CONSULTANT SERVICE CONTRACT

This Contract (the "Contract") is made this ___ day of _____, 20___, by and between the CITY OF PINE CITY, a Minnesota municipal corporation, 1015 Hillside Ave. SW, Ste. 2, Pine City, MN 55063 ("CITY"), and BIG FORK VALLEY LOG CABINS, LLC, a limited liability company under the laws of the State of Minnesota, 1275 West 4th Street, Rush City, Minnesota 55069 ("CONSULTANT"); (collectively the "PARTIES").

WHEREAS, the CONSULTANT has proposed, and the City Council for CITY preliminarily supports, the development of a municipal liquor store facility to be constructed by the Developer as part of a larger private development project and to be leased to the City under a long-term lease arrangement (the "Project"); and

WHEREAS, the CONSULTANT intends to develop the Project in phases, commencing with preliminary design services for building layout and exterior design ("Phase 1"); and

WHEREAS, CITY requires certain professional services in conjunction with Phase 1 of the Project; and

WHEREAS, CONSULTANT agrees to furnish the various professional services required by CITY for Phase 1 of the Project.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the Parties agree as follows:

SECTION I – CONSULTANT'S SERVICES AND RESPONSIBILITIES

A. **Scope of Services.** CONSULTANT agrees to perform various Project services as detailed in Exhibit 1, Scope of Services, attached hereto and incorporated herein by reference (the "services").

B. **Changes to Scope of Services/Additional Services.** Upon mutual agreement of the PARTIES hereto pursuant to Section VI, Paragraph J of this Contract, a change to the scope of services detailed in Exhibit 1, attached hereto, may be authorized. In the event that such a change to the scope of services detailed in Exhibit 1 requires additional services by CONSULTANT, CONSULTANT shall be entitled to additional compensation consistent with Section III of this Contract. CONSULTANT shall give notice to CITY of any additional services prior to furnishing such additional services. CITY may request an estimate of additional cost from CONSULTANT, and upon receipt of the request, CONSULTANT shall furnish such cost estimate for such additional services prior to CITY's authorization of the changed scope of services.

C. **Changed Conditions.** If CONSULTANT determines that any services it has been directed or requested to perform by CITY are beyond the scope of services detailed in Exhibit 1, or that, due to changed conditions or changes in the method or manner of administration of the Project, CONSULTANT's effort required to perform its services

under this Contract exceeds the estimate that formed the basis for CONSULTANT's compensation, CONSULTANT shall promptly notify CITY of that fact. Upon mutual agreement of the PARTIES hereto pursuant to Section VI, Paragraph J of this Contract, additional compensation for such services, and/or an extension of time for completion thereof, may be authorized. In the absence of such a mutual agreement, amounts of compensation and time for completion shall be equitably adjusted, provided that CONSULTANT first provides notice to CITY as required by this Paragraph and CITY has not terminated this Contract pursuant to Section IV, Paragraph B.

D. **Standard of Care.** Services provided by CONSULTANT or its subcontractors under this Contract will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of CONSULTANT's profession or industry. CONSULTANT shall be liable to the fullest extent permitted under applicable law, without limitation, for any injuries, loss, or damages proximately caused by CONSULTANT's breach of this standard of care. CONSULTANT shall put forth reasonable efforts to complete its duties in a timely manner. CONSULTANT shall not be responsible for delays caused by factors beyond its control or that could not be reasonably foreseen at the time of execution of this Contract. CONSULTANT shall be responsible for costs, delays or damages arising from unreasonable delays in the performance of its duties or services.

E. **Insurance.** CONSULTANT shall not commence work under this Contract until CONSULTANT has obtained all insurance required herein and such insurance amounts specified herein have been verified by CITY, nor shall CONSULTANT allow any subcontractor to commence work on a subcontract until such subcontractor has obtained like insurance covering as to worker's compensation, liability, and automobile insurance. All such insurance coverage shall be maintained at all times while this Contract is in effect.

