HIBBING ECONOMIC DEVELOPMENT AUTHORITY
SPECIAL MEETING AGENDA
July 31, 2024
5:00 p.m.

ATTENDANCE:

President Shari Majkich Brock		Greg Pruszinske, City Administrator	
Member John Schweiberger		Andy Borland, City Attorney	
Vice President Steve Jurenes		Candie Seppala, City Clerk/Dep Admin	
Member Jennifer Hoffman Saccoman		Sheena Mulner, Finance Director	
Mayor Pete Hyduke		Betsy Olivanti, Comm. Dev. Director	
Member Roger Kivela			
Vacant			

CALL HEDA MEETING TO ORDER:

ADDITIONS/DELETIONS:

APPROVAL OF THE AGENDA:

APPROVAL OF MINUTES:

- **Approve the Minutes of the Regular Meeting of Hibbing Economic Development Authority for July 15, 2024**

CONSENT AGENDA:

1. Set the next Regular Meeting of HEDA for Monday, August 19, 2024 at 4:30 p.m. in the Hibbing City Hall Council Chamber
2. Set the next HEDA Working Session for Monday, August 19, 2024 following the Regular Meeting in the Hibbing City Hall Council Chamber
3. Authorize the HEDA Board to attend the AMGS Expansion Project Groundbreaking event for **1 p.m. Thursday, Aug. 29, 2024** at 1122 East 13th Street, Hibbing, MN 55746

PRESENTATIONS:

1. AMGS Expansion Project GMP and Schedule Presentation – KA, Widseth
2. Jefferson School Redevelopment Project

BOARD REPORTS:

1. **Community Development Director – Betsy Olivanti**
   a. Approve Guaranteed Maximum Price for AMGS Expansion Project
   b. Approve schedule for AMGS Expansion Project

c. Approve the Memorandum of Understanding with the Sunrise Bakery for the Jefferson School Redevelopment Project
d. Approve the Right of Access Agreement for the Jefferson School Redevelopment Project
e. Approve the agreement with New History for the Jefferson School Redevelopment Project

ADJOURNMENT:

MEMORANDUM OF UNDERSTANDING
Between
Sunrise Bakery LLC
and
Hibbing Economic Development Authority

I. BACKGROUND

This is an agreement between Sunrise Bakery LLC and Hibbing Economic Development Authority hereinafter called HEDA.

WHEREAS the City Council and the Hibbing Housing and Redevelopment Authority collaborated on a Housing Needs Analysis in 2023 which identified a number of factors for the need for additional housing units and preservation of current housing units:

- Low vacancy rates across all products/price points for rental units
- 96% of Market Rate units at 50% average median income (naturally occurring affordable housing – NOAH)
- Lack of new rental housing driving NOAH to high percentage of units
- Lot inventory for new construction is sufficient for near-term, only (93 lots vacant with ~100 units/year needed through 2035)
- Lack of entry level & move-up housing stock available
- Need for 60+ new multifamily housing units
- Demand for over 1,200 new housing units through 2035 which, is equally divided between general-occupancy housing (48%) and age-restricted senior housing (52%); and,

WHEREAS, the City Council undertook a Strategic Planning Initiative in April of 2023 which outlined the following values and goals for housing: 1) Core Strategy #2: Well-rounded, Strong Quality of Life - Quality housing stock that is affordable and accessible and 2) Core Strategy #5: Safe, Secure, and Valued Community - Everyone feels they are an integral and involved part of the community, Safe place to live and raise a family; and,

WHEREAS the city council is extremely interested in adding additional housing units to the city and is pursuing several projects to do so; and,

WHEREAS, the Jefferson School has come to the attention of city staff and officials as a potential property to repurpose for housing; however, the costs to do so are not defined nor is a developer come forward to do so; and

WHEREAS the HEDA Board is interested in undertaking a project to develop the scope and budget of repurposing the Jefferson School in the hopes to attract a developer to redevelop this former school building into housing; and,

WHEREAS Sunrise Bakery LLC desires to provide access to the Jefferson School to HEDA for the purposes of conducting a study to determine the potential of repurposing the property for housing.

