

**City of Ramsey**  
**Agenda**  
**Housing and Redevelopment Authority (HRA)**  
**Regular Session**  
**Tuesday February 12, 2013**  
**Immediately following City Council**  
**Council Chambers, 7550 Sunwood Drive NW**

1. **Call to Order**
2. **Citizen Input**
3. **Approve Agenda**
4. **Approve Minutes**
  1. Approve the Following Meeting Minutes:
    1. HRA Regular - January 22, 2013
5. **HRA Business**
  1. Landform Professional Services, LLC's Contract with Ramsey HRA
6. **Development Team Report**
7. **Commissioner Input**
8. **Adjournment**

**HRA Regular Session**

**4. 1.**

**Meeting Date:** 02/12/2013

**By:** Jo Thieling, Administrative Services

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**Information**

**Title:**

Approve the Following Meeting Minutes:

1. HRA Regular - January 22, 2013

**Background:**

Meeting minutes attached.

**Funding Source:**

N/A

**Council Action:**

Motion to approve the following meeting minutes

1. HRA Regular - January 22, 2013
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**Attachments**

[HRA Mts 012213](#)

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**Form Review**

**Inbox**

Kurt Ulrich

**Reviewed By**

Kurt Ulrich

**Date**

02/07/2013 01:27 PM

Form Started By: Jo Thieling

Started On: 01/30/2013 04:14 PM

Final Approval Date: 02/07/2013

**HOUSING AND REDEVELOPMENT AUTHORITY  
CITY OF RAMSEY  
ANOKA COUNTY  
STATE OF MINNESOTA**

The Housing and Redevelopment Authority conducted a regular meeting on Tuesday, January 22, 2013, at the Ramsey Municipal Center, 7550 Sunwood Drive NW, Ramsey, Minnesota.

Members Present:     Chairperson Randy Backous  
                            Commissioner David Elvig  
                            Commissioner Mark Kuzma  
                            Commissioner John LeTourneau  
                            Commissioner Chris Riley  
                            Commissioner Sarah Strommen  
                            Commissioner Jason Tossey

Members Absent:     None.

Also Present:         HRA Executive Director Kurtis G. Ulrich  
                            Deputy Executive Director Timothy Gladhill  
                            Finance Director Diana Lund  
                            Management Analyst Patrick Brama  
                            City Attorney William Goodrich  
                            Development Manager Darren Lazan  
                            Interim Engineer Shane Nelson

**1.     CALL TO ORDER**

Chairperson Backous called the regular meeting of the Housing and Redevelopment Authority to order at 9:05 p.m.

**2.     CITIZEN INPUT**

There was none.

**3.     APPROVAL OF AGENDA**

Motion by Commissioner LeTourneau, seconded by Commissioner Strommen, to approve the agenda as submitted.

Motion carried. Voting Yes: Chairperson Backous, Commissioners LeTourneau, Strommen, Elvig, Kuzma, Riley, and Tossey. Voting No: None.

#### 4. APPROVAL OF MINUTES

Motion by Commissioner Tossey, seconded by Commissioner LeTourneau, to approve the following minutes:

HRA Special Meeting Minutes dated October 16, 2012  
HRA Regular Meeting Minutes dated October 23, 2012  
HRA Regular Meeting Minutes dated November 13, 2012  
HRA Special Meeting Minutes dated November 20, 2012  
HRA Regular Meeting Minutes dated December 11, 2012  
HRA Regular Meeting Minutes dated January 8, 2013

Motion carried. Voting Yes: Chairperson Backous, Commissioners Tossey, LeTourneau, Elvig, Kuzma, Riley, and Strommen. Voting No: None.

#### 5. HRA BUSINESS

##### **5.01: Adopt Resolution Conveying Outlot C, RAMSEY TOWN CENTER 8<sup>TH</sup> ADDITION to The Seasons of Ramsey Limited Partnership. Related to a Proposed Major Plat Named SEASONS OF RAMSEY Located at the Northeast Intersection of Bunker Lake Boulevard and Town Center Drive within TOWN CENTER GARDENS 3<sup>RD</sup> ADDITION**

Development Services Manager Gladhill reviewed the staff report and request of Podawiltz Development Corporation to convey Outlot C (a remnant parcel), Ramsey Town Center 8<sup>th</sup> Addition, as part of a local contribution so it can be recorded by February 28, 2013, and not jeopardize the Minnesota Housing Finance Agency (MHFA) funding award. He advised the developer was able to secure MHFA financing based on the City's donation of the remnant parcel and vacation of 142<sup>nd</sup> Circle. Development Services Manager Gladhill presented the site plan and exterior elevations that staff supports upgrading.

Bill Kemp, representing Podawiltz Development Corporation, introduced Lonnie Kornovich, the builder. He stated there are some architectural details to work out with staff and they hoped to start construction in March. He indicated the driveways are at least 25 feet long, meeting the City's requirement, and sidewalks will be constructed along Town Center Drive, 147<sup>th</sup> Lane, both sides of 147<sup>th</sup> Lane Extension, and provide a connection with the sidewalk on the easterly side.

Motion by Commissioner Strommen, seconded by Commissioner Riley, to adopt Resolution #HRA-13-01-021, Conveying Outlot C, RAMSEY TOWN CENTER 8<sup>TH</sup> ADDITION to The Seasons of Ramsey Limited Partnership as a local contribution as part of the MHFA Section 42 Tax Credit, contingent on Final Plat and Site Plan approval by the City Council and contingent upon compliance with City architectural requirements.

Motion carried. Voting Yes: Chairperson Backous, Commissioners Strommen, Riley, Elvig, Kuzma, LeTourneau, and Tossey. Voting No: None.

## **5.02: Consider Alternate Platting Scenario – COR TWO**

Development Manager Lazan stated his intent was to garner support prior to expending efforts to determine cost estimates and this information is being presented for discussion only. He reviewed the staff report, past consideration of COR TWO, and recommendation the HRA proceed with the modification to the plat of COR TWO and revise documents necessary to record the plat, contingent upon the HRA receiving adequate written agreement or cash escrow from Sophia-Ramsey to cover the costs incurred to the HRA, or securing some other form of guarantee to ensure the adequate repayment to the HRA. Development Manager Lazan indicated the Development Team recommends the sale of the remnant parcels, shown as Outlots B and C, to Sophia Ramsey LLC with the condition that they re-plat the parcels before December 31, 2013. It was noted that upon successful acquisition of the parcels, the HRA would grant the access easement over the HRA lots. He noted this proposal would result in accomplishing the HRA's original goals, allow the HRA to move forward with retail land sales, and include all of the original agreement components.

Jay Scott, President of Solomon Real Estate and Managing Partner of Sophia-Ramsey, thanked Development Manager Lazan for his efforts. He described the impact of their mortgage being repurchased by another firm that resulted in a significant tax impact and indicated they support the recommendation of staff. Mr. Scott stated they look forward to a successful future and being part of The COR.

HRA Executive Director Ulrich recommended delaying consideration of a work order until additional cost estimate details are presented to the HRA.

## **6. DEVELOPMENT TEAM REPORT**

HRA Executive Director Ulrich and Development Manager Lazan indicated they had nothing additional to report.

## **7. COMMISSIONER INPUT**

Development Manager Lazan stated leasing of The Residence is ahead of hopes and an update will be scheduled at an upcoming meeting when the owners are in town.

Commissioner Strommen noted Mr. Cronk had also offered a tour to HRA members.

## **8. ADJOURNMENT**

Motion by Commissioner Tossey, seconded by Commissioner LeTourneau, to adjourn the regular meeting of the Housing and Redevelopment Authority.

Motion carried.

The regular meeting of the Housing and Redevelopment Authority adjourned at 9:30 p.m.

Respectfully submitted,

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Kurtis G. Ulrich  
HRA Executive Director

ATTEST:

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Jo Ann M. Thieling  
City Clerk

Drafted by Carla Wirth  
*TimeSaver Off Site Secretarial, Inc.*

**HRA Regular Session**

5. 1.

**Meeting Date:** 02/12/2013**By:** Kurt Ulrich, Administrative Services

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**Information****Title:**

Landform Professional Services, LLC's Contract with Ramsey HRA

**Background:**

The current Development Management (DM) contract for The COR at Ramsey will be in effect until March 31, 2013. The current contract has been in effect for two years and preceded the original contract of April 2010, and preliminary work that was done by Landform starting in 2009.

The contract provides for a variety of development management services relative to the COR in exchange for compensation in the form of "Administrative Compensation," "Incentive Compensation," and Additional Compensation."

Recently the City received two documents (attached) asserting that Landform should not be compensated for services that Landform has provided to the HRA because its services performed under the contract constitute serving as a real estate broker or agent.

The Landform Attorney has provided a response asserting that both Landform and the City HRA have not "abridged any law of this state." (See attached letter: Shainess 1/31/13)

The City HRA Attorney has reviewed all relative documents and is preparing a memo for Tuesday evening. Unfortunately, the HRA Attorney experienced the death of an immediate family member, and consequently the memo is expected early next week. No immediate action is required at this meeting.

This meeting is to discuss alternatives available to the HRA in regard to the Landform contract for the balance of the remaining term.

**Notification:**

n/a

**Observations/Alternatives:**

It is recommended that the HRA review and discuss the Landform response and the HRA Attorney's response, and alternative actions available.

The Professional Services contract with Landform was originally drafted with the assistance of the City Attorney Bill Goodrich. The review of the current issue is being done by HRA Attorney Tom Bray. An estimate of (\$1,100 to \$1,760) was received from a third law firm, used extensively by the League of Minnesota Cities, to provide an "outside" legal opinion. This would be a reasonable amount to confirm our legal direction with an attorney that has a more objective position in the matter.

In regard to the Landform contract, it is recommended that the HRA not renew the contract, but proceed with alternative of hiring an Economic Development Manager as directed by Council. Staff would work with the development manager to ensure a smooth transition of documents and contacts. An hourly services agreement should be negotiated as part of this transition for any necessary future work that may need to be done following the contract. The Development Manager's contract provides that incentive fees are to be paid for any HRA Contracts with third parties, for a period of fifteen month following termination.

**Recommendation:**

It is recommended that the Council proceed to the March 31 termination date of the Landform contract and that staff be directed to negotiate with Landform any outstanding issues. Staff supports an outside legal review as indicated.

**Funding Source:**

n/a

**Council Action:**

It is recommended that the Council proceed to the March 31 termination date of the Landform contract and direct staff to negotiate with Landform any outstanding issues prior to that date, and direct staff to obtain an outside legal review of the contract in an amount not to exceed \$2,000.

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**Attachments**

- [landformcontractissueV1](#)
  - [LandformcontractissueV2](#)
  - [Landformresponse](#)
  - [Landform2011contract](#)
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**Form Review**

<b>Inbox</b>	<b>Reviewed By</b>	<b>Date</b>
Kurt Ulrich (Originator)	Kurt Ulrich	02/07/2013 06:01 PM
Kurt Ulrich (Originator)	Kurt Ulrich	02/07/2013 06:03 PM
Form Started By: Kurt Ulrich		Started On: 02/07/2013 04:05 PM
	Final Approval Date: 02/07/2013	

## FACTS

Landform Engineering Company, Inc. originated as a Minnesota corporation on October 12, 1994. Darren B. Lazan is identified as the Chief Executive Officer and its principal executive office is Suite 513, 105 5<sup>th</sup> Avenue South, Minneapolis, MN 55403. Landform Professional Services, LLC is a Minnesota limited liability company, formed on October 26, 2009. Its principal office is at the same location as Landform Engineering Company.

Darren Lazan identifies himself as a mechanical engineer on a variety of business search engines, including Manta, PowerProfiles, Yellow Explorer, Bixwiki, corporationwiki and Bizvotes. These websites identify Mr. Lazan's address as 1320 153<sup>rd</sup> Lane N.W., Anoka, MN 55304-2587. Majon, a web social service directory, identifies Mr. Lazan as primarily engaged in "Heavy Construction Engineering Services."

In 2007, Mr. Lazan filed an application to do business with the Secretary of State in the state of Florida. The application described the purpose of the company: "Landform is a civil site design firm, looking to do projects in Florida."

The 2009 Annual Report filed with the Florida Secretary of State is signed by Mr. Lazan as the Chief Executive Officer of the Corporation, with an address of 800C Butler Sq., 100 N. 6<sup>th</sup> St. Minneapolis, MN. 55403. The Vice President of the Company is identified as Christine Moss. The Company is identified as having been formed in Minnesota on October 24, 1994. Manta also lists Landform as being located as 105 5<sup>th</sup> Avenue. Suite 513, Minneapolis, MN.

The Landform website is at [www.landform.net](http://www.landform.net). The company describes itself as a:

"multi-disciplinary consulting firm that offers a full range of integrated site design services including civil engineering, landscape architecture, planning, infrastructure, land surveying and water resources design and management."

The Company states on its website that its clients are architects, builders, property owners and developers. The website identifies the owners as Mr. Lazan and Robert Schunicht. Kendra Lindahl is identified as a principal of the company. The website refers to its principal discipline as being urban design, retail and commercial design and residential design.

