Agreement for inspection by Owner and copies thereof shall be furnished to Owner upon request by Owner.

10. **No Prohibited Interest.** Consultant represents and warrants to Owner that no employee, officer or agent of Owner, any member of the family of any such person, any partner of any such person or any organization which employs or is about to employ any of the above has a financial or other interest in the business of Consultant.

11. **Confidentiality.** Consultant agrees that, at all times, both during the term of this Agreement and after the termination of this Agreement, it will be faithful to Owner by not divulging, disclosing or communicating to any person, firm or corporation, in any manner whatsoever, except in furtherance of the business of Owner or as required by any applicable law, rule, regulation or ordinance of Owner or any other governmental authority, any information of any kind, nature or description concerning any matters affecting or relating to the business, employees, agents, customers of Owner, or parties contracting with Owner.

12. **Intellectual Property Rights.** For the purposes of this Agreement, Project Materials means copyrights and all works developed in the performance of this Agreement, including, but not limited to, the finished product and any deliverables, including any software or data. Project Materials do not include any materials that Consultant developed, acquired or otherwise owned or had a license to use prior to the date of this Agreement. All Project Materials

are agreed by Consultant to be “works made for hire” as defined under 17 U.S.C. §101, for which Owner has the sole and exclusive right, title and interest, including all rights to ownership and copyright and/or patent. In addition, Consultant hereby assigns all right, title and interest, including rights of ownership and copyright in the Project Materials to Owner no matter what their status might be under federal law. Consultant shall provide Owner with copies of all Project Materials. Upon request by Consultant, Owner may authorize Consultant to use specified Project Materials to evidence Consultant’s progress and capability. In all such uses of Project Materials by Consultant, reference shall be made to Owner and the Project and that the Project Materials are owned by Owner. Consultant also acknowledges and agrees that all names and logos provided to Consultant by Owner for use in connection with the Project are and shall remain the sole and exclusive property of Owner.

13. **Notices.** Any notice required to be given under this Agreement shall be deemed sufficient if in writing, sent by mail to the last known office address of Consultant, or to Owner at 5105 Maple Grove Roder, Hermantown, MN 55811.

14. **Miscellaneous.** This Agreement constitutes the sole and complete agreement relating to the subject matter of this Agreement between the parties, superseding any and all other agreements between the parties and no verbal or other statements, inducements or representations have been made or relied upon by either party. No modifications hereof shall be binding upon either party unless in writing and properly executed.

15. **No Contractual Authority.** Consultant shall have no authority to enter into any contracts or agreements binding upon Owner or to create any obligations on the part of Owner.

16. **Data Practices Act.** Consultant acknowledges that Owner is subject to the provisions of the Minnesota Government Data Practices Act. Consultant must comply with the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, as it applies to all data provided by Owner in accordance with this Agreement and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by Consultant in accordance with this Agreement. The civil remedies of Minnesota Statutes § 13.08, apply to Consultant and Owner. Minnesota Statutes, Chapter 13, provides that all government data are public unless otherwise classified. If Consultant receives a request to release the data referred to in this Section, Consultant must immediately notify Owner and consult with Owner as to how Consultant should respond to the request. Consultant’s response shall comply with applicable law, including that the response is timely and, if Consultant denies access to the data, that Consultant’s response references the statutory basis upon which Consultant relied. Consultant does not have a duty to provide public data to the public if the public data is available from Owner.

17. **Choice of Law and Venue.** All matters relating to the validity, construction, performance, or enforcement of this Agreement shall be determined in accordance with the laws of the State of Minnesota. All legal actions initiated with respect to or arising from any provision contained in this Agreement shall be initiated, filed and venued in the State of Minnesota District Court located in the City of Duluth, County of St. Louis, State of Minnesota.

18. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall together constitute one and the same instrument.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, Owner and Consultant have executed this Agreement for Consulting Services as of the date first above written.

OWNER:

**Hermantown Economic Development
Authority**

By _____
Its President

And By _____
Its Secretary

CONSULTANT:

Mammoth Sports Construction

By _____
Its _____

EXHIBIT A

EXHIBIT B

Mammoth proposes a cost-share between CH and RBI Group for design fees & services provided under this Agreement for Phase One services. One Hundred Thousand and No/100 Dollars (\$100,000.00) shall be paid from CH to Mammoth, plus reimbursable expenses, not to exceed Seven Thousand and No/100 Dollars (\$7,000.00), unless otherwise authorized in writing by CH. Fifty Thousand and No/100 Dollars (\$50,000.00) shall be paid by RBI Group to Mammoth, plus reimbursable expenses, not to exceed Three Thousand and No/100 Dollars (\$3,000.00), unless otherwise authorized in writing by RBI Group. Reimbursable expenses would include all travel, meals, printing, and incidental costs related to the Project, with such expenses being billed when incurred. Funding for Phase Two services in the amount of One Hundred Thousand and No/100 Dollars (\$100,000.00) are to-be determined. Payments to Mammoth would be received monthly to the percentage of work completed as determined by Mammoth.