

# 1. CONSTRUCTION CONTRACT AGREEMENT

## Dugouts

This Construction Contract Agreement is made as of the date of March 1, 2024, by and between City of Baxter, 13190 Memorywood Drive, Baxter, MN 56425 and Driftwood Enterprise, a Minnesota limited liability company located at 26608 Sunset Valley Rd, Pequot Lakes, MN 56472 with contractor's license number 1102575000027. Client and Contractor may each be referred to in this Agreement individually as a "Party" and collectively as the "Parties."

The Parties agree as follows:

**1. Description of Work.** Contractor shall perform the following described work at Oscar Kristofferson Park, Baxter, MN., in accordance with Client's contract plans and specifications, this Agreement and any Change Order, as defined herein, Demo and install three dugouts. Industry terminology used in any Contract Documents which are not defined shall be interpreted as having the same meaning as that recognized in the construction industry in the area where the Property is located.

**2. Contract Price and Payments.** Client agrees to pay Contractor the total amount of \$14,406. Payment of this amount is subject to additions or deductions in accordance with any mutually agreed to changes and/or modifications in the Work. Payment will be made by city check, according to the following schedule:

- \$7,203.00 deposit, due upon the execution of this Agreement.
- \$7,203.00 balance due upon completion of the Work.

**3. Certificate of Completion.** Work under this Agreement shall begin on May 22, 2024, and be completed by June 25, 2024. Upon completion of the Work, Contractor shall notify Client that the Work is ready for final inspection and acceptance and Client shall make the final payment within thirty (30) days after final inspection, unless another payment arrangement has been made.

**4. Materials and Labor.** Contractor shall provide and pay for all labor and equipment, including tools, construction equipment, machinery, transportation and all other facilities and services, and all materials necessary for the completion of the Work. All materials shall be good quality and new, unless the Contract Documents require or permit otherwise. Contractor may substitute materials only with the prior written approval of Client.

**5. Licenses and Permits.** Client shall obtain all licenses and permits necessary for proper completion of the Work. Client is responsible for the cost of any necessary permits or licenses.

**6. Laws and Regulations.** Contractor shall perform the Work in a workmanlike manner and in compliance with all applicable federal, state, and local laws, regulations and ordinances, trade standards, ethical guidelines and any safety requirements of Client (the "Applicable Laws"). Contractor shall promptly notify Client upon discovery of any variance between the Applicable Laws and the Construction Documents.

**7. Supervision of Construction.** Contractor shall be solely responsible for and shall supervise and direct all construction under this Agreement. Contractor shall provide competent and suitable personnel to perform the Work and shall at all times maintain good discipline and order at the Property. Contractor will at all times take all reasonable precautions for the safety of its employees and the public at the Property. Contractor agrees to assume full responsibility for the acts, negligence, and/or omissions of its employees and any subcontractors and their employees.

**8. Record Documents.** Contractor shall maintain in a safe place at the Property one record copy of all drawings, specifications, addenda, written amendments, and the like in good order and annotated to show all changes made during construction, which will be delivered to Client upon completion of the Work. Client shall have the right to inspect and review such documents upon notice to Contractor.

**9. Utilities.** Client shall pay for all permanent electric, water, phone, cable, sewer and gas service as needed to perform the Work. Client shall pay for the installation, connection and removal of all temporary utilities on the Property during the performance of the Work. All temporary utilities shall conform and adhere to the Applicable Laws.

**10. Hazardous Materials.** Except as otherwise provided in the Contract Documents, Contractor shall be responsible for all Hazardous Materials brought to the Property by Contractor. Hazardous Materials shall include radioactive materials, asbestos, polychlorinated biphenyls, petroleum products, crude oil, flammable materials, chemicals or solvents known to cause cancer or reproductive toxicity, pollutants, contaminants and toxic substances which are restricted, prohibited or regulated by any agency of government in its manufacture, use, maintenance, storage, ownership or handling. If Contractor discovers any Hazardous Materials on the Property, Contractor shall immediately notify Client and may cease working until the material or substance has been rendered harmless. Client shall defend, indemnify and hold harmless Contractor, any subcontractors, and their respective agents and employees from and against all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from contact with the Hazardous Substance in performance of the Work resulting in bodily injury, illness or death, or injury or property damage, *provided* such claim, damage, loss or expense is not the result of any negligent act or omission by the party seeking such indemnity.