Nowhere on the website is the Company identified as having a real estate license. None of the above named individuals, the only people described on the website or government applications, are identified as having real estate licenses.

In April of 2009, Landform was awarded a contract to manage the mixed use development of the Ramsey Town Center. Heidi Nelson, an employee of Ramsey, states that Landform was retained because of its relationship to Greely, Inc, an Illinois developer and CronkRe, also of Illinois.<sup>1</sup> Under this contract Landform was paid a \$15,000 monthly fee plus a \$10,000 monthly "incentive advancement." The "incentive advancement" was an advance fee against a 2% commission Landform was to be paid on any parcel it sold in the Ramsey Town Center, later to be named the COR development district. The 2% commission was not based on the sale price of the land; rather, it was based on the total cost of the end use of the parcel. In many cases this means the commission was far in excess of the standard real estate commission paid on the sale of a commercial parcel.

On March 22, 2011, the Ramsey HRA approved a new two year contract with Landform, with the \$15,000 fixed fee continuing to be paid and the \$10,000 per month incentive fee being capped at the end of the first year of the renewed contract.<sup>2</sup> As noted above, the 2% commission was paid not only on the acquisition price of the land being sold by the Ramsey HRA but also on the cost of any improvement being constructed on the site. The contract staged the payment of the commission, with a percentage paid at the time of the purchase agreement, a percentage at the closing, and a percentage when there is occupancy of the site.

In January of 2012, the contract between Landform and Ramsey HRA was amended.<sup>3</sup> Under the contract, Landform continued to be paid \$15,000 per month. The payment of the 2% commission was deferred, however, with half the 2% commission paid at the time a purchase agreement is signed and half at the time and public financing on the project is repaid by the developer.

It is not believed that Landform was involved in any real estate transaction involving the COR from 2009 through 2011. Accordingly, while Landform was paid approximately \$15,000 per month, or \$469,761.59 for services from August of 2009 to March, 2011, it does not appear any commission was earned by the Company, although it had received the advance incentive fee. Mr. Lazan, the President of the Company, told ABC Newspapers that fifteen people at Landform put in 3,300 hours of work during the period up to March of 2011, receiving approximately \$140 per hour.<sup>4</sup>

In October of 2012 Ramsey HRA approved the sale of a 1.36 acre parcel to McDonald's Corporation for \$470,000.<sup>5</sup> Under the terms of the transaction, the HRA will pay McDonald's realtor a fee of \$30,000. It will also pay \$51,441 in fees to Landform. Therefore, on a straight commission basis, the transactional fees amount to \$81,441, or 17 ½ % of the sale price, all shouldered by the seller. This does not include the \$15,000 monthly fee paid to Landform.

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<sup>1</sup> Sakry, "Landform Works to Grow the COR in Ramsey," ABC Newspaper, December 16, 2010.

<sup>2</sup> Sakry, "Ramsey HRA Approves New Landform Contract," ABC Newspapers, March 24, 2011.

<sup>3</sup> Sakry, "Ramsey HRA Amends Landform Contract," ABC Newspapers, January 7, 2012.

<sup>4</sup> Sakry, "Ramsey HRA Considers the Money Spent on The COR," March 23, 2011

<sup>5</sup> Sakry, "Ramsey HRA Approves McDonalds Sale, Landform Fee." October 31, 2012.

In addition, SuperAmerica acquired two different parcels of property, and Landform is reported to receive \$53,725 fees connected to the sale of one parcel and \$57,913 in fees connected to the sale for the other.<sup>6</sup> Landform is to be paid 20% of the fee with the signed purchase agreement, 60% at closing, and 20% at occupancy. The newspaper article identifies the total project cost of the SuperAmerica service stations. It does not, however, identify the price paid by SuperAmerica for the parcels of land. Accordingly, the transactional fee is not calculated on a percentage basis.

Landform has also sought commissions of \$25,000 on work to *purchase* a liquor store that is not located in the COR District and a \$4,000 for work on a realignment of property for Sophia Ramsey, LLC. It appears that these fees were not approved by the HRA.

Landform has also sought commissions relative to the sale of parcels to Flaherty & Collins for the development of the Residence Luxury Apartment complex. Flaherty & Collins paid the HRA \$250,000 for 3.03 acres of COR property.<sup>7</sup> I did not find the amount of the commission being paid to Landform, and accordingly I did not calculate the percentage of the commission.

Landform's contract with the City makes it clear that the commission it earns is for the sale of commercial real estate. Indeed, while I have not seen the contract, newspaper reports indicate that it follows the custom and use of the real estate industry as to when a commission is earned, in this case being earned on any closing which occurs less than 15 months after the Landform contract is terminated if Landform performed certain benchmark services, such as having significant discussion with the purchaser and physically showing the premises to the purchaser. The contract also provides for a termination fee of \$60,000 if the contract is terminated before March of 2013.

Landform is not identified as a real estate licensee in the directory of the Minnesota Department of Commerce. Neither Mr. Lazan nor the associates identified above are listed as real estate licenses in the directory.

### LAW AND DISCUSSION

The City of Ramsey's contract with Landform, in which it is required to pay Landform commission for managed services, is unenforceable because Darren Lazan, the individual acting on behalf of Landform, does not hold a required license to manage the sale of land in the development area.

In Minnesota, a license is required for anyone who "for another and for commission, fee, or other valuable consideration . . . lists, sells, exchanges, buys or rents, manages, or offers or attempts to negotiate a sale, option, exchange, purchase or rental of an interest or estate in real estate[.]" Minn. Stat. § 82.55, subd. 19(a) (2012). This licensure

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<sup>6</sup> Id.

<sup>7</sup> Sakry, "Ramsey Council Gives Approvals for 250 Unit Luxury Apartment Complex" December 2, 2010.

requirement is extremely broad. Two Minnesota appellate cases have made it clear that the activities for which a broker's license is required are much broader than traditional brokerage services.

In *PEMS Co. Int'l, Inc. v. Temp-Air, Inc.*, the Minnesota Court of Appeals held that a license is required for a "finder," which is described as:

an intermediary who brings together parties for a business opportunity, and differs from a broker because the finder merely brings two parties together to make their own contract; a finder locates, introduces, and brings parties to a transaction together, while a broker does more, attempting to bring the parties to agreement.

*PEMS Co. Int'l, Inc. v. Temp-Air, Inc.*, No. A10-834, 2011 WL 69098, at \*4 (Minn. Ct. App. Jan. 11, 2011) (quoting 12 Am. Jur. 2d Brokers § 3 (West 2010)). In that case, a consulting company, PEMS, was hired to act as a "finder," or to identify and vet possible buyers of a company. *Id.* at \*5. It also acted as a gate keeper between the owner and potential buyer. *Id.* The court held that, even though PEMS did not negotiate the actual sale of the business—as a traditional broker would do—PEMS's services still fell within the "broad range of conduct" for which a license is required. *Id.* at \*6.

Likewise, in *Bridgeplace Associates, L.L.C. v. Lazniarz*, the Minnesota Court of Appeals concluded that a license is also required for a developer who is being compensated for using his "good will" in a relationship to help effect a sale of land from one owner to another. *Bridgeplace Associates, L.L.C. v. Lazniarz*, No. A04-2218, 2005 WL 1869657, at \*3 (Minn. Ct. App. Aug. 9, 2005). In that case, Lazniarz, a developer, was offered compensation for using his pre-existing relationship with a landowner to help effect a sale between the landowner and another developer. *Id.* at \*3. Lazniarz had been negotiating a sale of land for his own development. *Id.* at \*2. But when he was unable to find an investor, he ultimately entered into an agreement with another developer—the developer would pay Lazniarz if Lazniarz could convince the owner of the land to sell the land and the neighboring parking lot to the developer. *Id.* The court agreed with the district court that "[t]here is no doubt that [Lazniarz] was trying to effect a sale of the property . . . so that [he] would realize the anticipated . . . compensation." *Id.* at \*13. It therefore concluded that Lazniarz was required to have a license. *Id.*

Here, at a minimum, Lazan acted as a finder in exchange for promised commission. Lazan agreed to "solicit the interest of various prospective end-users[,] . . . coordinate the efforts of all team members to provide a uniform front to the development community, and assist in the evaluation, consideration, negotiations, and deal structuring on any disposition of land within the development area." In exchange for these services, Landform was promised 2% of the "total capital cost of the end use of the parcel or property sold or developed." In other words, Lazan engaged in the exact same services as PEMS and Lazniarz, and like PEMS and Lazniarz, it was required to have a license to do so. See *PEMS*, 2011 WL 69098; *Lazniarz*, 2005 WL 1869657.

Although there are some exceptions to the licensure requirement, none apply to Lazan. *See* Minn. Stat. § 82.55 (2012). Among them is an exception for small real estate developers who engage in fewer than 25 transactions a year and who keep a trust account in accordance with Minnesota Statutes section 82.75. It would be Lazan's burden to prove that he qualifies for that exception. *See Douglas v. Schuette*, 607 N.W.2d 142, 147 (Minn. Ct. App. 2000). Lazan would have difficulty proving that he qualifies for that exception because it does not appear that he has ever acquired, built, and then resold property. It also does not appear that Landform is development company. Rather, in reviewing the dates of formation of Landform Engineering Company, Inc. and Landform Professional Services, LLC, it appears that its employees were employees solely by Landform Engineering Company, Inc., until it landed the Ramsey HRA contract in 2009, at which point they formed Landform Professional Services, LLC. Moreover, neither Landform nor Lazan appear to maintain a trust account that is reportable and on file with the Department of Commerce. The trust account requirements are very strict. *See* Minn. Stat. § 82.75. Accordingly, Lazan does not meet this exception and should be licensed.

Because Lazan is not licensed, Landform is not entitled to compensation for any of Lazan's services. Minnesota Statutes section 82.85, subdivision 1 (2010) states:

No person shall bring or maintain any action in the courts of this state for the collection of compensation for the performance of any of the acts for which a license is required under this chapter without alleging and proving that the person was a duly licensed real estate broker, salesperson, or closing agent at the time the alleged cause of action arose.

"This section is penal in nature and will defeat a claim for commissions if a plaintiff fails to allege and prove that they were duly licensed." *Ike v. Anderson*, 369 N.W.2d 321, 322 (Minn. Ct. App. 1985) (*citing Relocation Realty Services Corp. v. Carlson Companies, Inc.*, 264 N.W.2d 643, 645 (Minn.1978); *Albers v. Fitschen*, 274 Minn. 375, 376-77, 143 N.W.2d 841, 843 (1966)). The section was enacted as "part of a legislative scheme to protect the public against unqualified brokers." *Relocation Realty Services Corp.*, 264 N.W.2d at 645.

There are no exceptions to the section 82.85's complete bar on compensation for unlicensed brokerage services. Courts apply it universally. *See PEMS*, 2011 WL 69098, at \*3-4 (applying bar); *Bridgeplace Associates*, 2005 WL 1869657, at \*13 (same); *Ike*, 369 N.W.2d at 322 (same); *Relocation Realty Servs. Corp.*, 264 N.W.2d at 645 (same).

In the sixties, the Minnesota Supreme Court attempted to carve out an exception for sophisticated parties, *see Paske v. Liberty Equities Corp.*, 283 Minn. 167, 170, 167 N.W.2d 30, 32 (1969), but the "isolated real estate transaction" exception upon which the sophisticated-parties exception was based was repealed by the legislature in 1967, *see Gahagan v. Patterson*, 316 F. Supp. 1099, 1102 n.2 (D. Minn. 1970). No court has applied the *Paske* exception.

Given that the 2% compensation to Landform is not enforceable, the question then becomes whether the City of Ramsey should pay it anyway. There are at least two reasons why the City should not pay it. First, public policy, as demonstrated by the continued force of section 82.85, does not support compensating unlicensed brokers for their services. *See PEMS*, 2011 WL 69098, at \*3-4 (observing that unlicensed broker “forfeits his right to collect compensation for his services”). Second, and perhaps more importantly, the City of Ramsey charter provides:

The proceeds of any sale of such property shall be used as far as possible to retire any outstanding indebtedness incurred by the city in the purchase, construction, or improvement of this or other property used for the same public purpose. If there is no such outstanding indebtedness, the council may by resolution designate some other public use for the proceeds.

Ramsey City Charter § 12.5.<sup>8</sup> This provision prioritizes how the City should use its funds from the sale of land; paying Landform compensation based on an unenforceable contract is not the priority. *See id.*

### CONCLUSION

Landform is not entitled to compensation for its role in selling land in the City of Ramsey because Lazan, the person acting on behalf of Landform, is not a licensed broker. The City has no obligation to pay Landform and public policy and the City’s Charter weigh against compensation.

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<sup>8</sup> The Ramsey City Charter is publicly available at <http://www.ci.ramsey.mn.us/sites/default/files/documents/AboutUs/Charter2010.pdf>

In this case there is no doubt that Landform is trying to effect a sale of the COR property so that it will realize the anticipated compensation. The Courts have been firm that the key word in the licensure statute is "negotiate." *Bridgeplace Associates, LLC v. Henry J. Lazniarz*, Mn. Ct. Appeals (2005).