NOW, THEREFORE, Sunrise Bakery LLC and HEDA, in consideration of the mutual promises and undertakings herein contained, agree as follows:

II. IT IS MUTUALLY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES THAT:

A. Sunrise Bakery LLC shall undertake the following activities:

- Sign the Right of Access agreement with the HEDA Board of Directors
- Allow the project to take place
- Agree not to sell the property to anyone other than HEDA during the duration of this Agreement

B. HEDA shall undertake the following activities:

- Develop an acceptable work scope for the project and provide to Sunrise Bakery LLC
- Hire a consultant to undertake the project
- Fund and facilitate the project
- Complete the project in a timely manner
- Provide the project report to Sunrise Bakery LLC

C. **Terms of Agreement.** The Term of Agreement shall be six (6) months beginning on the Effective Date. Notwithstanding the foregoing, both parties may mutually agree to terminate this Agreement at any time; and either party may terminate this Agreement by giving written notice of termination to the other party at least ten (10) days prior to the date of termination specified in such notice.

D. Applicable Law. The laws of Minnesota shall govern this Agreement. By entering into this Agreement, the parties specifically intend to comply with all applicable laws, rules, and regulations as they may be amended from time to time. In the event that any part of this Agreement is determined to violate federal, state, or local laws, rules, or regulations, the parties agree to negotiate in good faith revisions to the provision or terms as **required to bring the entire Agreement into compliance.**

III. EFFECTIVE DATE AND SIGNATURE

This MOU shall be effective upon the signature of authorized officials from PLACEHOLDER and HEDA. It shall be in force from (______________________). Both parties indicate agreement with this MOU by their signatures below.

Sunrise Bakery LLC	**HEDA**
By: Paul Torell	**By:** ______________________
Title: CEO	**Title:** ______________________
Signed: Paul Torell	**Signed:** ______________________
Date: 7-26-27	**Date:** ______________________

NOTE: ***Signatures above signify only intent to enter into a Memorandum of Understanding (MOU) and is subject to further edits and legal review.***

ACCESS AGREEMENT

THIS ACCESS AGREEMENT (this "**Agreement**") is entered into as of July ___, 2024, between Hibbing Economic Development Authority, a body politic under the laws of the State of Minnesota ("**HEDA**"), and Sunrise Bakery LLC of Hibbing, a Minnesota corporation.

RECITALS

A. Sunrise Bakery LLC owns certain real property (the "**Property**"), which is identified as parcel 140-0270-00855 and address 2810 Diane Lane, Hibbing, MN 55746.

B. Sunrise Bakery LLC and HEDA are engaged in nonbinding discussions regarding the potential development of all or a portion of the Property.

C. HEDA has requested to enter on the Property to investigate the Property, and Sunrise Bakery LLC is willing to permit HEDA to enter on the Property for such purposes so long as such entry and investigation are conducted in accordance with this Agreement.

PROVISIONS

In consideration of the mutual promises of the parties and intending to be legally bound hereby, the parties agree as follows:

1. **Access to the Property**. HEDA and its agents (collectively, "**HEDA Parties**") may access and enter the Property at reasonable times during the Term (as defined below) for purposes of performing reasonable inspections, investigations, surveys and testing of the Property (collectively, the "**Investigations**"), subject to the terms and conditions herein. HEDA shall schedule all access and entry to the Property by HEDA Parties in advance through Sunrise Bakery LLC, and Sunrise Bakery LLC's representative may accompany HEDA Parties during any access and entry. No destructive, invasive or intrusive Investigations (including without limitation any boring or other disruptions of the soil) may be conducted by any HEDA Parties without the Sunrise Bakery LLC's express prior written consent in each instance. HEDA shall not permit any HEDA Parties to interfere with Sunrise Bakery LLC's use of or operations at the Property or any adjacent property during any Investigations or entry on the Property.