**11. Warranty.** Contractor warrants that the Work shall be in accordance with the Contract Documents, applicable law and trade standards and free from material structural defects, improper workmanship or defective materials. Contractor shall replace, correct or repair any Work not in accordance with the Contract Documents, applicable law and trade standards or any defects caused by faulty materials, equipment or workmanship for a period of three (3) year(s) from the date of completion of the Work. Nothing in this Section 11 shall be construed to place a time limit with respect to any other obligation Contractor may have under this Agreement.

**12. Condition of the Property.** Contractor agrees to keep the Property and adjoining driveways free and clear of waste material and rubbish. Contractor shall confine the storage of materials and equipment and the operations of employees to the Property, and shall not unreasonably encumber the Property with materials or equipment. Contractor shall be fully responsible for any damage to the Property or areas contiguous thereto resulting from the performance of the Work. At the completion of the Work, Contractor shall remove all waste materials, rubbish and debris from and about the Property as well as all tools,

appliances, construction equipment and machinery, and surplus materials, and shall leave the Property clean and ready for occupancy by Client.

**13. Inspection.** Client shall have a right to inspect the Work at any time and request that Contractor promptly correct any Work that is defective or does not conform to the Contract Documents. If required, the Work shall be inspected and certified by the appropriate state or local agency or health officer at each necessary stage.

**14. Right to Stop Work.** If Contractor fails to correct any defective Work or repeatedly fails to perform the Work in accordance with the Contract Documents, Client shall have the right to order Contractor to stop performing the Work, or any portion thereof, until the cause for such order is eliminated.

**15. Subcontracts.** Contractor shall furnish to Client a list of names of subcontractors proposed to perform principal portions of the Work. Contractor shall not employ any subcontractor to whom Client reasonably objects. A subcontractor, for the purposes of this Agreement, shall be a person with whom Contractor has a direct contract for work at the Property. All contracts between Contractor and subcontractor shall be in accordance with the terms of this Agreement and the Contract Documents.

**16. Work Changes.** Client reserves the right to order changes to the Work in the nature of additions, deletions or modifications, without invalidating this Agreement, and agrees to make corresponding adjustments in the Contract Price and time of termination if applicable. All changes will be authorized in a written "Change Order" signed by Client and Contractor, which shall be incorporated by reference herein.

**17. Other Contractors.** Client reserves the right to enter into other contracts in connection with the Work. Contractor shall cooperate with all other contractors so that their work shall not be impeded, and shall give them access to the Property as necessary to perform their contracts.

**18. Indemnification.** Contractor agrees to defend, indemnify and hold harmless Client and its agents and employees, from and against all claims, actions, liabilities, suits, demands, injuries, obligations, damages, losses, settlements, judgments, fines, penalties, costs and expenses, including reasonable attorneys' fees, arising out of any negligent act or omission by Contractor, a subcontractor or anyone directly or indirectly employed by them in the performance of the Work resulting in bodily injury, illness or death, or for property damage, including loss of use, unless caused by the sole negligence or willful misconduct of Client.

**19. Contractor's Insurance.** Contractor agrees to maintain at its own expense during the entire period of construction at the Property:

**A. General Liability Insurance.** Such general liability insurance as will protect Contractor from claims for property damage and bodily injury, with limits of liability not less than \$1,000,000 for each occurrence.

Contractor shall name Client as an additional insured. Proof of such insurance shall be filed by Contractor with Client within a reasonable time after execution of this Agreement.

**20. Waiver of Subrogation.** Client and Contractor each waive any and all claims or rights to recovery against the other Party for any loss or damage to the extent such loss or damage is covered by insurance or would be covered by any insurance required under this Agreement. Client and Contractor shall cause each insurance policy carried by Client or Contractor relating to the Property to include or allow a full waiver of any subrogation claims.