There are exemptions in the statute for certain professions. For instance, a real estate developer might be exempt under the following provision:

The term real estate broker does not include...any person who acquires real estate for the purpose of engaging in and does engage in or who is engaged in the business of constructing residential, commercial or industrial buildings for the purpose of resale if no more than 25 such transactions occur in an 12 month period and the person complies with Section §82.75."

Minn. Stat. §82.56 (i). The courts have held that, even if a developer has bought, built and resold less than 25 parcels in a year, it is still not exempt unless it has maintained a trust account in compliance with Minn. Stat. §82.75. *Bridgeplace Associates, LLC v. Henry K. Lazniarz*, MN. Ct. App. (2005); *Douglas v. Shuette*, 607 N.W.2d 142, 147 (Minn. App. 2000)

It is problematic whether Landform is a developer. It does not appear it has ever acquired, built and then resold property. Rather, in reviewing the dates of formation of Landform Engineering Company, Inc. and Landform Professional Services, LLC, it appears that its employees were employees solely by Landform Engineering Company, Inc., until it landed the Ramsey HRA contract in 2009, at which point they formed Landform Professional Services, LLC. Regardless of the name of the company, it does

not qualify for the developer exemption because: 1.) It does not improve the property it acquires for resale, and 2.) It does not maintain a trust account which is reportable and on file with the Department of Commerce. The trust account requirements are very strict, with the account being so identified by the financial institution, deposits being made directly into the account, separate ledgers being maintained for the account, and proper reporting being made to the Commissioner of Commerce. Minn. Stat §82.75.

Minnesota law makes it clear that an unlicensed broker may not maintain any action in the courts for collection of compensation. Specifically, the statutes provide as follows:

“No person shall bring or maintain any action in the courts of this state for the collection of compensation for the performance of any of the acts for which a license is required under this chapter without alleging and proving that the person was a duly licensed real estate broker, salesperson, or closing agent at the time the alleges cause of action arose.”

Minn. Stat. §82.85, subd. 1. . The Courts have uniformly held that this statute is penal in nature and will defeat a claim for commissions if a plaintiff fails to allege and prove that he or she is licensed. *Ike v. Anderson*, 369 N.W. 2d. 321, 322 (Mn. App. 1985); *Albers v. Fitschen*, 274 Minn. 375, 143 N.W. 2d 841, 843 (1966) The Courts have uniformly been so strict on this issue that it prohibited an unlicensed broker from bringing a lawsuit to claim unjust enrichment. *Relocation Realty Services Corp. v. Carlson Companies, Inc.*, 264 N.W. 2d 643 (Minn 1978) To do otherwise, the Court reasoned, would “decrease the risks of doing business by unlicensed brokers and dilute the protections provided to the public.” *Id.*

In the sixties, the Minnesota Supreme Court tried to carve out an exemption in a situation where the parties were both sophisticated and where all parties knew that the broker was unlicensed. *Peske v. Liberty Equities Corp*, 283 Minn. 167, 167 N.W. 2d 30 (1969) After the *Peske* decision was rendered, the legislature amended the law to make it clear that the court can not look at the equities of the arrangement. Rather, the Courts must solely look to whether the activity was that of a licensed broker and, if so, whether the broker was licensed. *Gahagan v. Patterson*, 316 F. Supp. 1099 (D. Minn. 1970); *Dellwood Enterprises v. Pac. Am. Real Estate Fund*, 505, F. Supp 187 (1981) Absent the required license, a broker may not use the courts to enforce any compensation arrangement required such activity.

The above case law makes it clear that, unless Landform is licensed as a real estate broker or is exempt from licensure, it may not file any action in court to collect on any fees relating to brokerage activity, which includes the activity involving the McDonalds Restaurants, the SuperAmerica service stations, and the Flaherty & Collins project.

The statutes also provide that any person who violates any provision of the real estate code is guilty of a gross misdemeanor. Minn. Stat. §82.83.

A municipality must adhere to the strictest standards of the law. It may not make payments to vendors that are illegal or unauthorized under the law. It is misuse of public funds to make a payment to a vendor that is not enforceable under the law. The Landform contract, providing for unlicensed brokerage activity, may constitute an ultra vires contract which is in whole or in part void under the law. See *Dunnell's Minnesota Digest*, "Municipal Corporations," Section 12.01.

Under the above facts and law, it does not appear that the Ramsey HRA may pay compensation to Landform for brokerage work involving McDonalds, SuperAmerica and Flaherty & Collins. Indeed, depending on the terms of the contract, the entire contract may be construed to be ultra vires and be subject rescission.

## MEMORANDUM

To: William A. Erhart  
From: John M. Huberty  
Subject: Contract between Landform and City of Ramsey  
Date: January 1, 2013

### I. Introduction.

This memorandum discusses three main issues: (1) Did the parties contract around the requirement of a realtor's license in Chapter 82 of the Minnesota Statutes through a provision in the Landform contract stating that no one from Landform, or its consultants, are real estate brokers or salespersons as defined by § 82.55, subd. 19(a)? (2) In the event issues number 1 is answered in the negative, and Ramsey terminates the contract under Section X thereof, are there any estoppel or other equitable legal rules that Landform could rely on in seeking relief? (3) Are the conclusions reached in the memorandum previously provided on issue number 1 correct? In evaluating these issues, this memorandum will not reexamine in any detail the legal research presented in the previous memorandum so long as the conclusions presented are well-founded and supported by existing case law.

### II. Facts.

The facts are as stated in the previous memorandum. In addition, specific terms of the contract in the March 22, 2010 letter that are relevant to the analysis presented herein include the following:

Under Article II.:

"Initiate introductory meetings of the new Project with potential key users and development partners. Advance and negotiate various team accepted disposition strategies."

Under Article III.B.1.:

"... meeting with... perspective [sic] users...."

Under Article III.D.2 and 3:

"Project Marketing Strategy-Develop an overall marketing strategy, and appropriate sub-strategies, necessary to bring the Project to several markets. This will include the coordination of third party consultants to develop marketing collateral (print, electronic, etc.) necessary to present the Project to potential purchasers in the community, at trade shows, and/or industry events."

"Marketing Package Preparation-Prepare and maintain comprehensive Project site marketing packages... for owner's use in disposition strategy."

Under Article III.E.2, 3 and 4:

“Property Interest Solicitation-... disseminate marketing package(s) on behalf of Owner to targeted groups. Establish communications and as appropriate facilitate introduction of Owner to potential candidates for the various development options with the intent for deal establishment.... Landform shall be the exclusive development manager and will be responsible for all potential development deals within the 140 acre Project.”

“Development Options-Assist Owner in advancing the following development scenarios:

- a. Property Sale or Lease-Assist in finalizing an agreement for the sale or lease of the Project land.”

Article IV.B.1 and 2:

“Landform shall solicit the interest of various prospective end-users, to include individual entities, corporations, developers, and/or development partners.... Landform will... assist in the evaluation, consideration, negotiations, and deal structuring on any disposition of land within the development area.”

Under 2 the contract clearly sets forth an incentive structure that pays Landform a commission on the sale of land, including upon the closing of any sales.

Though is it not present in the copy of the Landform contract reviewed, the previous memorandum indicates that an early termination fee of \$60,000 is due and payable should the City terminate the contract prior to March of 2013. No specific date is provided, so it is unknown whether this means prior to March 1, 2013, or March 31, 2013.

Landform’s compensation under the contract is broken down into three categories: Administrative Compensation, Incentive Compensation, and Additional Compensation.

The first category is for services provided during the period from April 1, 2010 to March 31, 2011, totals \$180,000, and has already been paid. The third category is for services that appear to be unrelated to the marketing and sale of land in the COR, but rather is for actual development-related services, e.g., planning, civil engineering, design, for which the City must employ Landform, or require the end-user to employ Landform, presumably through a contractual provision included in the land sale agreement with the end-user.

The second category, Incentive Compensation, appears to be for the marketing and sale of property in the COR. Specifically, the contract states that Landform is to receive Incentive Compensation for any sales/projects that have been declared prior to

termination, i.e., those on the "Hot List" as defined on page 16, paragraph 7, a-f of the March 22, 2010 letter appended to and made part of the Purchase of Services Agreement (i.e., the contract).

Finally, the parties appear to have contemplated that Landform's real estate promotion activities may be construed as activities requiring a broker's license under Chapter 82 of the Minnesota Statutes. Paragraph X on page 2 of the Purchase of Services Agreement states that Landform, its team members, employees, and consultants are "real estate brokers or salespersons" under Chapter 82. This paragraph also states that "Landform will not be entitled to any compensation for work which requires a license under said Chapter 82."

### III. Legal Analysis.

The starting point for any legal analysis must be the relevant statutory provisions.<sup>1</sup> Chapter 82 of the Minnesota Statutes requires that real estate brokers be licensed. Section 82.55, subd. 19 defines "real estate broker" thusly:

"Real estate broker" or "broker" means any person who:

(a) for another and for commission, fee, or other valuable consideration or with the intention or expectation of receiving the same directly or indirectly lists, sells, exchanges, buys or rents, manages, or offers or attempts to negotiate a sale, option, exchange, purchase or rental of an interest or estate in real estate, or advertises or holds out as engaged in these activities;

\*\*\*\*

(f) for another and for commission, fee, or other valuable consideration or with the intention or expectation of receiving the same, promotes the sale of real estate by advertising it in a publication issued primarily for this purpose, if the person:

- (1) negotiates on behalf of any party to a transaction;
- (2) disseminates any information regarding the property to any party or potential party to a transaction subsequent to the publication of the advertisement, except that in response to an initial inquiry from a potential purchaser, the person may forward additional written information regarding

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<sup>1</sup> The case law and related analysis set forth in the previous memorandum appears to be well researched and the conclusions derived therefrom well founded. In light of the fact that the statute itself, without the aid of illuminating case law, appears to clearly define Landform's activities relating to promoting the sale of property in the COR as those that require a broker's license, additional case law research on this specific issue will not be performed unless requested.

the property which has been prepared prior to the publication by the seller or broker or a representative of either;

(3) counsels, advises, or offers suggestions to the seller or a representative of the seller with regard to the marketing, offer, sale, or lease of the real estate, whether prior to or subsequent to the publication of the advertisement;

(4) counsels, advises, or offers suggestions to a potential buyer or a representative of the seller with regard to the purchase or rental of any advertised real estate; or

(5) engages in any other activity otherwise subject to licensure under this chapter;

Accordingly, under subsection (a), one who (1) manages, offers, or attempts to negotiate a sale, (2) of an interest in real estate, (3) in exchange for compensation, is a real estate broker. Further, simply holding oneself out as engaged in such activities qualifies one as a real estate broker.

Under subsection (f), one who promotes a sale of realty by advertising it in a publication primarily meant for promoting real estate, and who also satisfies one or more of the five listed criteria, is a real estate broker.

Section 82.56 sets forth numerous exceptions to the definition of real estate broker, none of which would appear to cover Landform or its principals.

Importantly, § 82.85 prohibits a party who is required to be licensed as a real estate broker from bringing any civil action in the state courts for recovery of compensation due for real estate brokerage services unless the party proves they are licensed. Subdivision 1 thereof specifically states:

Subdivision 1. Compensation actions; proof of license. No person shall bring or maintain any action in the courts of this state for the collection of compensation for the performance of any of the acts for which a license is required under this chapter without alleging and proving that the person was a duly licensed real estate broker, salesperson, or closing agent at the time the alleged cause of action arose.

This provision therefore prohibits a civil action in the courts of Minnesota for the recovery of compensation due for only those activities for which a broker's license is required. Activities for which a broker's license is not required, e.g., civil engineering, planning, surveying, consulting, etc., would still be actionable. This is contrary to the opinion expressed in the previous memorandum, which states that "Landform is not entitled to compensation for any of Lazan's services," since as further explained below not all of the services provided by Landform fall under the definition of a real estate broker.

The Landform contract breaks down Landform's compensation into three categories: Administrative Compensation, Incentive Compensation, and Additional Compensation. Not all of the services rendered within these three categories fall under the definition of "real estate broker" services. For example, the Administrative Compensation covers several items, e.g., "Planning and Engineering," including "Preliminary Engineering," "Plan Review and Approval," as well as "Development Feasibility," including "Site Use Evaluation," "Pro Forma Development," etc. Accordingly, payments for such services would still be required, though it appears that all of this compensation was paid when due during the one-year "Development Management Services (Administrative Compensation)" period that ran from April 1, 2010 to March 31, 2011. Accordingly, this compensation would not be at issue in any potential civil action, nor would the City of Ramsey be able to recover it if it were at issue as it does not fall under real estate broker services for which a license is required.

Similarly, the category of Additional Compensation, which is for non-broker services like land surveying, civil engineering, planning, and landscape architecture, would appear to fall outside of those services for which a broker's license is required, and therefore any compensation due for the provision of such services would be recoverable in a civil action.

The Incentive Compensation, which forms the great bulk of the anticipated compensation under the agreement, however, is clearly anticipated as payment for services that are covered under Minn. Stat. § 82.55, subd. 19 defining "real estate broker" and "broker," and therefore would not be recoverable because neither Landform nor any of its principals possess a broker's license.