2. **Reports**. HEDA shall use all test results, studies, investigations, surveys, assessments, reports and other work product prepared by or for any HEDA Parties in connection with the Investigations (collectively, the "**Reports**") solely for determining whether to potentially purchase all or part of the Property and, subject applicable laws, shall keep all Reports and information therein strictly confidential and not permit any HEDA Parties to disclose the same to any third party. HEDA shall provide Sunrise Bakery LLC_ with copies of all Reports promptly after receiving or generating the same.

3. **Term**. The term of this Agreement (the "**Term**") shall begin on the date of this Agreement and end on the earlier to occur of: (i) the date the parties enter into a purchase agreement for the sale and purchase of the Property (it being the intention of the parties that any purchase agreement would contain terms that would supersede the provisions of this Agreement); or (ii)

December 31, 2024. Notwithstanding the foregoing, either party may terminate this Agreement on ten (10) days' written notice.

4. **Costs; Restoration; No Liens; Indemnification.** HEDA shall promptly pay all costs and expenses of the Investigations, shall not permit any damage to occur to the Property or any improvements thereon during any entry or activities thereon by any HEDA Parties, and shall promptly and fully repair to Sunrise Bakery LLC's reasonable satisfaction any damage caused by or arising from any such entry or activities. HEDA shall not cause or permit any lien to be placed on all or any portion of the Property in connection with any Investigations. HEDA shall defend, indemnify and hold harmless Sunrise Bakery LLC and the Property from and against any claims, losses, damages, costs and expenses (including without limitation reasonable attorneys' fees) arising out of or related to HEDA Parties' entry and activities on the Property. Any entry on the Property by any HEDA Parties and all amounts incurred by HEDA for any Investigations are at HEDA's sole risk. Sunrise Bakery LLC makes no representations or warranties regarding the Property. This ***Section 4*** shall survive the expiration or termination of this Agreement.

5. **Insurance.** Before any HEDA Parties enter the Property, HEDA will deliver to Sunrise Bakery LLC an insurance certificate naming Sunrise Bakery LLC as the certificate holder and as an additional insured and evidencing at least $1,000,000 of commercial general liability insurance.

6. **No Property Interest.** This Agreement does not grant to any HEDA Parties a possessory right, easement or other interest in any portion of the Property; it merely grants a temporary, non-exclusive license to access and enter the Property as described herein.

7. **No Obligation to Sell or Purchase.** This Agreement does not obligate, and shall not be construed as obligating, (i) Sunrise Bakery LLC to sell or HEDA to purchase all or any portion of the Property, or either such party to engage in or continue any discussions or negotiations regarding such sale or purchase, or (ii) Sunrise Bakery LLC or HEDA to negotiate, execute or enter into any purchase agreement for the sale or purchase of all or any portion of the Property. Neither party shall be bound in any way with respect to the sale or purchase of the Property by virtue of this Agreement. Failure to enter into any agreement for the sale or purchase of all or any portion of the Property shall not limit either party's rights or obligations under this Agreement.

8. **Notices.** Any notice or other communication given pursuant to this Agreement shall be sent to the notice address set forth below the receiving party's signature block below.

9. **Counterparts; Electronic Signatures.** This Agreement may be executed in counterparts and may be delivered by electronic transmittal of signed counterparts (including through DocuSign and email of PDF copies).

10. **Miscellaneous.** Time is of the essence hereof. There are no third-party beneficiaries of this Agreement, intended or otherwise. Neither party may assign this Agreement without the prior written consent of the other.

IN WITNESS WHEREOF the parties have caused this Access Agreement to be executed and delivered as of the date first set forth above.

