

**PRIVATE DEVELOPMENT AGREEMENT  
FESTAL ADDITION NO. 2  
(FESTAL PLACE NW – ROAD)**

THIS AGREEMENT (“Agreement”), is made and entered into as of \_\_\_\_\_, 2020, by and between Opus Design Build, L.L.C., a Delaware limited liability company (herein the “Developer”) and CITY OF OWATONNA, MINNESOTA (herein the “City”).

WHEREAS, the Developer and the City agree that this Agreement shall serve to facilitate the orderly and efficient construction of the dedicated road pursuant to the Festal Addition No. 2 plat (“Platted Land”) to the mutual benefit of the Developer and the City;

WHEREAS, the City has approved the Final Plat of Festal Addition No. 2, attached as Exhibit A on April 7, 2020 (the “Plat”);

WHEREAS, Festal Place NW was dedicated on the Plat as a public right-of-way (such dedicated public right of way, the “Public ROW”);

WHEREAS, the City has outlined certain public improvements and/or facilities to be completed in the Public ROW;

WHEREAS, the Developer wishes to complete such work in the Public ROW pursuant to this Agreement.

**I. DEVELOPER’S OBLIGATIONS**

- A. Effective Date. This Agreement shall become effective when the Plat is filed.
- B. Grading, Drainage, Erosion Control, Utility Lines. The Developer agrees to complete the grading and drainage improvements and install the erosion control facilities and utilities in the Public ROW in accordance with the construction plans and specifications prepared by Jones, Haugh, & Smith, Inc. entitled “The Opus Group 266K Opus Spec Warehouse”, sheets 1 to 14, and reviewed and approved by the City of Owatonna (the “Approved Plans”), to the extent reflected therein (“Utility Work”).
  - 1. The Developer shall be responsible for installing and maintaining all necessary temporary erosion and sediment control measures in the Public ROW to be in compliance with the City of Owatonna Construction Stormwater Ordinance and the MPCA Construction Stormwater Permit and any applicable rules and regulations.
  - 2. The Developer shall be responsible for construction of all required permanent stormwater control measures on the Property. The stormwater control measures shall be in accordance with City, MPCA and any other applicable standards.
    - a. An access easement for inspection of stormwater control and treatment measures shall be granted to the City of Owatonna for inspection. If the stormwater control and treatment measures are found to be out of compliance, the City will notify the developer of necessary improvements. If the Developer fails to complete improvements within sixty (60) days after written notice from the City, the City will issue a notice of non-compliance

and may repair or otherwise remedy the deficiencies and recover its reasonable expenses incurred.

- b. The permanent stormwater improvements on the Property will be privately owned. An association for the subdivision shall be formed for a stormwater easement and maintenance agreement agreed upon and recorded if the stormwater improvements serve more than one lot describing with responsibility for the operation and maintenance of such stormwater improvements.

3. The Developer will be responsible for the design and construction of all Utility Work, including but not limited to: sanitary sewer, watermain, and storm sewer to be in accordance with City of Owatonna regulations and all applicable rules and regulations.
4. The Developer shall provide the City Engineer with copies of utility layout plans, as provided by the electrical, telephone, gas, and cable companies before construction in the Public ROW.

- C. Roadway Improvements. The Developer will construct the roadway improvements in the Public ROW in accordance with the Approved Plans to the extent reflected therein (the “Road Work”; together with the Utility Work, the “Work”).

1. Construction observation shall be completed by an individual with the appropriate MNDOT Certifications, including but not limited to; grading and base, aggregate production, concrete I & II, etc.
2. Test required by the Minnesota Department of Transportation Schedule of Materials control shall be performed by a qualified testing agency and shall be submitted to the City.
3. Test results for tests required for utilities shall be submitted to the City, including but not limited to: sanitary sewer pressure and mandrel testing along with video inspection, watermain bacteria testing and pressure testing.
4. Construction schedule shall be submitted to the City and updated as changes occur.