One final form of compensation required under the contract is the potential \$60,000 early termination fee, payable in the event the contract is terminated prior to March 2013. This early termination fee is not included in the copy of the contract provided, and which is the subject of this memorandum. Rather, the existence of this provision is indicated in the previous memorandum, which defines early termination as termination prior to "March of 2013." No specific date is provided, so it is unknown whether this means prior to March 1, 2013, or March 31, 2013. In any event, should the contract be terminated prior to this date, Landform would be due the \$60,000 payment unless the contract has been validly terminated under paragraph X due to Landform's failure to comply with the law, e.g., the license requirement in Chapter 82, because as set forth above, those portions of the contract requiring compensation for non-broker related activities are legally valid.

This begs the question of whether the City of Ramsey has the right to terminate the contract immediately by treating Landform's failure to comply with the Chapter 82 licensing requirement as a material breach of the contract. While it is clear that Landform's promotional activities, efforts to sell land in the COR, and assistance in

negotiating land sale contracts with potential buyers render it a "real estate broker" under Minn. Stat. § 82.55, subd. 19, the City of Ramsey's seeming agreement that it is not a "real estate broker" presents a potential issue should the City seek to turn around and rely on this status as presenting a material breach of the contract and thus valid cause to terminate the contract early without paying the \$60,000 early termination fee. The precise wording of the contract may not provide Landform any cover, however, because it simply states that Landform, its employees and consultants are not real estate brokers, rather than stating that the services contemplated under the contract are not services covered under § 82.55, subd. 19. In other words, affirming on the one hand that it and its employees and consultants are not real estates brokers is not the same thing as stating on the other hand that the services it will be providing under the contract are not those that require a real estate broker's license. Therefore, it does not seem that the parties contracted around the license requirement of Chapter 82, assuming for the sake of argument that parties have the legal right to do so.

In any event, the contract also unequivocally states that Landform is not entitled to any compensation for which a license is required under Chapter 82. This provision is obviously superfluous in that § 82.85 already bars a civil action to recover compensation owed for real estate broker services unless the party seeking compensation is licensed as a broker. The obvious implication of this is that the City of Ramsey is not obligated to pay Landform anything under the Incentive Compensation provisions of the contract, and may very well have a cause of action to recover any sums already paid under these provisions.

#### IV. Conclusions.

- A. Whether the parties contracted around the license requirement of Chapter 82.

The parties did not contract around this requirement. Indeed, the contract affirms the dictates of Chapter 82 by unequivocally stating that "Landform will not be entitled to any compensation for work which requires a license under said Chapter 82." Therefore, any services performed by Landform for which a real estate broker's license is required are not compensable, nor will Landform be able to maintain a law suit seeking to recover compensation for these services. Accordingly, the City of Ramsey is not obligated to make any payments to Landform under the Incentive Compensation provisions of the contract.

- B. Whether Landform has any viable equitable arguments, e.g., estoppel, to preclude the City of Ramsey from raising Landform's violation of Chapter 82 as a defense in a civil action by Landform to recover under the Incentive Compensation provisions of the contract.

It is highly unlikely that the contractual provision stating that Landform, its team members, employees, or consultants are not real estate brokers under Chapter 82 can be successfully employed to estop or otherwise preclude the City of Ramsey from utilizing Landform's violation as a defense to any claim brought to recover under the Incentive Compensation provisions of the contract. The statement in the contract that Landform is not a broker is just that, nothing more and nothing less. It does not mean, and the parties thus did not agree, that the services provided by Landform under the contract are not those that require a real estate broker's license. Further, the affirmation by the parties that no compensation will be owed for services that require a broker's license would clearly undercut any effort by Landform to raise equitable arguments against the City's reliance on Chapter 82 as a defense to any civil action.

- C. Whether the conclusions reached in the previous memorandum are correct.

Yes, to the extent the conclusion is that the City of Ramsey has no obligation to compensate Landform for its role and services provided in marketing and selling land in the COR pursuant to the Incentive Compensation provisions of the contract, the previous memorandum is correct. However, there are additional provisions in the contract, besides the Administrative Compensation, which has already been earned and paid, and the Incentive Compensation, which are valid and enforceable. These include the requirement under the Additional Compensation provisions that the City ensure that Landform be used by end-users for certain services, e.g., design, surveying, civil engineering, etc. So long as the contract is in force, Landform has a right to this work, and compensation for it, or the lost profits should it not receive the work.

V. Alternatives.

- A. The City of Ramsey could immediately terminate all payments to Landform due and owing under the Incentive Compensation provisions of the contract.
- B. The City of Ramsey could consider bringing an action against Landform to recover all sums already paid pursuant to these provisions. Factors weighing on its decision should include the total amount paid to date under these provisions, Landform's willingness to agree to an immediate termination of the contract and release of all potential claims against the city under the contract, including a waiver of the \$60,000 early termination fee, and the City's ability to collect any judgment it might obtain against Landform.

- C. If there is a \$60,000 termination penalty, the City of Ramsey could wait until March 2013 to avoid paying the same. There are arguments both for and against taking this action.

January 31, 2013

**By Email and U.S. Mail**

Mr. Kurt Ulrich  
Ramsey HRA Executive Director  
7550 Sunwood Dr. NW  
Ramsey, MN 55303  
Email: kulrich@ci.ramsey.mn.us

Re: Landform Professional Services, LLC's contract with Ramsey HRA

Dear Mr. Ulrich:

I am counsel for Landform Professional Services, LLC ("**Landform**"). I understand that the City of Ramsey Housing and Redevelopment Authority ("**HRA**") has received an anonymous memorandum arguing that Landform, and its principal Darren Lazan, should not be compensated for services that Landform has provided to the HRA. I am taking this opportunity to briefly respond to the arguments made in the anonymous memorandum.

As a preliminary matter, Landform has worked with the HRA for a number of years. Landform greatly values its relationship with the HRA, as well as its reputation as a leader in land use planning and engineering. Landform's stock in trade is its professional reputation. As such, Landform is understandably dismayed that an unidentified individual has sought to disparage not only Landform, but a valued client and their contractual practices. Nonetheless, Landform is very confident that neither it nor the HRA have abridged any law of this state.

**FACTUAL BACKGROUND**

Landform is a party to a "Purchase Of Services Agreement" with the HRA dated April 1, 2011, pursuant to which Landform provides "development management services" (the "**Contract**"). Pursuant to the Contract, the services to be performed by Landform are those described in the Proposal dated April 1, 2011 (the "**Proposal**"), and include project organization, communication and reporting, development-related activities, planning and engineering services, feasibility study, and marketing of development concepts. The services under the Contract are to be performed from April 1, 2011 through March 31, 2013.

The Contract provides that Landform is to receive "Administrative Compensation," "Incentive Compensation," and "Additional Compensation." The administrative compensation is earned for performing various development-related tasks, entirely unrelated to the sale of any real estate.

With respect to the incentive compensation, Landform has agreed to "solicit the interest of various prospective end-users, to include individual entities, corporations, developers, and/or development partners. Landform will coordinate with the development community, and assist in the evaluation, consideration, negotiations, and deal structuring of any disposition of land within the development area." (Proposal p. 7 (emphasis added)) Incentive compensation is calculated based on a percentage (2%) of the total capital cost of the end use (development) of the parcel of property sold or developed.

The "Additional Compensation" will be earned by Landform in the event that Landform prepares various development-related documents, other than the deliverables spelled out in Article III, § B of the Proposal. Additional Compensation will be based on Landform's fee schedule, or as otherwise negotiated with the HRA.

Section X of the Contract provides that "Specifically, neither Landform, its team members, employees nor consultants are real estate brokers or salespersons as defined by Chapter 82 of Minnesota Statutes. Therefore, Landform will not be entitled to any compensation for work which requires a license under said Chapter 82."

The City of Ramsey has received an anonymous legal memorandum, arguing that Landform should not receive any compensation under the Contract because its services performed under the Contract constitute serving as a real estate broker or agent. In support of its argument, the anonymous memorandum relies principally on newspaper articles and unpublished decisions of the Minnesota Court of Appeals. The anonymous author concedes that he or she has not seen a copy of the Contract.

### **LEGAL ANALYSIS**

#### **1. The Contract Does Not Contemplate Compensating Landform For Providing Real Estate Brokerage Services.**

The anonymous memorandum argues that Landform is not entitled to receive compensation for its services under the Contract, because such a payment would constitute compensating Landform for providing the services of a real estate broker, without a license. A review of the Contract, however, makes clear that (a) the vast majority of services performed by Landform under the Contract have nothing whatsoever to do with the sale of real estate and (b) to the extent that the services relate to the sale of real estate, they do not constitute services for which a real estate broker's license is required.

Minnesota Statute § 82.81 provides that "No person shall act as a real estate broker or salesperson unless licensed as provided in this section." A real estate broker is defined as any person who "for another and for commission, fee, or other valuable consideration or with the intention or expectation of receiving the same directly or indirectly lists, sells, exchanges, buys or rents, manages, or offers or attempts to negotiate a sale, option, exchange, purchase or rental of an interest or estate in real estate, or advertises or holds out as engaged in these activities" Minn. Stat. § 82.55, Subd. 19(a). Exempted from the licensing requirement are, among other categories, "public officers while performing their official duties," and their employees. Minn. Stat. § 82.56 (f) and (g).

Whether Landform needs to be licensed to perform the functions outlined in the Contract depends on whether it is acting as a real estate broker or salesperson, i.e. whether it (a) performs any of the following functions (b) concerning any interest or estate in real estate (c) for compensation:

- lists;
- sells;
- exchanges;
- buys;
- rents;

- manages, or,
- offers or attempts to negotiate a sale, option, exchange, purchase or rental

Minn. Stat. § 82.55, Subd. 19.

*It must be pointed out that most of the services called for under the Contract have nothing at all to do with the sale of real estate. For instance, Article III of the Proposal describes Landform's obligation to perform a wide range of project management services, including reviewing project information, establishing project goals and timelines, assembling development teams, performing planning and engineering services, studying the feasibility of proposed development plans, etc. In short, Landform has been engaged to serve as the HRA's agent to manage a development project. This involves management of a process, and not management of real estate. Nothing in the Contract suggests that Landform engages in or receives any compensation for listing, selling, exchanging, buying, renting or managing any real estate.*

The anonymous memorandum focuses on Landform's receipt of "Incentive Compensation" and argues that the services Landform provides in exchange for this compensation requires a broker's license. In the context of the Contract taken as a whole, and particularly in light of the contractual provision barring Landform from receiving compensation for services that require a license, the anonymous author's assumption that Landform is being compensated for acting as a broker is erroneous. Regarding Incentive Compensation, Article IV. B. of the Proposal provides

Landform shall solicit the interest of various prospective end-users, to include individual entities, corporations, developers, and/or development partners. Landform will coordinate the efforts of the Development Management Team to provide a uniform front to the development community, and assist in the evaluation, consideration, negotiations, and deal structuring on any disposition of land within the development area.

First, this section contemplates that Landform will "solicit the interest" of parties with an interest in the prospective development. This language does not obligate Landform to "list" or "sell" any interest in real estate, nor does it obligate Landform to offer or attempt to negotiate the sale of any real estate. Rather, Landform understands this language to mean that it will solicit development proposals from businesses and individuals. These business and individuals would in turn present their proposals to the HRA. It should be noted that soliciting development proposals is materially different than soliciting potential buyers. The primary difference is that a development proposal may not involve the purchase of land at all. It is not uncommon for cities to assist in the financing of a development project by granting the land to a private party as an inducement to build a project that generates tax base revenue. Landform has no control over whether a given development proposal results in the sale of land. For that reason, Landform's compensation is not dependent upon a sale. Rather, Landform is compensated based on the overall capital cost of the development, regardless of whether the HRA sells land or gives it away.

Second, this section contemplates that Landform will "coordinate" the "Development Management Team," which is defined in the Contract as including Heidi Nelson, the Executive Director of the HRA. Of course, as a City employee, Ms. Nelson is exempt from the real estate broker licensing requirement, and can negotiate a land sale agreement on behalf of the HRA. Indeed, Ms. Nelson is a necessary part of the Development Management Team precisely because she, and not Landform, is uniquely able to perform that function.

Third, this section contemplates that Landform will “assist in the evaluation consideration, negotiations, and deal structuring on any disposition of land within the development area.” The Contract does not define the term “assist.” Nonetheless, in light of Section X of the Contract, which bars Landform from receiving compensation for providing brokerage services, this section cannot be interpreted to mean that Landform is to engage in activities requiring a brokerage license. See e.g. American Warehousing And Distributing, Inc. v. Michael Management, Inc., 414 N.W.2d 554 (Minn. Ct. App. 1988) (holding that contract provision requiring distributor to “assist” in sales could not be interpreted so as to breach other contract provision barring sales in certain territories). Rather, in light of the understanding and express acknowledgment in the Contract that Landform is not a licensed real estate broker, Landform understands this section to require that it provide assistance in the form of advice regarding land development, land use, and engineering, project feasibility, etc. Landform believes that this type of advice and assistance is valuable to the HRA, and is compensable. Landform does not understand its role as serving as a principal negotiator concerning the sale of land. Historically, that role has been filled by the HRA’s attorney, city staff, and most often the HRA itself in public meetings or closed sessions.