1. CONSULTANT agrees to procure and maintain, at CONSULTANT's expense, the following insurance policies, subject to the requirements in this Paragraph E and including the minimum coverages and limits of liability specified below, or as specified in the applicable insurance certificate(s), or as otherwise required by law, whichever is greater (coverages under umbrella or excess policies may be combined with primary policies to meet the below stated insurance coverage requirements):

Worker's Compensation	Statutory Limits
Employer's Liability	$500,000 bodily injury by accident $500,000 bodily injury by disease aggregate $500,000 bodily injury by disease per employee

Commercial General Liability	$1,000,000 property damage and bodily injury per occurrence $2,000,000 annual aggregate $2,000,000 annual aggregate Products – Completed Operations
Automobile Liability	$1,000,000 per occurrence combined single limit for Bodily Injury and Property Damage (shall include coverage for all owned, hired and non-owned vehicles
Umbrella or Excess Liability	Meets minimum requirements without umbrella or excess liability policy

2. Except as provided below, CONSULTANT's Workers' Compensation insurance must provide coverage for all its employees. If Minnesota Statutes, section 176.041 exempts CONSULTANT from Workers' Compensation insurance, or if CONSULTANT has no employees in the City, CONSULTANT must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes CONSULTANT from the Minnesota Workers' Compensation requirements. If at any time while this Contract is in effect CONSULTANT ceases to be exempt from the requirement to maintain Workers' Compensation coverage, CONSULTANT must comply with the Workers' Compensation insurance requirements herein and provide CITY with a certificate of insurance documenting such coverage.

3. CONSULTANT's Commercial General Liability ("CGL") and business automobile liability insurance coverages shall insure CONSULTANT against claims for bodily injury or death, or for damage to property, including loss of use, which may arise out of operations by CONSULTANT or by any subcontractor or by anyone employed by any of them or by anyone for whose acts any of them may be liable (including automobile use). The following coverages shall, at a minimum, be included in the CGL insurance: Premises and Operations Bodily Injury and Property Damage, Personal and Advertising Injury, Blanket Contractual Liability, and Products and Ongoing and Completed Operations Liability. The required automobile liability coverage must include coverage for "any auto," which extends coverage to owned autos, non-owned autos, and hired autos. Such insurance shall include, but not be limited to, minimum coverages and limits of liability specified in this Paragraph, or as otherwise required by law. CITY shall have additional insured status and be listed by name on an endorsement attached to such policy(ies) (for purposes of clarity, CITY shall not be an additional insured on CONSULTANT's professional liability policy if such insurance is required in this Contract) for the services provided under this

Contract and shall provide that CONSULTANT's coverage shall be primary and noncontributory in the event of a loss.

4. Professional/Technical (Errors and Omissions) Liability Insurance. CONSULTANT agrees to procure and maintain, at CONSULTANT's expense, Professional/Technical (Errors and Omissions) Liability Insurance. The required policy will provide coverage for all claims CONSULTANT may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to CONSULTANT's professional services required under the Contract. CONSULTANT is required to carry the following minimum limits: $1,000,000 – per claim; $2,000,000 – annual aggregate; or as specified in the applicable insurance certificate(s), or as otherwise required by law, whichever is greater. Any deductible will be the sole responsibility of CONSULTANT and may not exceed $75,000 without the written approval of CITY. If CONSULTANT desires authority from CITY to have a deductible in a higher amount, CONSULTANT shall so request in writing, specifying the amount of the desired deductible and providing financial documentation by submitting the most current audited financial statements so that CITY can ascertain the ability of CONSULTANT to cover the deductible from its own resources. The retroactive or prior acts date of such coverage shall not be after the effective date of this Contract and CONSULTANT shall maintain such insurance for a period of at least three (3) years, following completion of the services/work. If such insurance is discontinued, extended reporting period coverage must be obtained by CONSULTANT to fulfill this requirement.

5. Technology Errors and Omissions Insurance. CONSULTANT agrees to procure and maintain, at CONSULTANT's expense, Technology Errors and Omissions Insurance. The required policy will provide coverage for all claims CONSULTANT may become legally obligated to pay, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, cloud computing, extortion and network security. CONSULTANT is required to carry the following minimum limits: $1,000,000 – per occurrence; $2,000,000 – annual aggregate; or as specified in the applicable insurance certificate(s), or as otherwise required by law, whichever is greater.

6. True, accurate and current certificates of insurance, showing evidence of the required insurance coverages, are hereby provided to CITY by CONSULTANT and are attached hereto and incorporated herein by reference as Exhibit 2.