- D. Development Plans. No work shall begin until the plans for the Work are approved in writing by the City Engineer.

1. Any material variation from the approved construction plans for the Work shall be approved by the City Engineer in writing prior to making any changes.
2. As-Built construction plans for the Work shall be submitted to the City after completion. The plans shall be for public improvements only and in a format approved by the City Engineer.

- E. Traffic Improvements. The Developer shall pay for a stop sign and a street naming sign to be installed at the intersection of the Public ROW and Bridge Street. The signs can be purchased from the City of Owatonna.

- F. Permits. The Developer shall obtain all necessary permits for the construction under this Agreement.
- G. License. The Developer hereby grants the City, its agent, and employees a license to enter the project to perform periodic inspections or observations of the work as reasonably deemed appropriate by the City.
- H. Warranty. The Developer warrants all work to be performed in the public right-of-way against poor material and faulty workmanship for a period of three (3) year after its completion.
- I. Inspection. The Developer agrees to hire Jones, Haugh and Smith or other suitably qualified consultant (“Consultant”) to inspect and test the Work. Material testing shall be paid for by the Developer and completed by a certified testing agency.

The Developer agrees to hire the Consultant to provide construction staking for the construction of all improvements under this Agreement.

The Developer shall hire the Consultant to provide as-built construction drawings of the Work within 60 days of substantial completion of such work.

The Developer hereby grants the City, its agents, officials, and engineers, license to enter onto the Property for purposes of undertaking its own inspections at the City’s reasonable discretion, and at the City’s sole expense. City agrees to indemnify the Developer, its affiliates and its and their respective Governors, Managers, Members and Agents including but not limited to the Consultant and hold them harmless from any and all claims, demands, actions, causes of action, suits, proceedings, costs, expenses, damages, and liabilities, including attorney fees, arising out of any entry authorized by City onto the Property except if the claim arises from the gross negligence or willful conduct of the Developer.

## II. CITY’S OBLIGATIONS

- A. The City shall reimburse the Developer for \$509,824.00 of the total cost of the Work (“Reimbursement Amount”), which amount does not include the related design and engineering costs. The Developer shall deliver to the City periodically, but no more than once a month, a request for reimbursement together with (a) reasonable evidence that such costs have actually been incurred by the Developer, (b) conditional lien waivers for funds then being requested and (c) unconditional lien waivers (to the extent not already delivered and applicable funds were previously received from the City) for the previous requests. Within five (5) business days after receipt of such request and evidence, the City shall reimburse the Developer such amount requested, which aggregate amount shall not exceed the Reimbursable Amount. Promptly after the Developer notifies the City in writing of completion of the Work, which notice shall include a certificate of substantial completion for the Work issued by the Developer’s general contractor or architect, the City shall promptly inspect the Work to determine whether it has been substantially completed in accordance with the terms of this Agreement. If the City determines that the Work has been substantially completed in accordance with Exhibit B attached hereto, the City shall deliver to the Developer a recordable certificate of completion regarding the Work. Such certification by the City shall be a conclusive determination of satisfaction

and termination of the agreements and covenants in this Agreement with respect to the obligations of the Developer to complete the Work.

### III. DEVELOPER'S INSURANCE

The Developer shall not commence work under this Contract until it has obtained all insurance required herein and such insurance has been approved by the Owner, nor shall the Developer allow any Subcontractor to commence work on his subcontract until all similar insurance required of the Subcontractor has been so obtained and approved. All such insurance contracts shall be maintained throughout the life of this contract and insurance required to be maintained by Developer under this Section III shall be evidenced by carrier's certificates filed with the Engineer. Certificates of insurance for insurance required by Developer under III.B. and III.D. shall name the city of Owatonna as an "additional insured."

