

JOINT REPRESENTATION AGREEMENT

“**Clients**” are City of Arden Hills (“City”) and WSB and Associates, Inc. (“WSB”)

“**Attorneys**” are Campbell Knutson, P.A., and their partners and associates, Jardine, Logan & O’Brien, PLLP, and their partners and associates and Heley Duncan & Melander, PLLP, and their partners and associates.

The City retained WSB to provide professional services for the Old Snelling Train Extension & Water Main Improvements, City Project Number PW-17-0100 [hereinafter: Project]. Sunram Construction, Inc. submitted the low bid and the City retained Sunram Construction (“Sunram”) to complete construction work at the Project. Sunram has now initiated a claim against the City seeking additional compensation for services provided under its contract, including specifically claims for additional compensation for retaining walls, traffic control signals and extra concrete work for catch basins. Sunram has asserted claims for damages alleging breach of contract and unjust enrichment in *Sunram Construction, Inc. v. City of Arden Hills* [hereinafter: the Claim]. The City and WSB denied the Claim.

The Clients deny any obligation to jointly defend this case, but nonetheless have elected to do so due to the commonality of interest. This joint defense agreement shall also apply to any additional investigation, action, arbitration, litigation, mediation, or proceeding that may be taken in connection with or relating to the Claim. During the pendency of the joint defense, City and WSB each agree to cooperate to respond to and defend the Claim at their own expense except as otherwise provided under this agreement, while recognizing that Elisa Hatlevig of Jardine, Logan & O’Brien, PLLP and Joel Jamnik and Campbell Knutson, P.A., will defend and represent the interest of the City in the pending litigation subject to the following agreement. Heley Duncan & Melander shall represent the interests of WSB.

CONFLICT OF INTEREST WAIVER

1. Minnesota Rules of Professional Conduct 1.7 provides that a lawyer “[s]hall not represent a client if that representation may be materially limited by lawyer’s professional responsibilities to another client . . . unless . . . the lawyer reasonably believes the representation will not be adversely affected . . .” and “the client consents after consultation.” This agreement shall constitute an explanation of the implications of common representation in a single matter and a description of the advantages and risks involved.
2. Often clients defending against a damages claim obtain separate counsel to represent their distinct interests in a lawsuit. In choosing to have attorneys collaboratively represent the Clients, the Clients each forgo attributing fault to the other. This is because Attorneys cannot and will not investigate or analyze ways for one client to blame any of the others for Plaintiff’s alleged damage. To do so would be a breach of Attorneys’ attorney-client relationship with each client.
3. Conflicts of interest may also include disputes over the payment of proportional settlements, judgments, or appeal costs in connection the Claim. By signing this waiver, Clients agree that they will retain separate counsel to advocate their interests.

4. Based on the information Clients have provided to the Attorneys, we do not believe that other than the allocation of settlement, or potential judgment, described above, representation of Clients currently involves any other actual conflict of interest. Clients should be aware, however, that the attorneys' representation of the Clients may in the future involve actual conflicts of interest if Clients' interests in this matter become inconsistent. Should that occur, Attorneys will endeavor to apprise Clients promptly of any such conflict so that Clients can each decide whether to obtain independent counsel or withdraw from the Joint Defense Agreement as set forth herein.

5. In signing this Agreement, each Client acknowledges the existence of potential and actual conflicts of interest and notwithstanding such conflicts, knowingly waives the protections afforded by obtaining separate counsel. Each Client willingly enters into this joint Agreement and each client agrees not to hold Attorneys liable for damages joint representation might cause each client because of this waiver.

6. Clients each remain completely free to seek independent counsel even after the Clients decide to sign this Agreement. WSB is represented herein by counsel at Heley, Duncan & Melander, including Mark Heley, Eric Heiberg and/or Valerie Sims. The City is represented by Elisa Hatlevig of Jardine, Logan & O'Brien, PLLP and Joel Jamnik and Campbell Knutson, P.A.

CONFIDENTIALITY

7. It is in Clients' best interest to preserve the confidentiality of all communications between us. The ability to protect the confidentiality of those communications may be jeopardized if those communications or their contents are disclosed third parties.

8. The Clients and Attorneys agree that they form a Joint Defense Group with the intent of protecting and preserving the Attorney Client Privilege with respect to the Defense of the Claim. Any communications between any member of the Joint Defense Group concerning the Claim and related matters are confidential and are protected from disclosure to any third party by the applicable attorney-client privilege and by protections afforded by the work product doctrine.

9. Any communications among the Attorneys and Clients concerning the Claim and related matters, including work product, conversations, documents, interview memoranda, and other communications are confidential and are protected from disclosure to any third party by the applicable attorney-client privilege and by protections afforded by the work product doctrine.

10. Information obtained by members of the Joint Defense Group upon viewing documents, witness or client debriefings, or other papers including legal memoranda exchanged among members of the Joint Defense Group, will remain confidential and protected from disclosure to any third party by Attorneys' clients' attorney-client privileges and by protections afforded to Attorneys' work by the work product doctrine.