7. Any insurance limits in excess of the minimum limits specified herein above shall be available to CITY in the event of claims.

8. CONSULTANT's insurance policies and certificate(s) shall not be cancelled without at least Thirty (30) days' advance written notice to CITY, or Ten (10)

days' prior written notice to CITY for nonpayment of premium.

9. CONSULTANT's policies shall be primary insurance and noncontributory to any other valid and collectible insurance available to CITY with respect to any claim arising out of CONSULTANT's performance under this Contract.

10. CONSULTANT is responsible for payment of Contract related insurance premiums and deductibles. If CONSULTANT is self-insured, a Certificate of Self-Insurance must be attached in Exhibit 2. Any program of self-insurance shall be subject to CITY's approval, which shall not be unreasonably withheld, conditioned or delayed.

11. CONSULTANT shall ensure that all subcontractors comply with the insurance provisions contained in this Contract and such insurance is maintained as specified.

12. CONSULTANT's policies shall include legal defense fees in addition to its liability policy limits, with the exception of the professional liability insurance and technology errors and omissions insurance, if applicable.

13. All policies listed above, except professional liability insurance (or other coverage not reasonably available on an occurrence basis), shall be written on a per "occurrence" basis ("claims made" and "modified occurrence" forms are not acceptable) and shall apply on a "per project" basis.

14. CONSULTANT shall obtain insurance policies from insurance companies having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the State of Minnesota, or as approved by CITY.

15. CITY reserves the right to immediately terminate this Contract if CONSULTANT is not in compliance with the insurance requirements contained herein and retains all rights to pursue any legal remedies against CONSULTANT.

SECTION II – CITY'S RESPONSIBILITIES

A. CITY shall promptly compensate CONSULTANT as services are performed to the satisfaction of the CITY's City Administrator, in accordance with Section III of this Contract.

B. CITY shall provide access to any and all previously acquired information relevant to the scope of services detailed in Exhibit 1 in its custody to CONSULTANT for its use, at CONSULTANT's request.

C. CITY will, to the fullest extent possible, grant access to and make all provisions for entry upon both public and private property as necessary for CONSULTANT's performance of

the services detailed in Exhibit 1.

D. Marcy Peterson, CITY's City Administrator, shall serve as the liaison person to act as CITY's representative with respect to services to be rendered under this Contract. Said representative shall have the authority to transmit instructions, receive instructions, receive information, interpret and define CITY's policies with respect to the Project and CONSULTANT's services. Such person shall be the primary contact person between CITY and CONSULTANT with respect to the services performed by CONSULTANT under this Contract. CITY reserves the right to substitute the authorized contact person at any time and shall notify CONSULTANT thereof.

SECTION III – CONSIDERATION

A. **Fees.** CITY will compensate CONSULTANT as detailed in Exhibit 3, Compensation, which is attached hereto and incorporated herein by reference, for CONSULTANT's performance of services under this Contract.

B. **Suspension for Nonpayment**. Except for a good faith dispute, if CITY fails to make any payment due CONSULTANT for services performed to the satisfaction of the CITY's City Administrator and expenses within Thirty (30) days after the date of CONSULTANT's invoice, CONSULTANT may, after giving Seven (7) days written notice to CITY, and without waiving any claim or right against CITY and without incurring liability to CITY, suspend services and withhold Project deliverables due under this Contract until CONSULTANT has been paid in full all amounts due for services rendered to the date of suspension along with applicable expenses and charges related to the services rendered by CONSULTANT to CITY to the date of suspension.

SECTION IV – TERM AND TERMINATION

A. **Term.** This Contract shall be in effect until such time as the Project is completed, March 31, 2026, or as otherwise provided in this Contract, whichever occurs first. CITY may extend this termination date should an extension be necessitated by CITY's review of the deliverables.

B. **Termination.** This Contract may be terminated by either PARTY for any reason or for convenience by either PARTY upon Thirty (30) days written notice. In the event of termination, CITY shall be obligated to CONSULTANT for payment of amounts due and owing, including payment for services performed or furnished to the date and time of termination to the satisfaction of the CITY's City Administrator, computed in accordance with Section III of this Contract. Termination shall not act to discharge any liability incurred by either PARTY during the term of this Contract. Such liability shall continue until discharged by law, this Contract, adjudication, or another subsequent agreement between the PARTIES discharging, settling, waiving, and/or releasing such liability.