#### A. WORKERS' COMPENSATION INSURANCE:

The Developer shall take out and maintain during the life of this Contract "Workers' Compensation Insurance" for all of its employees employed at the site of the project and in case of any work is sublet the Developer shall require the Subcontractor similarly to provide "Workers' Compensation Insurance" for all of the latter's employees unless such employees are covered by the protection afforded by the Developer, in case any class of employee engaged in hazardous work under this contract at the site of the project is not protected under the Workers' Compensation Insurance Statute, the Developer shall provide, and shall cause each Subcontractor to provide adequate insurance coverage for the protection of his employees not otherwise protected.

#### B. COMMERCIAL GENERAL LIABILITY AND PROPERTY DAMAGE INSURANCE:

The Developer shall take out and maintain during the life of this Contract such Commercial General Liability and Property Damage Insurance, including Contractor's Contingent Insurance to protect the Developer from damage claims, arising from operations under this Contract, as shall protect it and any Subcontractors performing work covered by this Contract, from claims for damages for personal injury, including accidental death, as well as from claims for property damages which may arise from operations under this Contract, whether such operations be by itself or the Subcontractor or by anyone directly or indirectly employed by either of them and the amounts of such insurance shall be as follows:

Commercial General Liability Insurance in an amount not less than \$2,000,000.00 per occurrence limit or equivalent which requirement may be satisfied with a combination of Primary General Liability and Umbrella Liability limits. The Developer shall require Subcontractors, if any, not protected under the Developer's insurance policies to take out and maintain like insurance in like amounts. Developer shall supply the City with a Certificate of Insurance listing the City as additionally insured. The limits of coverage may be provided by coverage of \$1,000,000.00 per occurrence limit, together with excess or "umbrella" coverage of \$1,000,000.00 per occurrence limits.

C. **PROFESSIONAL ERRORS AND OMISSIONS INSURANCE.** The Developer shall take out and maintain during the life of this Contract such Professional Errors and Omissions Insurance in an amount not less than \$2,000,000.00 each claim limit or equivalent.

D. **AUTOMOBILE INSURANCE**

The Developer shall take out and maintain during the life of the Contract automobile public liability insurance in the amount of not less than \$2,000,000.00 combined single limit or equivalent. The limits of coverage may be provided by coverage of \$1,000,000.00 combined single limit, together with excess or “umbrella” coverage of \$1,000,000.00 combined single limit.

**IV. GENERAL PROVISIONS**

1. Waiver and Amendment. This Agreement will not be altered, modified, supplemented, or amended in any manner whatsoever except by written agreement signed by both parties.
2. Entire Agreement. This Agreement constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, beyond those specified in this agreement.
3. Successors and Assigns. This Agreement shall be binding upon the parties, their heirs, successors and/or assigns.
4. Compliance with law. Developer will give all notices and comply with all laws, ordinances, rules and regulations applicable to the Work.
5. Enforcements
  - a. In the event of either party’s default which is not cured within thirty (30) days (or such longer period if such cure is commenced within thirty (30) days but cannot be reasonably be completed within thirty (30) days) after written notice thereof, describing with specificity the nature of the default asserted, to the defaulting party, the non-defaulting party or its third party beneficiaries shall have all rights and remedies available under law or equity with respect to the default to restrain any violation or recover damages, or both. In addition, the parties shall have the following specific rights and remedies.
    - i. With respect to matters that are capable of being corrected by the non-defaulting party, a non-defaulting party may, after notice and cure rights provided in this Agreement or in Section III.5.a above, at its option, enter upon the Property for the purpose of correcting the default and the non-defaulting party’s reasonable costs in correcting same, plus interest as provided in Section III.5.c below, shall be paid by the defaulting party to the non-defaulting party immediately upon demand.
  - b. Reimbursement. Any amounts reasonably expended by the non-defaulting party in enforcing its remedies due to a default under this Agreement, including reasonable attorney’s fees, together with interest provided in Section III.5.c below, shall be reimbursed or paid to the non-defaulting party.



Sunday or legal holiday then, the next full business day will be included in such period and such notice, offer, demand, request or communication may be made and given on such next full business day.