Neither the plain language of the broker licensing statute nor Minnesota case law subjects the provision of this kind of “assistance” concerning a real estate transaction to the broker’s license requirement. Such an overreaching interpretation would be absurd, and would result in dramatic negative consequences for the City of Ramsey. For instance, such an overbroad interpretation would mean that a municipality, like Ramsey, could not hire outside experts to advise it in negotiations over real estate, unless the outside expert was a licensed real estate broker. Yet, municipalities routinely benefit from the advice of outside architects, developers, and land use professionals. This is particularly true of smaller municipalities that, unlike Minneapolis or St. Paul, cannot afford to employ full-time land use professionals on staff. It would be odd to interpret a statute designed to protect consumers as restricting a municipality’s ability to receive professional advice concerning development and sale negotiations. The bottom line is that offering advice and assisting the HRA in its negotiations to sell land does not rise to the level of direct negotiating regulated by the broker licensing statute. This interpretation is consistent with the inclusion of Ms. Nelson on Development Management Team, as well as the assignment of HRA counsel to each and every development proposed over the last three years that progressed to a potential sale of property.

Finally, it should also be noted that the anonymous author’s reliance on unpublished court of appeals decisions is misplaced. Unpublished decisions of the Minnesota Court of Appeals are not precedential, and can be relied upon by courts only in limited circumstances. See Minn. Stat. § 480A.08, subd. 3(c) (stating that unpublished court of appeals decisions are not precedential); Vlahos v. R&I Const. of Bloomington, Inc., 676 N.W.2d 672, 676 n.3 (Minn. 2004) (stating that unpublished decisions should not be relied upon because they “rarely contain a full recitation of the facts.”).

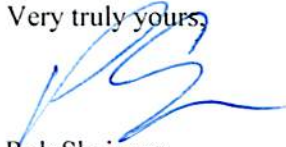
## **2. There Is Nothing Improper About The HRA’s Method For Calculating Landform’s Compensation**

Notwithstanding the suggestion of the anonymous author, there is nothing impermissible about Landform receiving compensation that is tied to the value of the development or the value of real estate. As background, it is Landform’s recollection that this incentive structure was the choice of the HRA. Landform initially presented the HRA with a proposal that involved paying an hourly rate for Landform’s services. The HRA expressed a preference for the “incentive” compensation structure. The HRA’s

decision was practical, because it allowed the HRA to defer compensating Landform until such time as the HRA received the proceeds of a land development. The HRA's choice is also lawful, because the broker licensing law prohibits performing the services of a broker for compensation. It does not prohibit compensating otherwise permissible services based on the value of a development, or for that matter, the price of tea in China.

Landform values its relationship with the HRA, and takes tremendous pride in the progress made in The COR over the last three and a half years and looks forward to completing its contractual obligations for the benefit of all Ramsey residents.

Very truly yours,



Rob Shainess  
*Attorney at Law*  
rob@capstonelawmn.com

cc: Darren Lazan (by email)  
Thomas Bray, Esq. (by email)

## PURCHASE OF SERVICES AGREEMENT

**THIS AGREEMENT** (this "Agreement") is made and entered into between the Housing and Redevelopment Authority of the City of Ramsey, a public body corporate and politic under the laws of the state of Minnesota (the "HRA"), 7550 Sunwood Drive NW, Ramsey, Minnesota 55303, hereinafter referred to as the "HRA," and Landform Professional Services, LLC, a Minnesota limited liability company, 105 South Fifth Avenue, Suite 513, Minneapolis, Minnesota 55401, hereinafter referred to as the "Contractor."

### WITNESSETH:

**WHEREAS**, the HRA is in need of development management services for its Ramsey Town Center Project, in the City of Ramsey; and

**WHEREAS**, the Contractor represents that the Contractor is qualified and willing to help the City in providing said services; and

**WHEREAS**, the City wishes to purchase this service from the Contractor.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, it is agreed and understood as follows:

#### I. TERM

This Agreement shall commence April 1, 2011 and shall continue in effect through March 31, 2013 unless terminated earlier as provided herein.

#### II. SERVICES

The HRA agrees to purchase and the Contractor agrees to furnish the services set forth in Contractor's Proposal dated April 1, 2011, (the "Contractor's Proposal") a copy of which is attached hereto and incorporated herein as Schedule A. HRA is referenced as "Owner" within the Contractor's Proposal and Contractor is referenced as Landform within said Proposal.

#### III. COMPENSATION

Compensation to Contractor shall be as provided in Section in Article IV of the Contractor's Proposal.

#### IV. BILLING AND PAYMENT

On a monthly basis, the Contractor shall submit to the HRA an itemized statement containing such information as is required by the HRA for work satisfactorily completed. Within thirty (30) days of its receipt of the billing statement, the HRA shall make payment to the Contractor or make reasonable arrangements for payment acceptable to the Contractor.

#### V. INDEMNIFICATION

The Contractor agrees that it will hold harmless, indemnify, and defend the HRA, its commissioners, officers, agents and employees against any and all claims, expenses (including attorneys fees), losses, damages or lawsuits for damages arising from or related to providing or failing to provide services hereunder, including but not limited to the negligence of the Contractor.

## **VI. INSURANCE**

The Contractor shall procure and maintain in full force and effect during the term of this Agreement, insurance coverage for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors. The insurance coverage shall satisfy the requirements set forth in Schedule B, which is attached hereto and incorporated herein.

## **VII. SERVICES NOT PROVIDED FOR**

No claim for services furnished by Contractor not specifically provided for herein shall be honored by the HRA.

## **VIII. INDEPENDENT CONTRACTOR**

It is agreed by the parties that at all times and for all purposes hereunder, the relationship of the Contractor to the HRA is that of an independent contractor and not an employee or agent of the HRA.

## **IX. HRA PROJECT MANAGER**

The HRA's representative for administering this Agreement is Deputy Ramsey City Administrator Heidi Nelson. For purposes of this Agreement Ms. Nelson shall be the designated Project manager. To the extent consistent with Contractor's status as an independent Contractor, Ms. Nelson shall be Contractor's direct supervisor relating to Agreement issues. Neither Ms. Nelson nor Contractor shall have the authority to legally bind the HRA and expend HRA funds, except as specifically permitted by this Agreement.

## **X. COMPLIANCE WITH LAWS**

In providing all services pursuant to this Agreement, the Contractor shall abide by all statutes, ordinances, rules and regulations pertaining to or regulating the provision of such services, including those now in effect and hereafter adopted. Any violation of said statutes, ordinances, rules, or regulations shall constitute a material breach of this Agreement and shall entitle the HRA to terminate this Agreement immediately upon delivery of written notice of termination to the Contractor. SPECIFICALLY, neither Landform, its team members, employees nor consultants are real estate brokers or salespersons as defined by Chapter 82 of Minnesota Statutes. Therefore, Landform will not be entitled to any compensation for work which requires a license under said Chapter 82.

## **XI. SUBCONTRACTING AND ASSIGNMENTS**

Contractor, unless provided for in the Contractor's Proposal, shall not enter into any subcontract for performance of any of the services contemplated under this Agreement, nor assign any interest in the Agreement without the prior written approval of the HRA and subject to such conditions and provisions as the HRA may deem necessary. The Contractor shall be responsible for the performance of all subcontractors.

## **XII. MODIFICATIONS**

Any material alterations, modifications or variations of the terms of this Agreement shall be valid and enforceable only when they have been reduced to writing as an amendment and signed by the parties.

## **XIII. AFFIRMATIVE ACTION**

In accordance with the HRA's Affirmative Action Policy and the HRA's policies against discrimination, no person shall illegally be excluded from full-time employment rights in, be denied the benefits of, or be otherwise subjected to discrimination in the project which is the subject of this Agreement on the basis of race, creed, color, sex, sexual orientation, marital status, public assistance status, age, disability, or national origin.

## **XIV. DATA PRIVACY**

In collecting, storing, using and disseminating data on individuals in the course of providing services hereunder, the Contractor agrees to abide by all pertinent state and federal statutes, rules and regulations covering data privacy, including, but not limited to, the Minnesota Data Practices Act and all rules promulgated pursuant thereto by the Commissioner of the Department of Administration.

All data created, collected, received, stored, used, maintained, or disseminated by the Contractor in performing this Agreement is also subject to the provisions of Minn. Stat. § 13 et. seq. (the Minnesota Government Data Practices Act) and, pursuant to that statute, the Contractor must comply with the requirements of that statute as if it were a government entity. All remedies set forth in Minn. Stat. § 13.08 shall also apply to the Contractor. The Contractor is not required to provide public data to the public if that same data is available from the HRA, unless stated otherwise in this Agreement.

## **XV. EARLY TERMINATION**

This Agreement may be terminated by the HRA or Contractor at any time, with or without cause, upon thirty (30) written days notice delivered by mail or in person. Notice to HRA and Contractor shall be delivered to HRA or Contractor at the respective addresses first written above. If notices are delivered by mail, they shall be effective two days after mailing. Early termination by the HRA shall be subject to the "Early Termination Payment" described in Section A.2.b. of Article IV of Contractor's Proposal.

Upon early termination by the HRA, the Contractor shall only be entitled to payment for services satisfactorily performed through the date of termination and shall not be entitled to any other payment and/or damages, EXCEPT as provided in Contractor's Proposal.

**XVI. DEFAULT AND REMEDY**


Failure of the Contractor (including the failure of any employee or agent of the Contractor) to abide by any of the terms, conditions, or requirements expressed in this Agreement shall constitute a default if not properly corrected by the Contractor upon receipt of a notice of deficiency and a request for compliance from the HRA. In the event of a default by the Contractor, the HRA may cancel this Agreement by sending a written notice of cancellation to the Contractor at the address stated above, and may recover from the Contractor any damages sustained by the HRA which may directly or consequently arise out of the breach of this Agreement by the Contractor.

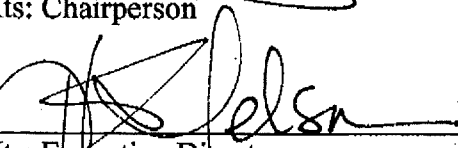
**XVII. ENTIRE AGREEMENT**

It is understood and agreed by the parties that the entire agreements of the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous agreements presently in effect between the HRA and Contractor relating to the subject matter hereof. The parties hereto revoke any prior oral or written agreement between themselves and hereby agree that this Agreement is the only and complete agreement regarding the subject hereof.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands.

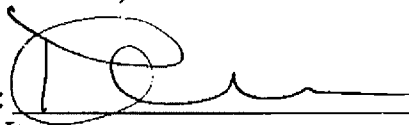
**HOUSING AND REDEVELOPMENT  
AUTHORITY OF THE CITY OF RAMSEY**

By   
Its: Chairperson

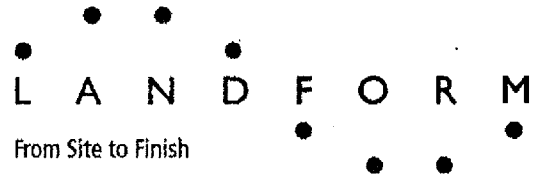
By   
Its: Executive Director

Dated: 4/1/2011

**LANDFORM PROFESSIONAL  
SERVICES, LLC**

By:   
Its: PRESIDENT

Dated: 3/31/11



April 1, 2011

105 South Fifth Avenue  
Suite 513  
Minneapolis, MN 55401

Tel: 612-252-9070  
Fax: 612-252-9077  
www.landform.net

Heidi Nelson  
HRA Executive Director  
City of Ramsey  
7550 Sunwood Drive NW  
Ramsey, MN 55303

Re: Development Management Services  
Ramsey, Minnesota

Ms. Nelson

LANDFORM is pleased to submit our proposal for Development Management Services as described below. This proposal is sometimes hereinafter referred to as this "Agreement".

#### ARTICLE I. PROJECT SCOPE:

##### A. Parties and Scope

Acting on behalf of The Housing and Redevelopment Authority of the City of Ramsey, Minnesota (the "HRA "and/or the "Owner"), Landform Professional Services, LLC, a Minnesota limited liability company it's team members and consultants ("Landform") shall provide development management services as Owner's representative during the development of Owner's approximate 140-acre property located adjacent to Highway 10 in Ramsey, Minnesota in the Ramsey Town Center subdivision and legally described on attached Exhibit "A" (the "Project").

##### B. The term of this Agreement is April 1, 2011 through March 31, 2013 (the "Agreement Term").

##### C. Definitions

1. "City" or sometimes "Ramsey" shall mean the City of Ramsey, a Minnesota municipal corporation.
2. "Critical Item Assessment" shall mean the current list of development items that ranks the most relevant events or aspects of the project that possess the potential to dramatically affect the advancement, interfere with, or disrupt the development process.
3. "Current Development Plan" shall mean the most current version of the sequentially numbered development plans that has been approved by the HRA.