C. **Default.** If CONSULTANT fails to satisfy any of the provisions of this Contract, or so fails to perform and/or administer the services detailed in Exhibit 1 pursuant to the

requirements of Section I of this Contract, in such a manner as to endanger the performance of this Contract or the services provided hereunder, this shall constitute default. Unless CONSULTANT's default is excused by CITY, CITY may, upon written notice, immediately cancel this Contract or exercise any other rights or remedies available to CITY under this Contract or law. In the event of CONSULTANT's default, CONSULTANT shall be liable to CITY for any and all costs, disbursements, attorneys and consultant fees reasonably incurred by CITY in enforcing this Contract.

D. **Suspension of Services / Work.** If any services/work performed by CONSULTANT are abandoned or suspended in whole or in part by CITY, CONSULTANT shall be paid for any services/work performed to the satisfaction of the CITY's City Administrator prior to CONSULTANT's receipt of written notice from CITY of such abandonment or suspension, but in no event shall the total of CITY's payments to CONSULTANT under this Contract be required to exceed a percentage of the total contract price (calculated by either the Contract price or the maximum price set forth in Exhibit 3, attached hereto) equivalent to the percentage of the scope of services in Exhibit 1 completed by CONSULTANT to the satisfaction of the CITY's City Administrator ,as determined by CITY.

SECTION V – INDEMNIFICATION

A. CONSULTANT shall indemnify, protect, save, and hold harmless CITY, and its respective officials, directors, employees, and agents, from and against any claims, liability, damages, costs, judgments, or expenses, including reasonable attorney's fees, to the extent attributable to or caused by the negligent or otherwise wrongful acts or omissions, including breach of a specific contractual duty, of CONSULTANT or CONSULTANT's subcontractors, agents, employees, members, vendors, or delegates with respect to this Contract, the Project, or the services. CONSULTANT shall defend CITY against the foregoing, or litigation in connection with the foregoing, at CONSULTANT's expense, with counsel reasonably acceptable to CITY, except that for professional liability claims, CONSULTANT shall have no upfront duty to defend CITY, but shall reimburse defense costs to CITY to the same extent of CONSULTANT's indemnity obligation herein. CITY, at its expense, shall have the right to participate in the defense of any claims or litigation and shall have the right to approve any settlement, which approval shall not be unreasonably withheld, conditioned, or delayed. The indemnification provisions of this Section shall not apply to damages or other losses proximately caused by or resulting from the negligence or willful misconduct of CITY. All indemnification obligations shall survive termination, expiration or cancellation of this Contract. CONSULTANT agrees, that in order to protect itself and CITY under the indemnity provisions set forth above, CONSULTANT will at all times during the term of this Contract keep in force policies of insurances required in Section I of this Contract. Nothing in this Contract shall be construed to waive any immunities, defenses, or limitations to which CITY is entitled under Minn. Stat. Chapter 466 or otherwise.

B. CITY shall indemnify protect, save, and hold harmless CONSULTANT, and its respective officers, directors, employees, members, and agents, from and against any

claims, liability, damages, costs, judgments, or expenses, including reasonable attorney's fees, to the extent attributable to or caused by the negligent or otherwise wrongful acts or omissions of CITY or its agents, employees, contractors or subcontractors with respect to CITY's performance of its obligations under this Contract. CITY shall defend CONSULTANT against the foregoing, or litigation in connection with the foregoing, at CITY's expense. CONSULTANT, at its expense, shall have the right to participate in the defense of any Claims or litigation. The indemnification provision of this Section shall not apply to damages or other losses proximately caused by or resulting from the negligence or willful misconduct of CONSULTANT. All indemnification obligations shall survive termination, expiration or cancellation of this Contract.

C. Nothing contained in this Contract shall create a contractual relationship with or a cause of action in favor of a third party against CITY or CONSULTANT. CONSULTANT's services under this Contract are being performed solely for CITY's benefit, and no other entity shall have any claim against CONSULTANT because of this Contract or the performance or nonperformance of services by CONSULTANT provided hereunder.