"Sunrise Bakery LLC"

PLACEHOLDER

By: Rd Piti

Notice Address:
2810 Mane Lane
Hibbing MN 55746
Hibbing, MN 55746

"HEDA"

Hibbing Economic Development Authority

By:______________________________
Betsy Olivanti
Its: Executive Dir.

Notice Address:

City Hall
401 East 21st Street, Room 300
Hibbing, MN 55746
Attn: Betsy Olivanti, Community Dev. Dir.
Email: betsyolivanti@hibbingmn.gov

NEW HISTORY

July 18, 2023

City of Hibbing Economic Development Authority
401 East 21st Street
Hibbing, MN 55746
Delivered To: Betsy Olivanti, Community Development Director
BetsyOlivanti@hibbingmn.gov

Project: Agreement Letter for Historic Building Consulting Services
Jefferson School
2810 Diane Lane
Hibbing, MN 55746

Dear Betsy:

Thank you for contacting us about the Jefferson School in Hibbing. We appreciate the opportunity to continue working with you and your colleagues. The purposes of this letter are to confirm our Scope of Services and propose our consulting fees for the project. Our scope and understanding of the project are based on our recent conversations and your email dated June 25. Our contract, upon your acceptance, consists of this letter and the incorporated attachments: New History "Hourly Billing Rates" and "General Terms and Conditions." We look forward to working with you on this project.

Project Understanding

This former school building in Hibbing, according to St. Louis County records, was built in 1958 and is privately owned by 'Sunrise Bakery, LLC'. Through our conversations, we understand that the building is being conditioned and occupied, but the current usage utilizes only a portion of the building square footage. We understand also that there is desire by the owner and support by other potential stakeholders to see the building retained, and there is interest in exploring options for reuse. For reuse projects, we often start with understanding the building, which can inform and focus further effort of evaluating options. This is best informed by an assessment phase, including both physical observation and research. We offer to tailor the extent of these services to be appropriate for each case, from a casual walk-through and opinion to a comprehensive plan study of specific options. We propose below a description of scope based on our understanding thus far, and invite further discussion to refine as necessary.

Scope of Services

The purpose of our Scope of Services is to inform reuse options for the Jefferson School. Our proposed Scope of Services includes:

1. Condition Assessment. We will tour the building with our licensed architectural and structural professionals, as well as a mechanical/electrical/plumbing (MEP) sub-consultant to broadly assess the existing conditions of the building including the site, the building envelope, the interior of the building, and building systems. We will produce a report to summarize our observations, identify any deficiencies, and prioritize recommendations for repairs based on the need and severity of the deficiencies.

   OR

   1.a. Team Selection (Alternate): We can assist the City with the solicitation and engagement of a third-party project architect with sub-consultants to produce a comprehensive condition assessment report with cost estimating. This alternate scope item could include authoring a request for proposal (RFP) for additional design professional scope to include: *definition and documentation of all existing building systems, evaluating options for new buildings systems for various reuse options, defining design requirements, and defining a design scope.* New History's work could include support or management of the selection process (such as drafting or reviewing RFP, review and comment on proposals, participation in interviews, or review of contracts).

2. Documentation Review. We will complete a desktop review of recent reports, drawings, and other available documentation to inform our understanding of the building. We can review documents on site, if needed. We will prepare a concise summary that describes the current reuse challenges with the building based on our review of available documentation.

3. National Register of Historic Places (NRHP) Eligibility. We will conduct limited historical research and integrity assessment to advise on the eligibility for listing of the building in the NRHP. Listing in the NRHP is a national honor, as well as a tool to access future funding sources for building improvements – like historic tax credits and Legacy grants. Based on our initial study and recommendations, we can also prepare National Register of Historic Places Questionnaire (NRQ) to request a preliminary evaluation of the property's eligibility for listing in the National Register, prior to proceeding with the full nomination.

4.a. Reuse Options. We will develop a summary table of reuse options for the building, indicating a qualitative magnitude of cost, time, and complexity. We will review these options with you in order to obtain your feedback, and to determine acceptable options for concept design and pricing. We will produce conceptual fit plans with short narrative for up to three (3) reuse options to be priced by a general contractor.