4. **"Development Management Team"** shall mean Landform Professional Services, LLC and it's project representative Darren Lazan, CronkRE, LLC and it's project representative Ryan Cronk, and the Executive Director of the HRA Heidi Nelson as the owner's representative.
5. **"Development Manager"** shall mean Darren Lazan and/or his designees as approved by the HRA.
6. **"Financial Dashboard"** shall mean the most current version of the working financial model for the development as approved by the HRA. This model shall contain at a minimum, the current pricing scenario for developable parcels, current project expenses and expected revenues, and anticipated development yields.
7. **"HRA's Contract(s)"** shall mean any purchase agreement, land exchange agreement, lease, option agreement, or development agreement, the subject matter of which is a parcel or parcels of land which are a part of the Project.
8. **"Staff"** shall mean employees of the City of Ramsey.
9. **"Weekly Update"** shall mean a written or presented update of development activities prepared for inclusion in the existing update to City Council, or presented to the HRA at a regular meeting. The weekly update shall contain brief and generic descriptions of the current activities while protecting the specific parties or details of pending deals so as to protect the HRA's position in the marketplace.

## **ARTICLE II. PROJECT OBJECTIVE:**

Landform shall determine maximum market viability of Project site based upon visioning and mission statements developed under previous efforts. Organize, coordinate and strategically focus the resources and efforts of existing and new team members to maximize critical Project decisions. Continue to support the new identity in the marketplace to bolster confidence in the new Project objectives. Develop viable pro-formas based on Project vision and market conditions. Prepare the Project and team for key events at which to showcase the Project. Initiate introductory meetings of the new Project with potential key users and development partners. Advance and negotiate various team accepted disposition strategies. Monitor and coordinate activities of team members from conception to completion.

The ultimate objective of the development of the Project is to create a mixed use development which shall include construction of a mixed use of commercial, office, retail and residential buildings for the Project's mixed use objective.

## **ARTICLE III. DEVELOPMENT MANAGEMENT SERVICES TO BE PROVIDED BY LANDFORM:**

### **A. Project Organization**

1. **Project Team Organization** - Clearly establish key Project goals, properly prioritize the order of these goals, and initiate potential strategies to accomplish the desired Project goals. Identify all key Project team members required to accomplish Project goals. Establish Project roles and responsibilities. Identify existing and forecasted team members based upon expertise, skill sets, and available workload capacity. Establish Project team reporting and communications standards and framework. Landform represents that it has a professional working relationship additional development management service firms and will have available to it personnel resources from these firms in reasonable amounts of time to perform certain services for Owner as required of Landform pursuant to this Agreement.
2. **Communication and Reporting** – The Development Manager shall be responsible for communication between and reporting to between the Development Management Team, Staff, and the HRA. These efforts shall consist of the following items as a minimum.
  - a. The Development Manager will provide the members of the HRA, once monthly, during their regular meeting a review of the financial dashboard for the Project and provide analysis of the data to the members of the HRA during the meeting.
  - b. At the end of every meeting of the HRA under the "Executive Director Report" portion of the agenda, the Development Manager will provide a verbal update to the members of the HRA regarding meetings held and work completed since the time of the last meeting of the HRA.
  - c. The Development Management Team will, on a regular basis, include in the Weekly Update document, a bulleted list of work completed and meetings attended for the week prior.
  - d. The Development Management Team will produce a monthly cable TV show on QCTV Channel 16, entitled "The COR Report", to be aired to the public regarding activity and projects in The COR.
  - e. The Development Management Team will write and publish an article in each edition of the Ramsey Resident newsletter entitled "The COR Report" to update the public regarding activity and projects in The COR.
  - f. The Development Management Team will attend the City Community Development and Department Head staff meetings on the first Tuesday of each month to update and receive feedback regarding activity and projects in The COR.
3. **Master Development Activities List and Schedule** - Develop a master list of activities and explain requirements and responsibilities associated with each for the completion of the Project's process. Create responsibility assignment matrix for each Project item. Establish the master Project schedule for accomplishment of each task.

4. **Critical Item Assessment** – Develop and maintain a Critical Item Assessment which determines and ranks the most relevant events and circumstances that possess the potential to interfere with or disrupt the Project process.
5. **Development Team Assembly** - Identify and assemble all additional key Project team members, internally or third party, including the preparation of request for qualifications, request for proposals, proposal evaluation, selection recommendations and negotiation of all contracts.

## **B. Planning and Engineering**

1. **Master Planning** –Provide basic master planning services as needed to evaluate potential development scenarios and respond to the opportunities that present themselves in the marketplace regarding this Project. This will include meeting with existing and perspective users and the coordination of planning efforts by all parties. Landform will maintain the master site database to ensure data integrity as all parties work on the various aspects of the Project. Upon expiration of this Agreement the master site database will become the property of the Owner.
2. **Conceptual Layout** –Provide basic conceptual site design to assist in the evaluation and coordination of prospective deals and to ensure plans prepared by end users conform to the design criteria of the Project.
3. **Preliminary Engineering** – Perform basic preliminary engineering necessary to evaluate potential development scenarios. If extensive engineering becomes necessary to facilitate a development concept, Landform will provide a separate proposal to the HRA for consideration at any time that becomes necessary.
4. **Plan review and approval** - Provide peer review and summary of all plans prepared by other consultants within the Project to ensure compatibility with design intent, coordination with master plan, and data integrity of the overall CAD file systems.

## **C. Development Feasibility**

1. **Site Use Evaluation** - Review existing market feasibility analysis and as needed, conduct additional comprehensive industry, customer and competitor market feasibility analyses in order to determine market opportunities. Apply market research and use evaluation to determine and identify potential user classifications. Prepare list of potential user candidates and evaluate feasibility of each candidate based upon current and projected market conditions.
2. **Public Incentives & Benefits Analysis** – Determine the necessary funds required at each stage of the development process of the Project in order to manage responsibilities and sources of funding appropriately. Identify

various scenarios and options for public financial incentives and benefits to assist in the development of the Project.

3. **Pro Forma Development** - Prepare anticipated income and expense pro forma based upon Project scenarios to include all projected hard and soft costs as well as potential income scenarios to determine each of the Project site's alternative financial feasibility. Landform will maintain current "Dashboard" summaries for review and assessment by the team, and to assist in the analysis of potential Project scenarios.
4. **Development & Disposition Scenario Analysis** - Prepare and present various options and strategies for disposition of the Project parcels based upon identified Project parameters. Evaluate and prioritize potential development and disposition options for the Project.

#### D. Marketing

1. **Project Identity Management** – Coordinate the efforts of internal team members, staff, and third party design consultant to assist in managing the brand identity for the Project. This may include a brand for the overall area as well as sub-brands for specific portions of the Project.
2. **Project Marketing Strategy** – Develop an overall marketing strategy, and appropriate sub-strategies, necessary to bring the Project to several markets. This will include the coordination of third party consultants to develop marketing collateral (print, electronic, etc.) necessary to present the Project to potential purchasers in the community, at trade shows, and/or industry events.
3. **Marketing Package Preparation** – Prepare and maintain comprehensive Project site marketing packages, to include the assembly of relevant economic, demographic, traffic, and planning data for Owner's use in disposition strategy.

#### E. Development

1. **Proposal Criteria Establishment** – Work to establish a criteria for disposition strategies. This may include leveraging industry relationships, evaluating presented opportunities, or developing specific RFP opportunities where appropriate. Landform will present the criteria to the Owner for consideration and approval.
2. **Property Interest Solicitation** – Based upon industry knowledge and existing team relationships, disseminate marketing package(s) on behalf of Owner to targeted groups. Establish communication and as appropriate facilitate introduction of Owner to potential candidates for the various development options with the intent for deal establishment. For the term of this Agreement (or as extended by the parties) Landform shall be the exclusive development manager and will be responsible for all potential development deals within the 140 acre Project.

3. **Development Options** – Assist Owner in advancing the following development scenarios:
  - a. **Property Sale or Lease** – Assist in finalizing an agreement for the sale or lease of the Project land.
  - b. **Public-Private Partnership (“P3”)** – Assist in the establishment of development partnership(s) with private entities for various components of the Project.
  - c. **Owner Self-Development** – If applicable, assist Owner in developing a program for self development and ownership of specific components of the Project (see below).
4. **Development Administration** – Organize, prepare, and disseminate ongoing reporting, budgeting, and meeting minutes for the review of the team and Owner. Attend and present reports at scheduled HRA meetings and stand for questions or further consideration. Coordinate with Staff to prepare and present cases for consideration by the HRA and/or other boards or commissions of Owner.

**F. Owner Self-Development (If applicable)**

Scope of services shall include but not be limited to Design Coordination, Pre-Construction, Leasing, Financing, Project Management, Tenant Coordination, and Project Closeout.

**ARTICLE IV. BASIS OF COMPENSATION:**

**A. Development Management Services (the “Administrative Compensation”)**

**Project Organization / Planning and Engineering / Development Feasibility / Development / Marketing Phases**

1. Landform shall provide the following development management services for the Agreement Term.

**Organizational Activities**

Municipal Approvals / Entitlements / Development Board-Commission  
 Architectural Coordination & Establishment  
 Preliminary Engineering  
 Project Construction Guidelines & Rules  
 Anchor Procurement Process  
 Commence Sales & Leasing effort & Developer Solicitation  
 Marketing  
 Financial Analysis  
 Tenant Coordination  
 Off-Site Improvement Coordination  
 Public Projects  
 Owners Coordination (existing owners in The COR)

**Reporting & On-Going Meetings with City of Ramsey**

The Organizational Activities do also include all those services as referenced in Article I Project Scope, Article II Project Objective, and Article III Development Management Services herein.

(the "Development Management Services")

**2. Administrative Compensation.**

a. **Monthly Payment.** Landform shall be compensated a total of \$360,000.00 for the Development Management Services for the Agreement Term at the rate of \$15,000.00 per month. This payment is known as the "Administrative Compensation". In the event this Agreement is terminated prior to March 31, 2013, Landform shall receive the said \$15,000 monthly compensation for each full month this Agreement is in effect and a prorated amount for any partial month during which this Agreement is in effect.

b. **Early Termination Payment.**

(i) In addition to the Administrative Compensation, in the event the HRA terminates this Agreement prior to January 31, 2013, Landform shall be paid an early termination fee equal to four month's fee or \$60,000.00. In the event of termination of this Agreement after January 31, 2013, no early termination payment shall be paid.

(ii) Notwithstanding the preceding terms of this paragraph 2.b. in the event the HRA sells to a third party 75% or more of the then remaining Project parcels available for development purposes to a single entity, in one transaction, no early termination payment shall be paid to Landform.

**B. Incentive Based Development Compensation**

In addition to the Administrative Compensation received for Development Management Services, Landform shall receive additional incentive-based compensation (the "Incentive Compensation") based upon its success in advancing the Project.

1. For the purposes of this Agreement, it is assumed that the disposition of various land parcels may occur in any of three ways: sale or lease, public private partnership, or owner self-developed. Landform shall solicit the interest of various prospective end-users, to include individual entities, corporations, developers, and/or development partners. Landform will coordinate the efforts of the Development Management Team to provide a uniform front to the development community, and assist in the evaluation, consideration, negotiations, and deal structuring on any disposition of land within the development area. Incentive Compensation will be paid on all transactions regardless of origin or referral source. Meeting update reports documenting marketing progress shall be presented to the Owner on a regular basis.

2. The Incentive Compensation shall be **two percent (2%)** of the total capital cost of the end use of the parcel or property sold or developed (the "Development(s) Capital Cost(s)"). The Development's Capital Cost shall be the total dollar amount of the following items a.-d.:
  - a. The net land sale price paid to Owner plus;
  - b. The proforma building value as presented by Landform, except that said value shall not exceed the then current Minnesota Department of Labor and Industry's Building Valuation Data by more than 25% plus;
  - c. The Site improvement's costs plus;
  - d. The development soft costs such as engineering, planning architecture, legal fees, any marketable title issues, realtor commissions, finance expenses and special inspections. In no event shall the development soft costs exceed 20% of the total of items a. through c. above.

The total dollar amount of items a.-d. above is the Development's Capital Cost which is the basis for the Incentive Compensation. However, the parties agree that during the term of this Agreement, unique development scenarios may be presented which will require modification of the Incentive Compensation terms. With that understanding the parties agree to negotiate as necessary modified terms in relation to the Incentive Compensation.

3. The Incentive Compensation will be payable at the following stages of a specific development:
  - a. For the first twelve (12) months of this Agreement and on a monthly basis, Landform shall receive monthly advances on future Incentive Compensation in the amount of **\$10,000/each**. Such draws shall be reimbursed from the proceeds of the Incentive Compensation when earned, and shall be considered minimum compensation for this contract component. However, in the event this Agreement is terminated prior to March 31, 2011, Landform shall receive the said \$10,000 monthly advance only for each full month this Agreement is in effect and a prorated amount for any partial month during which this Agreement is in effect. Monthly draws shall terminate once total compensation under this paragraph a. reaches \$120,000 within the period of this Agreement.
  - b. During the drafting of an HRA Contract, the HRA and Landform shall work to determine the proposed project costs and phasing schedule which shall be used to determine the Incentive Compensation. The Incentive Compensation, once calculated based on this criteria, shall be final on or before the execution of any HRA Contract. Any substantial or fundamental changes to the proposed project, phasing, or terms prior to closing will necessitate reconsideration of the Incentive Compensation. Minor changes will be considered incidental.