11. All work performed by members of the Joint Defense Group pursuant to this agreement and communications among Joint Defense Group members and clients in connection with such representation shall be conducted and protected pursuant to the common interest rule recognized in such cases as *United States v. Schwimmer*, 902 F.2d 237 (2d Cir., 1989), *on remand*, 738 F.

Supp. 654 (E.D.N.Y. 1990), *aff'd*, 924 F.2d 443 (2d. Cir. 1991); *In re Grand Jury Subpoenas*, 89-3 and 89-4, 902 F.2d 244 (4th Cir. 1990); *United States v. Zolin*, 809 F.2d 1411 (9th Cir. 1987); *United States v. McPartlin*, 595 F.2d 1321, 1336-37 (7th Cir.), *cert. denied*, 444 U.S. 833 (1979); *Hunydee v. United States*, 355 F.2d 183 (9th Cir. 1965); *Continental Oil Co. v. United States*, 330 F.2d 347 (9th Cir. 1964).

12. To the extent possible and necessary to protect the respective interests of each and to the extent permissible under existing law and disciplinary considerations, none of the information obtained by any member of the Joint Defense Group pursuant to this agreement shall be disclosed to third parties under any circumstances without the written consent of the Joint Defense Group member (obtained from his, her, or its client) who disclosed it in the first instance information protected by the attorney-client privilege or work product doctrine. If any third party requests or demands, by subpoena or otherwise, that a member of the Joint Defense Group, disclose or produce any joint defense materials provided by another member or his, her, or its client, the member or client receiving the request shall immediately notify the other members of the Joint Defense Group.

13. The parties understand that one purpose of this agreement is to facilitate a joint defense by maximizing the information flow among Attorneys and Clients who are parties to the agreement. The parties recognize, however, that under some circumstances, the information known to one client may not be shared with other members of the Joint Defense Group.

14. Either party may release information if required by court order by state law, including the Minnesota Government Data Practices Act.

DISCHARGE AND WITHDRAWAL

15. Any Client may discharge Attorneys at any time. Attorneys may withdraw from representing Clients with Clients' consent or for good cause.

16. The City or WSB may withdraw from this Agreement upon tendering a ten (10) day written notice to the other party, in which case this Agreement shall no longer be operative but shall continue to protect all communications and information covered by the Agreement and disclosed to the withdrawing Party prior to such withdrawal.

17. Termination. This Agreement shall terminate upon: (i) execution of a full settlement of the Claim; (ii) filing of a stipulation discontinuing or dismissing with prejudice the Claim; (iii) entry of an order discontinuing or dismissing with prejudice the Claim; or (iv) entry of a final, non-appealable judgment of the Claim and payment of the damages by both parties as provided under this Agreement. The confidentiality obligations of this Agreement shall survive any termination.

18. The Parties agree that in the event this agreement is terminated, Attorneys shall not be disqualified from serving as counsel for their respective Clients due to participation in this Joint Defense Agreement, or as a result of any information shared hereunder. Nothing contained in this Joint Defense Agreement shall create an attorney-client relationship between a Party and the attorney for any other Party to this Agreement. WSB shall continue to be represented by Heley

Duncan & Melander, PLLP, and the City shall continue to be represented by Campbell Knutson, P.A. and Jardine, Logan & O'Brien, PLLP. The parties further acknowledge, waive, and release any actual or potential conflicts that would limit their ability to be represented by the above counsel.

APPLICABLE LAW

19. This Agreement shall be governed by the laws of the State of Minnesota.

INDEPENDENT COUNSEL

20. Clients understand their right to obtain, at each client's own expense, independent legal counsel regarding this Agreement or any aspect of this matter. Each Party's signature below indicates it either sought such advice or waives its right to do so.

INSURANCE

21. The Parties do not intend for this Agreement to prejudice any Party with respect to its insurers. All of the provisions of this Agreement shall be interpreted so as not to conflict with each Party's obligations to its insurers.

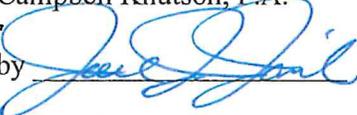
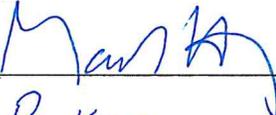
MODIFICATION

22. This Agreement may be amended only by a writing signed by all Parties.

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COUNTERPARTS

23. This Agreement may be signed in counterparts. Each counterpart shall constitute a binding agreement upon each and all of the undersigned. The individuals executing this Agreement on behalf of their respective clients represent that they have the authority to sign this Agreement and the authority to bind and commit their respective clients to the terms hereof.

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| <p>Dated:</p> <p>City of Arden Hills</p> <p>by _____</p> <p>Its _____</p> | <p>Dated: 4/30/21</p> <p>Jardine, Logan & O'Brien, PLLP</p> <p>by  _____</p> <p>its Partner</p> | <p>Dated: 4/30/21</p> <p>Campbell Knutson, P.A.</p> <p>by  _____</p> <p>its Vice-President</p> |
| <p>Dated:</p> <p>WSB and Associates, Inc.</p> <p>by  _____</p> <p>Its Corporate Counsel</p> | <p>Dated:</p> <p>Heley, Duncan & Melander, PLLP</p> <p>by  _____</p> <p>its Partner</p> | |