   4.b. RFP Writing (Optional): If there is momentum toward a particular reuse, we can assist the City by drafting a public RFP for the selection of a project architect to produce construction documents during the design phase. We can also support the City during the bidding phase by drafting a public RFP for the selection of a general contractor.

Consulting Fees

Our work will be provided on an hourly basis per the estimates below. We have also included our estimated hourly fees for alternate scope item (1.a) and optional scope item (4.b). Invoices will be sent monthly, unless requested otherwise. Please see the attached Hourly Rates for additional information.

Scope Item	Estimated Effort and Fees	Initials
1. Condition Assessment	\$12,500 - \$19,000	
1.a. Team Selection (**Alternate**)	\$4,000 - \$6,500	
2. Documentation Review	\$1,500 - \$4,000	
3. NRHP Eligibility	\$3,000 - \$4,000	
4.a. Reuse Options	\$5,000 - \$7,500	
4.b. RFP writing (**Optional**)	\$4,000 - \$5,500	
Reimbursable Expenses	NTE \$1,500	
Total for scope items #1-#4b	**\$13,500-\$40,000 plus reimbursable expenses**	

Our proposal does not include:

- General city approvals for redevelopment
- Construction drawings or specifications
- Material testing
- Hazardous materials survey
- Permitting
- Legal counsel, accounting, and tax advice

As with any project of this nature, our scope, and your requirements, can change quickly and substantially as new information becomes available and the project evolves. We will provide regular progress reports so that we can adjust, augment, or curtail our scope of services to be compatible with your process. If our Scope of Services must be adjusted, we will work with you to revise our Agreement.

We look forward to working with you and your colleagues. If you find this proposal acceptable, please initial the scope line(s) you desire in the table above, sign and return a copy of the next page. I may be reached at the contact information below for any comments or questions.

Sincerely,

Kirk Davis, Managing Partner
New History
(612) 843-4142
davis@newhistory.com

Quentin Collette, Managing Director
New History
(612) 843-4270
collette@newhistory.com

APPROVAL AND ACCEPTANCE OF AGREEMENT

Our contract consists of this Agreement Letter and the incorporated attachments:

- New History Hourly Billing Rates
- General Terms and Conditions of New History for Consulting Services.

Please sign and return a copy of this page.

PROJECT: Agreement Letter for Historic Building Consulting Services
Jefferson School
2810 Diane Lane
Hibbing, MN 55746

THE UNDERSIGNED, HAVING THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THE ENTITY NAMED BELOW, HEREBY ACKNOWLEDGES AND AGREES TO THIS LETTER AGREEMENT, AND THE INCORPORATED ATTACHMENTS.

PRINTED NAME: ______________________ TITLE: ____________________

COMPANY/ENTITY NAME: ____

ADDRESS: ____

SIGNATURE: ______________________________ DATE: ____________________

ACCEPTED BY:

Kirk Davis, Managing Partner
New History
575 SE 9th Street, Suite 215
Minneapolis, MN 55414

SIGNATURE: Kirk Davis DATE: July 18, 2024

NEW HISTORY

HOURLY BILLING RATES

Project Role	Hourly Billing Rate
Principal	$285
Managing Partner	$225
Project Director	$195
Project Team Member	$180
Associate Team Member	$160
Administrative Support	$90

Project Billing. Invoices are typically sent monthly, unless stated otherwise.

Reimbursable Expenses. We will not charge any of our minor and incidental project-related expenses such as mileage, parking, or photograph printing. Extraordinary expenses are billed at 1.1 times the cost. Extraordinary expenses typically include, but are not limited to:

- Mileage, airfare, and/or per diem outside of the seven-county Twin Cities metropolitan area
- Large-format scanning of historic drawings
- Sub-consultant fees, if applicable
- Application fees
- Archival fees
- Mailing and shipping charges for applications

Billing rates may be increased annually.