SECTION VI – GENERAL TERMS

A. **Voluntary and Knowing Action.** The PARTIES, by executing this Contract, state that they have carefully read this Contract and understand fully the contents hereof; that in executing this Contract they voluntarily accept all terms described in this Contract without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound hereby.

B. **Authorized Signatories.** The PARTIES each represent and warrant to the other that; (1) the persons signing this Contract are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Contract against it. Each PARTY indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.

C. **Notices**. All notices and other communications required or permitted under this Contract shall be in writing, and hand delivered or sent by registered or certified mail, postage prepaid, or by overnight delivery service and shall be effective upon receipt at the following addresses or as either PARTY shall have notified the other PARTY. The PARTIES' representatives for notification for all purposes are:

CITY:
Marcy Peterson
City Administrator
1015 Hillside Ave. SW, Ste. 2,
Pine City, MN 55063
Phone: 320-438-1010
Email: mpeterson@pinecitymn.gov

CONSULTANT:

[Name] _____
[Position] _____
[Address] _____

_____
Phone: _____
Email: _____

D. **Dispute Resolution**. CITY and CONSULTANT agree to negotiate all disputes between them in good faith for a period of Thirty (30) days from the date of notice of dispute prior to proceeding to formal dispute resolution or exercising their rights under law. Any claims or disputes unresolved after good faith negotiations shall first be submitted to mediation utilizing the Minnesota District Court Rule 114 Roster. CONSULTANT and CITY agree to require an equivalent dispute resolution process governing all contractors, subcontractors, suppliers, consultants, and fabricators concerned with the Project.

E. **Electronic/Digital Data**. Because of the potential instability of electronic/digital data and susceptibility to unauthorized changes, copies of documents that may be relied upon by CITY are limited to the printed copies (also known as hard copies) that are signed or sealed by CONSULTANT. Except for electronic/digital data, which is specifically identified as a Project deliverable by this Contract, or except as otherwise explicitly provided in this Contract, all electronic/digital data developed by CONSULTANT as part of the Project is acknowledged to be an internal working document for CONSULTANT's purposes solely and any such information provided to CITY shall be on an "as is" basis strictly for the convenience of CITY without any warranties of any kind. In the event of any conflict between a hard copy document and the electronic/digital data, the hard copy document governs. The electronic/digital data shall be prepared in the current software in use by CONSULTANT and is not warranted to be compatible with other systems or software.

F. **Independent Contractor Status.** CONSULTANT, at all times and for all purposes hereunder, shall be an independent contractor and is not an employee of CITY for any purpose. No statement contained in this Contract shall be construed so as to find CONSULTANT to be an employee of CITY, and CONSULTANT shall not be entitled to any of the rights, privileges, or benefits of employees of CITY, including but not limited to, workers' compensation, health/death benefits, and indemnification for third-party personal injury/property damage claims. CONSULTANT acknowledges that no withholding or deduction for State or Federal income taxes, FICA, FUTA, or otherwise, will be made from the payments due CONSULTANT under this Contract, and that it is CONSULTANT's sole obligation to comply with the applicable provisions of all Federal and State tax laws. CONSULTANT shall at all times be free to exercise initiative, judgment and discretion as to how to best perform or provide services identified herein. CONSULTANT is responsible for hiring sufficient workers to perform the services/work required by this Contract, withholding their taxes, and paying all other employment tax obligations on their behalf.

G. **Acceptance of Deliverables.** Each deliverable shall be subject to a verification of

acceptability by CITY to ensure such deliverable satisfies stated requirements. The acceptability of any deliverable will be based on CITY's satisfaction or non-satisfaction with the deliverable based on requirements of this Contract. If any deliverable is not acceptable, CITY will notify CONSULTANT specifying reasons in reasonable detail, and CONSULTANT will, at no additional cost, conform the deliverable to stated requirements of this Contract.

H. **Subcontracting.** CONSULTANT shall not enter into any subcontract for performance of any services contemplated under this Contract without the prior written approval of CITY except that CONSULTANT may contract for services with licensed architects such as Cole Architects, as proposed by CONSULTANT, for the performances of services under this Contract. CONSULTANT shall be responsible for the performance of all subcontractors. As required by Minn. Stat. § 471.425, CONSULTANT must pay all subcontractors, less any retainage, within Ten (10) calendar days of CONSULTANT's receipt of payment from CITY for undisputed services provided by the subcontractor(s) and must pay interest at the rate of one and one half percent per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s).