**21. Time of Essence.** All times stated in this Agreement or in the Contract Documents are of the essence. Contractor agrees that such times are reasonable for performing and completing the Work.

**22. Liquidated Damages.** In the event the Work is not completed by the date set forth in Section 3 of this Agreement, plus any extensions thereof as allowed in this Agreement, Client shall suffer damages uncertain in amount and difficult to measure and prove accurately. Client and Contractor agree that in lieu of actual damages, and not as a penalty, for delay in the performance of the Work, Contractor shall pay Client the sum of \$10.00 for each calendar day completion of the Work is delayed. Contractor agrees that the liquidated damages specified herein are reasonable in amount and are not disproportionate to actual anticipated damages. Client shall have the right to deduct any liquidated damages from any amount due or that may become due to Contractor. Liquidated damages shall be the sole and exclusive remedy for Client for delay in completion of the work past the agreed upon date.

**23. Extension of Time.** The times stated in this Agreement may be extended for such reasonable time as Contractor may determine when performance of the Work by Contractor is delayed by a Change Order, labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions, unavoidable casualties, or other causes beyond Contractor's control or which justify the delay.

**24. Early Termination for Breach of Contract.**

**A. Contractor's Termination.** Contractor may, on 5 days' written notice to Client, terminate this Agreement before the completion of the Work when for a period of 15 days after a progress payment is due, through no fault of Contractor, Client fails to make the payment. On such termination Contractor may recover from Client payment for all Work completed and for any loss sustained by Contractor for materials, equipment, tools or machinery to the extent of actual loss thereon, plus loss of a reasonable profit.

**B. Client's Termination.** Client may, on 5 days' written notice to Contractor, terminate this Agreement before the completion of the Work, and without prejudice to any other remedy Client may have when Contractor defaults in the performance of any provision of this Agreement, or fails to carry out performance of the Work in accordance with the provisions of the Contract Documents. If the unpaid balance on the Contract Price at the time of the termination exceeds the expense of finishing the Work, Client shall pay such excess to Contractor.

**25. Disputes.** Any dispute arising from this Agreement shall be resolved through mediation. If the dispute cannot be resolved through mediation, then the dispute will be resolved through binding arbitration conducted in accordance with the rules of the American Arbitration Association.

**26. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together, shall constitute one and the same document.

**27. Headings.** The section headings herein are for reference purposes only and shall not otherwise affect the meaning, construction or interpretation of any provision of this Agreement.

**28. Notices.** Any notice or communication given or made to any Party under this Agreement shall be in writing and delivered by hand, sent by overnight courier service or sent by certified or registered mail, return receipt requested, to the address stated above or to another address as that Party may subsequently designate by notice and shall be deemed given on the date of delivery.

**29. Assignment.** No Party hereto shall have the right to assign its rights or delegate its duties hereunder without the written consent of the other Party, which consent shall not be unreasonably withheld.

**30. Binding Effect.** This Agreement shall be binding and endure to the benefit of the Parties and their respective legal representatives, heirs, administrators, executors, successors and permitted assigns.

**31. Governing Law.** This Agreement and the rights and obligations of the Parties hereto shall be governed by and construed in accordance with the laws of the State of Minnesota, without regard to its conflicts of laws provisions.

**32. Severability.** If any provision of this Agreement is held to be invalid, illegal or unenforceable in whole or in part, the remaining provisions shall not be affected and shall continue to be valid, legal and enforceable as though the invalid, illegal or unenforceable part had not been included in this Agreement.

**33. Entire Agreement.** This Agreement contains the entire agreement between the Parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, understandings and agreements.

**34. Amendments.** This Agreement may not be amended or modified except by a written agreement signed by the all of the Parties.

**35. Waiver.** No Party shall be deemed to have waived any provision of this Agreement or the exercise of any rights held under this Agreement unless such waiver is made expressly and in writing. Waiver by any Party of a breach or violation of any provision of this Agreement shall not constitute a waiver of any other subsequent breach or violation.