GENERAL TERMS AND CONDITIONS OF NEW HISTORY FOR CONSULTING SERVICES

THE FOLLOWING TERMS AND CONDITIONS are incorporated into and made a part of the attached Agreement Letter ("Agreement") for Consulting Services between the Client and NEW HISTORY.

1. Scope of Services. The Scope of Services to be provided is described in the Agreement, and can be modified in writing.

2. Consultant Status. NEW HISTORY's Services are advisory in nature. While Services may involve the review of the work product of architectural, engineering, design, construction, legal, accounting, and other professional services providers, NEW HISTORY is not engaged to provide such professional services unless and except as specifically stated in the Scope of Services. Therefore, the Client agrees to indemnify and hold NEW HISTORY harmless against any and all claim, loss, damage, liability, demand, suit and expenses, including reasonable attorney's fees assessed or awarded that may be incurred by NEW HISTORY as a result of third-party claims brought against NEW HISTORY, excluding any claims by Client against NEW HISTORY for breach of any express provision of this Agreement. The standard of care applicable to New History's Services shall be that applicable to other providers of the same Services, and not those applicable to professional services outside of this Agreement.

3. Site Safety and Hazardous Materials. NEW HISTORY shall have neither control of nor responsibility for site safety. NEW HISTORY shall have no responsibility for the identification, abatement or removal of hazardous materials.

4. Project Costs. The parties acknowledge that any estimate of construction costs, qualified rehabilitation expenditures (QREs), or tax credits prepared by NEW HISTORY are an estimate only. As such, NEW HISTORY does not warrant that actual amounts will not vary from estimates. NEW HISTORY's estimates are not to be taken as a warranty or guarantee of the eventual cost of the project, QREs, or historic tax credits.

5. NEW HISTORY's Documents. Documents prepared by NEW HISTORY are solely for use with respect to the project referenced in the Agreement. All documents furnished by NEW HISTORY pursuant to this Agreement are NEW HISTORY's instruments of service for this project alone, and NEW HISTORY retains all common law, statutory and other reserved rights in such documents, including intellectual property and copyright. Any use of documents prepared by NEW HISTORY except for the specific purpose intended by this Agreement will be at the Client's sole risk without any liability or legal exposure to NEW HISTORY. The Client will defend, indemnify and hold New History harmless from all claims or lawsuits arising from the use these documents on other projects without the consent of New History.

6. Compensation ("Consulting Fees"). Payment is due within thirty (30) days from the date of NEW HISTORY's invoice. If there is a material change in the Scope of Services or project conditions, NEW HISTORY's compensation shall be equitably adjusted. Cumulative annual interest at a rate of six percent (6%) will be paid by client on all past due amounts. NEW HISTORY reserves the right to suspend or terminate services, at its sole discretion, upon three days written notice in the event NEW HISTORY fails to receive timely payment of any invoice.

7. Records and Data. The Client agrees to provide to NEW HISTORY any and all data, plans, specifications, surveys, and other documents reasonably requested by NEW HISTORY to allow NEW HISTORY to complete the services to be provided by NEW HISTORY. NEW HISTORY shall be entitled to rely upon the accuracy and timeliness of the information provided by the Client. NEW HISTORY is not responsible for the inaccuracy or insufficiency of such Client-supplied information. NEW HISTORY does not assume responsibility beyond its own scope of services for disclosing or accounting for that information, for the condition of the property described therein, or for latent or concealed conditions or defects in the property.

8. Dispute Resolution. In the event of any dispute, controversy or claim arising out of or in connection with this Agreement, including any questions regarding its existence, enforceability, interpretation or validity, the parties shall meet and confer in good faith to attempt to resolve such dispute, controversy or claim without initiating an adversarial proceeding. Should such attempts at resolution prove unsuccessful within a reasonable period after the meeting of the parties, any dispute, controversy, or claim arising under this Agreement shall be: (1) first, submitted to mandatory formal mediation in Minneapolis, Minnesota. The Parties will agree upon a mediator and share equally in the mediator's cost.