I. **Assignment.** This Contract may not be assigned by either PARTY without the written consent of the other PARTY.

J. **Modifications/Amendment.** Any alterations, variations, modifications, amendments or waivers of the provisions of this Contract shall only be valid when they have been reduced to writing, and signed by authorized representative of CITY and CONSULTANT.

K. **Records—Availability and Retention.** Pursuant to Minn. Stat. § 16C.05, subd. 5, CONSULTANT agrees that CITY, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of CONSULTANT and involve transactions relating to this Contract. CONSULTANT agrees to maintain these records for a period of six years from the date of termination of this Contract.

L. **Force Majeure**. The PARTIES shall each be excused from performance under this Contract while and to the extent that either of them are unable to perform, for any cause beyond its reasonable control. Such causes shall include, but not be restricted to fire, storm, flood, earthquake, explosion, war, total or partial failure of transportation or delivery facilities, pandemic, raw materials or supplies, interruption of utilities or power, and any act of government or military authority. In the event either PARTY is rendered unable wholly or in part by force majeure to carry out its obligations under this Contract then the PARTY affected by force majeure shall give written notice with explanation to the other PARTY immediately.

M. **Compliance with Laws.** CONSULTANT shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Contract or to the facilities, programs and staff for which CONSULTANT is responsible.

N. **Covenant Against Contingent Fee.** CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from award or making of this Contract.

O. **Covenant Against Vendor Interest.** CONSULTANT warrants that it is not employed by any vendor of equipment or service provider that could result in a commission, percentage, brokerage, or contingent fee as a result of CONSULTANT's association with CITY.

P. **Non-Discrimination.** The provisions of any applicable law or ordinance relating to civil rights and discrimination shall be considered part of this Contract as if fully set forth herein.

Q. **Interest by City Officials.** No elected official, officer, or employee of CITY shall during their tenure or employment and for one year thereafter, have any interest, direct or indirect, in this Contract or the proceeds thereof.

R. **Work Product.** All materials such as reports, exhibits, models, graphics, computer files, maps, charts, and supporting documentation produced under services/work authorized by this Contract ("Materials") shall become the property of CITY upon completion of the services/work. CITY may use the information for the Project for which they were prepared. Such use by CITY shall not relieve any liability on the part of CONSULTANT. Notwithstanding any of the foregoing to the contrary; (a) CONSULTANT may reuse standard details of its Materials in the normal course of its business, and (b) CITY understands that the Materials have been prepared for a specific project and are not intended to be reused for other purposes. If CITY reuses the Materials for any other purpose, CITY waives any claims against CONSULTANT arising from such reuse and agrees to defend and indemnify CONSULTANT from any claims arising from such reuse.

S. **Governing Law**. This Contract shall be deemed to have been made and accepted in Pine County, Minnesota, and the laws of the State of Minnesota shall govern any interpretations or constructions of the Contract without regard to its choice of law or conflict of laws principles.

T. **Data Practices.** The PARTIES acknowledge that this Contract is subject to the requirements of Minnesota's Government Data Practices Act ("Act"), Minnesota Statutes, Section 13.01 *et seq.* CONSULTANT agrees to abide by the applicable provisions of the Act, HIPAA requirements, and all other applicable state or federal rules, regulations or orders pertaining to data privacy or confidentiality. CONSULTANT

understands that all of the data created, collected, received, stored, used, maintained or disseminated by CONSULTANT in performing those services, work, and functions that the CITY would perform is subject to the requirements of the Act, and CONSULTANT must comply with those requirements as if it were a government entity. This does not create a duty on the part of CONSULTANT to provide the public with access to public data if the public data is otherwise available from CITY, except as required by the terms of this Contract.

U. **Cybersecurity Incident Reporting.** CONSULTANT acknowledges that CONSULTANT by virtue of this Contract is subject to the requirements of Minn. Stat. § 16E.36 for reporting cybersecurity incidents impacting CITY.

V. **No Waiver.** Any PARTY's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Contract or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that PARTY's right to assert or rely upon the terms and conditions of this Contract. Any express waiver of a term of this Contract shall not be binding and effective unless made in writing and properly executed by the waiving PARTY.