- c. Upon the execution of an HRA Contract, Landform shall receive **20%** of the total Incentive Compensation, EXCEPT that in no event shall the said 20% exceed the non-refundable (hard) earnest money or other down payment received by the HRA from the other party to the HRA Contract, i.e. buyer, lessee, or developer, except upon specific HRA authorization. In the event the earnest money is held in escrow by a title company or other fiduciary until closing or termination of the HRA Contract, the HRA shall, assess the security of said earnest money to be released to the HRA upon closing or HRA Contract termination and after consultaion with its Legal Counsel make a dtermination on whether or not to authorize payment of the 20% to Landform.
- d. Upon closing of a land sale transaction between the HRA and a parcel developer, or tenant occupancy under a lease, Landform shall receive **60%** of the total Incentive Compensation.
- e. Following project design, permitting and construction, and upon issuance of a Certificate of Occupancy by the City ,Landform shall receive a final payment of **20%** of the total Incentive Compensation, subject to paragraph 9. below. In addition, for Phased Projects as defined in paragraph 5. below the 20% payment shall be paid at the time of occupancy of future phases.
- f. Example of the application of the above subparagraphs c.-e. of this paragraph 3.: An agreement is signed on a parcel of land for an office building valued at \$10m in June, 2011. There were three (3) advances totaling \$30,000 previously.
  - i. The Incentive Compensation is calculated at two percent (2%) of \$10m or \$200,000.
  - ii. The initial payment would be twenty percent (20%) of the total or \$40,000 **minus** the previous advances of \$30,000 for a net payment of \$10,000.
  - iii. Closing occurs and the second payment of sixty percent (60%) of the total Incentive Compensation becomes due in the amount of \$120,000 **minus** subsequent draws (if any).
  - iv. Upon certificate of occupancy for the office building, the final twenty percent (20%) becomes due in the amount of \$40,000.

4. **Large Projects** – In calculating the Incentive Compensation on developments with a total Development Capital Cost greater than \$30 million in a single transaction, the following equation shall be used:

- a. The Incentive Compensation shall be two percent (2%) of the total Development Capital Cost up to \$30 million (standard agreement);
- b. Then, one percent (1.0%) for Development Capital Costs from \$30 million to \$100 million;

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- c. Then, one half percent (0.5%) for Development Capital Costs in excess of \$100 million-\$150 million;
  - d. Then, one quarter per cent (0.25%)for Development Capital Costs in excess of \$150 million.
  - e. Example of the application of the above subparagraphs a.-d. of this paragraph 4: An agreement is signed for a development with an estimated total Development Capital Cost of \$180,000,000. The Incentive Compensation shall be calculated as follows:
    - i. 2.0% of \$30m = \$600,000
    - ii. 1.0% of \$70m = \$700,000
    - iii. 0.5% of \$50m = \$250,000
    - iv. 0.25% of \$30m = \$75,000
    - v. Total Compensation = \$1,625,000
5. **Phased Projects** – In calculating the Incentive Compensation on projects where occupancy is anticipated to be phased over a period greater than 24 months from the spring of the year following closing of the transaction (phased start), a discount to the Incentive Compensation will be applied as a means to recognize the delay in property tax payments realized by the HRA.
- a. For each 12 month period the project, or portion of the project, is anticipated to be phased beyond 24 months, the Incentive Compensation for that portion of the project shall be discounted by ten percent (10%).
  - b. Example: A sale occurs for an apartment project consisting of six buildings. Two are to be constructed immediately; two are anticipated to begin the following year, and the last two the year after. Each phase is roughly \$20m in value.
    - i. Phase 1 Incentive Compensation shall be the full two percent (2%) of the \$20m or \$400,000.
    - ii. Phase 2 commencing later than 24 months after the spring following closing shall be the full Incentive Compensation (\$400,000) discounted \$40,000 or \$360,000.
    - iii. Phase 3 commencing later than 36 months after the spring following closing shall be the full Incentive Compensation (\$400,000) discounted \$80,000 or \$320,000.
    - iv. The total Incentive Compensation for the example phased project would be \$1,080,000.

6. Incentive Compensation shall be due on the project known as The Residence and the project known as Suite Living under the terms of the agreement effective April 1, 2010, and commensurate with their respective incentive compensation fee worksheets approved by the HRA. The incentive compensation paid to Landform for The Residence and Suite Living will be reduced by any advances on incentive payments made under this Agreement, and said amounts will count towards the maximum advance amount contemplated in Article 4, Section B.3.a
7. Compensation Carryover – It is recognized that Landform will expend significant effort and expense in the advancement of the Project and individual users on an incentive basis, for which the HRA receives value that will survive the termination of this Agreement. Therefore, upon termination of this Agreement, on or before March 31, 2013, Landform shall receive compensation as outlined in Article 4, Section B herein, on all HRA Contracts for which the HRA and a third party execute within a period of fifteen (15) months following the termination of this Agreement. . Once an HRA Contract is executed, compensation shall continue on a project-by-project basis until complete. Compensation shall follow the particular user or buyer originating the HRA Contract regardless of subsequent renewals or extensions of the HRA Contract..

For purposes of this paragraph 7., in order to determine the Development Capital Cost for future developments, the Development Capital Cost formula as defined in Subsection B.2 of this Article IV will be used. Where necessary, because adequate development data from a proposed purchaser is not sufficient to determine the Development Capital Cost, the Current Development Plan and Financial Dashboard shall be used to arrive at the Development Capital Cost for a development when the exact costs of the future development is unknown.

If, by the agreement of both parties, services outlined in this proposal are provided outside the Project all terms and conditions outlined in this proposal shall apply on a parcel-by-parcel basis.

8. Exceptions/Exclusions to Incentive Compensation:
  - a. No Incentive Compensation will become due on any public infrastructure (roads, bridges, utilities, etc.) projects constructed within the Project.
  - b. No Incentive Compensation will become due on any public park projects including the City of Ramsey's East Meandering Park unless the park contains a commercial or private component for which the fee will be calculated on that portion alone.
  - c. No incentive Compensation will become due on any city initiated facilities providing municipal services to the City of Ramsey. (i.e. City offices, pump house, public works facilities, community center, etc.). The term "community center" as used herein shall mean a facility that is constructed without any private partnership with the City/Owner. Incentive Compensation will be paid on the Development Cost of the

private portion of a community center where there exists a private/public partnership for said construction.

### **C. Additional Compensation**

In the normal course of the development of the Project, it becomes necessary at times to prepare detailed feasibility, preliminary, and final design documents. Typically these are completed by the developer, as part of the overall development and include land surveying, civil engineering, planning, landscape architecture, and related architectural disciplines. Additionally, these services are also necessary for individual site development plans by either the end-user, or the developer on behalf of the end-user.

1. For the term of this Agreement (or as extended by the parties) when the need for design services beyond the basic services outlined in Article III. Section B of this Agreement, it is understood that said services identified in the above paragraph in this Section C. will either be performed by or coordinated by Landform. At the time the need is identified, Landform will prepare a proposal specific to the scope required and present said proposal for consideration and approval by the HRA. Notwithstanding the above, the HRA may determine it is in the best interests of the Project, and that there are minimal negative impacts on the overall development coordination, the HRA reserves the right to self-perform for the design of major public improvement projects such as roadway improvements, trunk utility or infrastructure improvements, or municipal design services.
2. For the term of this Agreement (or as extended by the parties) when the need for design services beyond the basic services outlined in Article III. Section B of this Agreement is required by an end-user, to the extent possible the HRA shall require this work be completed by Landform at the end-user's direction and costs. Whether these services are contracted directly between the end user and Landform, or if they are escrowed by the HRA for payment to Landform, the contract for such services will be reviewed and approved by the HRA. Architectural services are excluded from this condition.
3. All design services performed shall be at normal and customary fees constant with fees Landform charges similar clients for similar projects. Said fee schedule attached as Exhibit B.
4. In any event, the HRA and Landform, understanding the dynamic nature of the development business, shall be free to discuss compensation strategies specific to deals of a more complicated nature, or on deals outside the Project, so as to create appropriate compensation on specialized deals.
5. Should the HRA opt to self-develop certain components of the Project, services and fees will be determined and mutually agreed upon for each component at that time.

### **D. Only Compensation**

For work within the Project, Landform agrees that the Administrative Compensation, the Incentive Compensation and the Additional Compensation shall be the only compensation paid to Landform under this Agreement.

#### **E. Reimbursable Expenses**

In addition to the compensation set forth above, Landform shall receive reimbursement from Owner subject to the provision of proper documentation for the expenses listed in paragraphs 1., 2. and 3. below for Project related expenses at cost plus 10%: No Reimbursable Expenses will be considered for payment unless said expense is included as an expense item category previously approved on the then current HRA budget.

1. Any normal and ordinary business expenses permitted by the City/Owner including temporary living and travel expenses, airfare, lodging, car rental, mileage, meals, parking and tolls. Said expenses shall be approved by Owner prior to expenditure.
2. Administrative expenses incurred in connection with work performed on Owner's behalf and to handle Project related documents during the course of Project. Expenses shall include but not be limited to costs for reproduction, photocopies, printing, postage, and overnight delivery. Also to be reimbursed shall be the costs for Landform's providing various web-based Project and information management systems and hosting for the purposes of collaboration, document sharing, and marketing during the course of the Project.
3. Third party expenses such as sub-consultant fees, event registrations, memberships, third party services, and other similar expenses. Said expenses shall be approved by Owner prior to expenditure.

#### **F. Invoicing and Owner Payment**

An initial retainer of fifteen thousand dollars (\$15,000) shall be made upon execution of this Agreement and is minimum payment under this Agreement. Said retainer shall be credited to Landform's account and applied to the final invoice of the contract period.

Landform shall invoice Owner for services rendered that month, or for Incentive Compensation becoming due, with the Administrative Compensation payment due within 30 days of the invoice date. Accounts unpaid 30 days after the invoice date will be subject to a monthly service charge of 1.5% on the then unpaid balance.

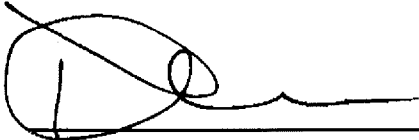
#### **ARTICLE V. FORM OF CONTRACT:**

The attached Terms and Conditions, Exhibit C are incorporated by reference and are an integral component of this contract.

Landform agrees to perform the Services described in this Proposal under the terms as outlined, subject to the terms and conditions of the Purchase of Services Agreement of even date to which this proposal is attached as Schedule A.

The HRA accepts the scope, terms and conditions outlined in this Proposal and instructs Landform to perform the Services as outlined, subject, to the terms and conditions of the Purchase of Services Agreement of even date to which this proposal is attached as Schedule A.

**Housing and Redevelopment Authority (HRA) of the City of Ramsey, Minnesota**

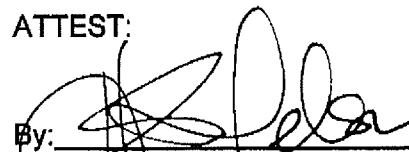


Darren B. Lazan  
President

3/31/11  
Date

  
By: \_\_\_\_\_  
Its Chairperson

ATTEST:

  
By: \_\_\_\_\_  
Its Executive Director

4/1/2011  
Date

Landform Federal Tax ID: 27-1199905

**LIST OF EXHIBITS**

**Exhibit A - Legal Description**

**Exhibit B - Landform Fee Schedule per Article IV. C.3.**

**Exhibit C - Additional Agreement Terms and Conditions**

## Exhibit A

### Legal Description of the Project Property

Outlots V, CC, DD and HH, RAMSEY TOWN CENTER ADDITION Anoka County; Minnesota;

and

Outlot GG, RAMSEY TOWN CENTER ADDITION, Anoka County; Minnesota, except that part described as follows: Beginning at the northwest corner of said Outlot GG; thence on an assumed bearing of South, along the westerly line of said Outlot GG for 567.55 feet to a point of curvature in said westerly line; thence southerly for 36.04 feet along said westerly line along a tangential curve concave to the west, radius 540 feet and a central angle 03 degrees 49 minutes 27 seconds to a point of tangency in said westerly line; thence South 03 degrees 49 minutes 27 seconds West along said westerly line for 87.95 feet to the most southerly corner in said westerly line; thence South 66 degrees 10 minutes 33 seconds East along the southwesterly line of said Outlot GG for 659.59 feet; thence on a bearing of North for 957.75 feet to the northerly line of said Outlot GG; thence on a bearing of West along said northerly line for 596.32 feet to the point of beginning;

and

Outlot A, RAMSEY TOWN CENTER 11<sup>th</sup> ADDITION, and Lot 1, Block 1, RAMSEY TOWN CENTER 11<sup>th</sup> ADDITION, Anoka County; Minnesota, except that part which lies southerly of the following described line: Commencing at the southeasterly corner of Lot 1; thence on an assumed bearing of North along the easterly line of said Lot 1 for 186.92 feet to the actual point of beginning of the line to be described; thence on a bearing of West for 692.28 feet to the westerly line of Lot 1 and there terminating;

and

Outlot B, RAMSEY TOWN CENTER 11<sup>th</sup> ADDITION Anoka County; Minnesota;

and

All that part of Outlot B, RAMSEY TOWN CENTER 2<sup>nd</sup> ADDITION, Anoka County; Minnesota which lies easterly of the easterly line of Block 1, RAMSEY TOWN CENTER 7<sup>th</sup> ADDITION, and its southerly extension;

and

All that part of Outlot B, RAMSEY TOWN CENTER 2<sup>nd</sup> ADDITION Anoka County; Minnesota, lying southerly of the following described line: Commencing at the Northeast corner of Block 1, Ramsey Town Center 7<sup>th</sup> Addition; thence South, along the East line of said Block 1, a distance of 247.47 feet to the Point of beginning of said line; thence West, along the South line of Block 1, Ramsey Town Center 7<sup>th</sup> Addition, a distance of 616.21 feet to the Westerly line of Outlot B, RAMSEY TOWN CENTER 2<sup>nd</sup> ADDITION, and said line there terminating.