(2) If mediation fails to resolve the matter, and if the claimed injury or damage arising from the matter in dispute is $25,000.00 or less, the dispute shall be submitted to arbitration conducted in Minneapolis, Minnesota, by a single arbitrator selected by the parties in accordance with the then effective arbitration rules of the American Arbitration Association for fast-track arbitration. Judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof. The fees and expenses of the arbitration shall be borne equally by the parties. The decision of the arbitrator shall be binding and may be confirmed and enforced in any court having proper jurisdiction. All facts and other information relating to any arbitration arising under this Agreement shall be kept confidential to the fullest extent permitted by law. (3) If the claimed injury or damage arising from the matter exceeds $25,000.00, and discussions and formal mediation have failed to resolve the dispute, it shall be adjudicated in any Minnesota State court of competent jurisdiction. The provisions of this Section shall survive the termination of this Agreement.

9. Retainer. A retainer deposit may be required prior to commencement of services by NEW HISTORY. The retainer will be deposited in NEW HISTORY's general bank account, and any retainer funds may be commingled with NEW HISTORY's general funds. The retainer will be held until the end of Services when it will be applied to final Consulting Fees and any reimbursable expenses. Any unapplied retainer funds will be refunded to the Client.

10. Termination. In the event of material default in the terms of this Agreement by the Client, this Agreement and the obligation to provide further services under this Agreement may be terminated by written notice from NEW HISTORY to the Client. Upon termination, NEW HISTORY shall be entitled to compensation for all services rendered prior to the date of termination, together with reasonable expenses incurred to the date of termination. Failure to make timely payment of any invoice shall be a material default of this Agreement.

11. Limitation of Liability. The parties acknowledge and agree that they will not hold the other liable or assert claims for lost profits or consequential damages arising from or relating to breach of this Agreement, even if a party was advised of the possibility of such damages. The parties agree that NEW HISTORY's liability and the Client's remedy under this Agreement shall be limited to claims for monetary damages, and that any liability arising out of or relating to this Agreement shall not exceed the total amount actually paid to NEW HISTORY for services provided by NEW HISTORY under this Agreement.

12. Waiver. Client waives any and all rights against NEW HISTORY for damages covered by any property insurance or other insurance during and after completion of the Scope of Services.

13. Indemnity. The Client shall indemnify, defend and hold harmless New History, its officers and employees from and against claims, lawsuits, damages, losses, costs, including reasonable attorneys' fees, and judgments resulting from claims by third parties, to the extent such claims or lawsuits arise out of or from the negligent acts or omissions of the Owner, its employees, contractors or consultants or the employees, agents or subcontractors of any of them.

14. Entire Agreement. This Agreement, which includes any incorporated attachments and these General Terms and Conditions, constitutes the entire agreement between the parties and supersedes all prior agreements or oral understandings. No modification or waiver of this Agreement or its terms shall be binding unless in writing and executed by both parties.

15. Assignment. Neither party may assign their rights under this Agreement without the written consent of the other party. This Agreement shall be binding upon the parties and their permitted successors and assigns.

16. Governing Law. This Agreement shall be governed by and interpreted pursuant to the laws of the State of Minnesota, with any dispute or claim relating to this Agreement venued or heard in the State of Minnesota, Hennepin County.

17. Acknowledgment. The parties acknowledge that these terms and conditions are incorporated by reference into the Agreement Letter for Planning Services, that the parties have had an opportunity to read and understand these terms and conditions, discuss such terms and conditions with legal counsel, and understand the significance of this Agreement.

18. Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed shall be deemed an original with all such counterparts taken together shall constitute one and the same instrument. Facsimile or email (PDF format) signatures shall be deemed and treated as originals.