W. **Data Disclosure**. Under Minn. Stat. § 270C.65, Subd. 3, and other applicable law, CONSULTANT consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to CITY, to federal and state agencies and state personnel involved in the payment of CITY obligations. These identification numbers may be used in the enforcement of federal and state laws, which could result in action requiring CONSULTANT to file state tax returns, pay delinquent state tax liabilities, if any, or pay other CITY liabilities.

X. **Patented Devices, Materials and Processes**. If this Contract requires, or CONSULTANT desires, the use of any design, device, material or process covered by letters, patent or copyright, trademark or trade name, CONSULTANT shall provide for such use by suitable legal agreement with the patentee or owner. If no such agreement is made as noted, CONSULTANT shall indemnify and hold harmless CITY from any and all claims for infringement by reason of the use of any such patented designed, device, material or process, or any trademark or trade name or copyright in connection with the services agreed to be performed under the Contract by CONSULTANT, and shall indemnify and defend CITY for any costs, liability, expenses and attorney's fees that result from any such infringement.

Y. **Mechanic's Liens.** CONSULTANT hereby covenants and agrees that CONSULTANT will not permit or allow any mechanic's or materialman's liens to be placed on CITY's interest in CITY property that is the subject of the Project during the term hereof. Notwithstanding the previous sentence, however, in the event any such lien shall be so placed on CITY's interest, CONSULTANT shall take all steps necessary to see that it is removed within Thirty (30) days of its being filed; provided, however, that CONSULTANT may contest any such lien provided CONSULTANT first posts a surety bond, in favor of and insuring CITY, in an amount equal to 125% of the amount of any

such lien.

Z. **Severability.** The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Contract to the extent of its invalidity or unenforceability, and this Contract shall be construed and enforced as if the Contract did not contain that particular provision to the extent of its invalidity or unenforceability.

AA. **Entire Contract.** These terms and conditions constitute the entire agreement between the PARTIES regarding the subject matter hereof. All discussions and negotiations are deemed merged in this Contract.

BB. **Headings and Captions.** Headings and captions contained in this Contract are for convenience only and are not intended to alter any of the provisions of this Contract and shall not be used for the interpretation of the validity of the Contract or any provision hereof.

CC. **Survivability**. All covenants, indemnities, guarantees, releases, liability, representations and warranties by any PARTY or PARTIES, and any undischarged obligations of CITY and CONSULTANT arising prior to the expiration of this Contract (whether by completion or earlier termination), shall survive such expiration.

DD. **Execution**. This Contract may be executed simultaneously in two or more counterparts that, when taken together, shall be deemed an original and constitute one and the same document. The signature of any PARTY to the counterpart shall be deemed a signature to the Contract, and may be appended to, any other counterpart. Facsimile and email transmissions of executed signature pages shall be deemed as originals and sufficient to bind the executing PARTY.

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SECTION VII –SIGNATURES

IN WITNESS WHEREOF, the PARTIES have hereunto executed this document the day and year first above written.

CONSULTANT:

BIG FORK VALLEY LOG CABINS, LLC

By: _____ Date: _____
(Signature)
Title: _____
Print Name: _____

CITY OF PINE CITY:

By: _____ Date: _____
Kent Bombard, Its Mayor

By: _____ Date: _____
Marcy Peterson, Its City Administrator

EXHIBIT 1

SCOPE OF SERVICES

Subject to the terms of this Contract, CONSULTANT shall perform the following services/work:

The CONSULTANT shall provide, or cause to be provided by qualified professionals (including licensed architects such as Cole Architects), the following services for Phase 1:

a. Site analysis and preliminary site plan;
b. Building layout and floor plans suitable for a municipal liquor store;
c. Exterior elevations and material selections; and
d. 3D model for public presentation.

EXHIBIT 2

CERTIFICATES OF REQUIRED INSURANCE COVERAGES

[*Certificates of Insurance attached hereto*]

EXHIBIT 3

COMPENSATION

Subject to the limitations set forth in this Exhibit, CITY will pay CONSULTANT a flat fee of $8,100.00 ("Contract price") for CONSULTANT's services, including expenses, under this Contract.