**36. Survival.** The obligations of Contractor expressly identified in this Agreement, or those by operation of law, shall survive the completion of Work or termination of this Agreement.

**37. Industry Language.** The language used for terms of this Agreement, unless otherwise defined, shall be construed according to the customary meaning within the construction industry in the area where the Project is located and for the type of Work being performed.

**38. Independent Contractor.** Contractor acknowledges that it is an independent contractor and is not an agent, partner, joint venture nor employee of Client. Contractor shall have no authority to bind or otherwise obligate Client in any manner nor shall Contractor represent to anyone that it has the right to do so. Contractor further agrees that in the event that the Company suffers loss or damage as a result of a violation of this provision Contractor shall indemnify and hold harmless Client from any such loss or damage.

**39. Rights of Third Parties.** Nothing in this Agreement shall create or give to any third party a claim or right of action against Contractor or Client.

**40. Confidentiality.** As a result of Contractor's participation in the Work, Contractor will have access and contribute to information and materials of a highly sensitive nature, including Confidential Information. Contractor hereby warrants that Contractor and its employees and agents shall not (without in each instance obtaining the Client's prior written consent) disclose, make commercial or other use of, or give or sell to any person, firm, or corporation, any Confidential Information received directly or indirectly from Client or acquired or developed in the course of the performance of this Agreement unless: (1) required to do so pursuant to Applicable Laws (and then only after Contractor has given Client prompt written notice of the legal compulsion and, at Client's expense, provided by Client with cooperation in any attempt Client may make to gain a protective order acceptable to Client); or (2) it is rightfully in the possession of Contractor from a source other than Client prior to the time of disclosure of the information to Contractor under this Contract; or (3) it was in the public domain prior to the time of Contractor's receipt; or (4) it became part of the public domain prior to the time of Contractor's receipt by any means other than an authorized act or omission on the part of Contractor; or (5) it is supplied to Contractor after the time of Contractor's receipt by a third party who was not under any obligation to Client to maintain such information in confidence; or (6) it was independently developed by Contractor prior to the time of its receipt from Client. All Confidential Information, regardless of form, shall be the property of Client and shall be returned to Client upon its request, or in any event, at the completion or earlier termination of this Agreement.

**NOTICE TO CLIENT**

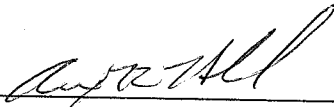
**ANY PERSON OR COMPANY SUPPLYING LABOR OR MATERIALS FOR THIS IMPROVEMENT TO YOUR PROPERTY MAY FILE A LIEN AGAINST YOUR PROPERTY IF THAT PERSON OR COMPANY IS NOT PAID FOR THE CONTRIBUTIONS.**

**UNDER MINNESOTA LAW, YOU HAVE THE RIGHT TO PAY PERSONS WHO SUPPLIED LABOR OR MATERIALS FOR THIS IMPROVEMENT DIRECTLY AND DEDUCT THIS AMOUNT FROM OUR CONTRACT PRICE, OR WITHHOLD THE AMOUNTS DUE THEM FROM US UNTIL 120 DAYS AFTER COMPLETION OF THE IMPROVEMENT UNLESS WE GIVE YOU A LIEN WAIVER SIGNED BY PERSONS WHO SUPPLIED ANY LABOR OR MATERIAL FOR THE IMPROVEMENT AND WHO GAVE YOU TIMELY NOTICE.**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

City of Baxter

**Client**  
Full Name



**Client Representative**  
Signature

Alex Honch  
Parks + Trails Supervisor

**Client Representative**  
Name and Title

Driftwood Enterprise

**Contractor**  
Full Name



**Contractor Representative**  
Signature

Ben Peterson  
Owner

**Contractor Representative**  
Name and Title



## **Certificate of Completion**

Contractor Name: Driftwood Enterprise

Property Address: Oscar Kristofferson Park – 5672 Baxter Lions Road, Baxter, MN 56425

Contract Date: May 22, 2024

Completion Date: June 25, 2024