and

Outlots A, C, D, F, and the West 140 feet of Outlot K, RAMSEY TOWN CENTER 8<sup>th</sup> ADDITION Anoka County; Minnesota;

and

Outlots F, G, H, J, K, N, O, P, Q and R, RAMSEY TOWN CENTER ADDITION Anoka County; Minnesota;

and

Tracts A, C, D and E, REGISTERED LAND SURVEY NO. 241 Anoka County; Minnesota;

and

Outlot M, RAMSEY TOWN CENTER ADDITION, except that part platted as RAMSEY TOWN CENTER 5<sup>th</sup> ADDITION Anoka County; Minnesota;

and

Outlot A, RAMSEY TOWN CENTER 5<sup>th</sup> ADDITION Anoka County; Minnesota;

and

Outlot A, RAMSEY TOWN CENTER 10<sup>th</sup> ADDITION Anoka County; Minnesota;

and

Outlots A and B, RAMSEY TOWN CENTER 7<sup>th</sup> ADDITION Anoka County; Minnesota;

and

Lot 2, Block 1, RAMSEY TOWN CENTER 5<sup>th</sup> ADDITION, Anoka County; Minnesota;

## Exhibit B

LANDFORM

From Site to Finish

105 South 5<sup>th</sup> Avenue  
Suite 513  
Minneapolis, MN 55401

Tel: 812-252-9070  
Fax: 812-252-9077  
www.landform.net

# RATE SCHEDULE

Effective Date: July 1, 2008

## LABOR RATES

The following hourly rates shall be used for this contract:

Senior Principal	195.00/hour
Principal	180.00/hour
Associate	130.00/hour
Water Resources Specialist	125.00/hour
Project Designer	115.00/hour
Senior Designer	115.00/hour
Designer III	80.00/hour
Designer II	75.00/hour
Designer I	65.00/hour
Project Planner	115.00/hour
Senior Planner	115.00/hour
Planner III	80.00/hour
Planner II	75.00/hour
Planner I	65.00/hour
Survey Department Manager	135.00/hour
Survey Project Manager	115.00/hour
Crew Coordinator	100.00/hour
Survey Technician III	90.00/hour
Survey Technician II	75.00/hour
Survey Technician I	65.00/hour
Crew Chief	90.00/hour
Instrument Person	55.00/hour
GPS Equipment	95.00/hour
Construction Observation III	110.00/hour
Construction Observation II	85.00/hour
Construction Observation I	80.00/hour
Department Manager	75.00/hour
Information Systems Manager	125.00/hour
Senior Administrative Assistant	85.00/hour
Administrative Assistant	50.00/hour

## REIMBURSABLE EXPENSES

Internal reimbursable expenses are priced as follows:

Mileage	0.55 per mile
Plotting on Bond	0.25 per square foot
Plotting on Vellum	1.10 per square foot
Plotting on Mylar	2.50 per square foot
Plotting in Color	7.00 per square foot
Color Printing	1.00 for 8.5 x 11
	2.00 for 8.5 x 14, 11 x 17
Scanning	1.50 per scan
CD/DVD	10.00 per cd/dvd

External reimbursable expenses shall be billed at cost plus 15%.

## EXHIBIT C

### TERMS AND CONDITIONS

**1.0 CONSULTANT'S SERVICES.** Consultant shall perform the services identified in this Proposal and no others unless otherwise agreed and unless Consultant is paid additional compensation in accordance with this Proposal. As used in this Terms and Conditions document, the term "Client" means the City of Ramsey and the term "Consultant" means Landform.

**1.1 STANDARD OF CARE.** Consultant's services shall be performed based on the standard of reasonable professional care for services similar in scope, schedule, and complexity to the services being provided by the Consultant.

**1.2 SCHEDULE.** Time limits established by the schedule identified in the Proposal shall not, except for reasonable cause, be exceeded by Consultant or Client. Consultant's compensation shall be equitably adjusted in the event of delays caused by Client, Client's other consultants, or Client's agents. Fees quoted in the Proposal shall be adjusted if services do not commence within 90 days after the date of the Proposal.

**2.0 ADDITIONAL SERVICES.** In addition to any other Additional Services listed in the Proposal, the following services are not included in Basic Services and Client shall compensate Consultant for such services upon prior agreement by Client, in addition to compensation for Basic Services: (1) Making revisions in Drawings and Specifications or other documents when such revisions are (a) inconsistent with approvals or instructions previously given, (b) the result of adjustments in Client's requirements, (c) required by enactment, interpretation or revision of codes, laws or regulations subsequent to preparation of such documents, (d) required by the failure of Client or Client's consultants to render decisions or to provide necessary information in a timely manner, (e) imposed by municipal or other authorities as a condition for approval of a project, unless the Drawings, Specifications or other documents clearly were not in compliance with applicable law when submitted for approval, or (f) due to or caused not solely within control of Consultant; (2) Providing any services excluded from the Scope of Services identified in the Proposal; (3) Providing any other services not otherwise expressly included in this Proposal.

**7.0 MISCELLANEOUS PROVISIONS.** ((1) This Proposal represents the entire and integrated agreement between Client and Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. (2) This Proposal may be amended by written instrument signed by both Client and Consultant or, in the case of Additional Services, by a written confirmation from Consultant to which Client does not object within ten (10) working days.

**9.0 BASIS OF COMPENSATION.** Client shall compensate Consultant as set forth in the Proposal.

#### **10.0 DELAYED PAYMENT; PAYMENT DISPUTES.**

**10.1 CONDITIONS PRECEDENT TO WITHHOLDING PAYMENT.** The Client may not withhold any payments to the Consultant unless the basis of (including all particulars) and amount in dispute are identified and presented in writing to the Consultant not later than the twenty-fifth (25th) calendar day after presentation of the disputed invoice.

**10.2 NOTICE OF CLAIMED ERRORS OR OMISSIONS.** Client shall provide written notice, including all known particulars, to Consultant of any claimed errors or omissions in Consultant's services not later than 60 calendar days after Client becomes aware, or in the exercise of reasonable diligence should have become aware, of the existence of such error or omission. Consultant shall be given a reasonable opportunity, during such 60-day period, to investigate and recommend ways of mitigating any alleged damages. Client's failure to provide such notice, and/or Client's failure to provide Consultant a reasonable opportunity to investigate and make recommendations, within the time stated shall constitute an irrevocable waiver of any and all claims, counterclaims, defenses, setoffs, or recoupments Client might have in connection with any such alleged error or omission. In the event Client asserts a claim in violation of this paragraph, or in the event that any other error and omission claim asserted by Client is determined to be without substantial merit,

**10.3 ERRORS OR OMISSIONS OF CLIENT'S CONSULTANTS.** If Client has separately retained other design professionals Client agrees to defend, indemnify, and hold the Consultant harmless from all loss, damage, liability, cost or expense (including but not limited to reasonable attorneys' fees) arising out of or relating to (a) the negligent acts or omissions of such other design professionals, and/or (b) the failure of such other design professionals to carry out or maintain professional liability insurance in an amount adequate to protect Client and Consultant from loss.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
11/18/2010

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Kraus-Anderson Insurance 420 Gateway Boulevard  Burnsville MN 55337-2790	<b>CONTACT NAME:</b> Certificate Department <b>PHONE (A/C No. Ext):</b> (952) 707-8200 <b>FAX (A/C No.):</b> (952) 890-0535 <b>E-MAIL ADDRESS:</b> certificates@kainsurance.com <b>PRODUCER CUSTOMER ID #:</b> 00006299																				
	<table border="1"> <tr> <th colspan="2">INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A:</td> <td>Secura Insurance</td> <td>22543</td> </tr> <tr> <td>INSURER B:</td> <td></td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A:	Secura Insurance	22543	INSURER B:			INSURER C:			INSURER D:			INSURER E:			INSURER F:	
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INSURER B:																					
INSURER C:																					
INSURER D:																					
INSURER E:																					
INSURER F:																					
<b>INSURED</b> Landform Professional Services, LLC. 105 Fifth Ave. South Suite 513 Minneapolis MN 55401																					

**COVERAGES**                      **CERTIFICATE NUMBER:** 10-11 Certificate                      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY			BP-003156589-9	11/18/2010	11/18/2011	EACH OCCURRENCE	\$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 250,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person)	\$ 5,000
	GENL AGGREGATE LIMIT APPLIES PER:							PERSONAL & ADV INJURY
<input checked="" type="checkbox"/> POLICY	<input type="checkbox"/> PRO-JECT	<input type="checkbox"/>	<input type="checkbox"/> LOC				GENERAL AGGREGATE	\$ 2,000,000
							PRODUCTS - COM/OP AGG	\$ 2,000,000
								\$
A	AUTOMOBILE LIABILITY			A-003156590-9	11/18/2010	11/18/2011	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO						BODILY INJURY (Per person)	\$
	<input type="checkbox"/> ALL OWNED AUTOS						BODILY INJURY (Per accident)	\$
	<input type="checkbox"/> SCHEDULED AUTOS						PROPERTY DAMAGE (Per accident)	\$
<input checked="" type="checkbox"/> HIRED AUTOS							\$	
<input checked="" type="checkbox"/> NON-OWNED AUTOS							\$	
								\$
								\$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB	<input checked="" type="checkbox"/> OCCUR		CU-003156592	11/18/2010	11/18/2011	EACH OCCURRENCE	\$ 5,000,000
	<input type="checkbox"/> EXCESS LIAB	<input type="checkbox"/> CLAIMS-MADE					AGGREGATE	\$ 5,000,000
	<input type="checkbox"/> DEDUCTIBLE							\$
<input checked="" type="checkbox"/> RETENTION	\$ 10,000						\$	
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			WC-003156591-9	11/18/2010	11/18/2011	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS	OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input checked="" type="checkbox"/> Y <input checked="" type="checkbox"/> N	N/A				E.L. EACH ACCIDENT	\$ 500,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	\$ 500,000
							E.L. DISEASE - POLICY LIMIT	\$ 500,000
B	Professional Liability			LHR724124	11/18/2010	11/18/2011	Each Claim	2,000,000
							Aggregate	2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

**CERTIFICATE HOLDER****CANCELLATION**

FOR INFORMATIONAL PURPOSES ONLY	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE  J Voerster/CARLEY

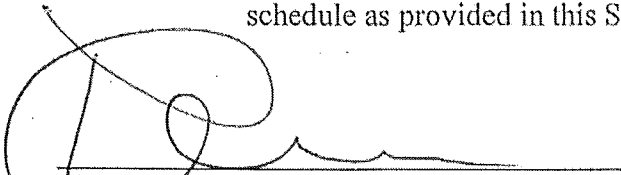
December 13, 2011

**AGREEMENT AMENDMENT**


Amendment to the March 31, 2011 Purchase of Services Agreement between the City of Ramsey HRA and Landform Professional Services LLC (the "Agreement").


Article IV Basis of Compensation, paragraph 9 Exceptions/Exclusions to Incentive Compensation of the March 22, 2010 Contractor's Proposal attached to the Agreement is amended by the following addition:

9.f. Notwithstanding any Incentive Compensation payment scheduled herein to the contrary, in the event a development project is provided with public financing in whole or in part from the HRA or the City of Ramsey, payment of a portion of the Incentive Compensation by the HRA will be delayed and paid on a pro-rata basis conforming to the payments received on the public financing. For example, if a \$1,000,000 development project receives \$500,000 in public financing and the calculated Incentive Compensation is \$20,000, one-half of the Incentive Compensation earned, or \$10,000, would be delayed. If the public financing is to be paid over a 10 year term, its principal will be reduced at the rate of 10% annually. Therefore and likewise during said 10 year term, the delayed Incentive Compensation will be paid at the rate of 10% annually until such time as the public financing is paid in full. In the event the public financing is prepaid and satisfied, the balance of any delayed Incentive Compensation will be paid in full. Upon full repayment and satisfaction of any public financing, any delayed Incentive Compensation then due shall be paid in accordance with the payment schedule as provided in this Section B, paragraphs 3. through 6. above.

  
\_\_\_\_\_  
Darren B. Lazan, President  
Landform Professional Services, LLC

2/21/12  
\_\_\_\_\_  
Date

By:   
\_\_\_\_\_  
Its Chairperson

ATTEST:  
  
By: \_\_\_\_\_  
Its Executive Director

1/18/2012  
\_\_\_\_\_  
Date