



**AGENDA ITEM #9.4**

**REPORT TO CITY COUNCIL**

**Report Prepared by: Tim Houle**

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**Date:** August 4, 2020

**Subject:** Maintenance Facility Final Payment

**Report:** After some back-and-forth with the City Attorney and Boser Construction, Inc.'s (BCI's) - the construction Contractor's - attorney, there was agreement on BCI dropping their claim, the City dropping their liquidated damages claim, and executing the payment of the remainder of the original Contract Amount.

BCI has provided the close out paperwork per the construction Contract, along with a release of claims letter prepared by the City Attorney (signed by BCI and to be signed by the Mayor).

**Council Action Requested:** Council motion approving the Final Payment to Boser Construction, Inc. in the amount of \$31,912.99.

July 24, 2020

City of Pequot Lakes  
4638 Main Street  
Pequot Lakes, MN 56472

Re: Maintenance Garage Construction – Release of Claims

To whom it may concern:

On or about February 28, 2018, the City of Pequot Lakes (the “City”) contracted with Boser Construction Inc. (“BCI”) for the construction of a maintenance garage facility (the “Project”). In the fall of 2018, a dispute arose between the City and BCI regarding the status of the Project’s completion, with the City and BCI (together, the “parties”) asserting competing claims which were denied by the other party during their attempts to resolve their dispute. Specifically, the City asserted an entitlement to liquidated damages against BCI under the terms of the construction contract, and BCI asserted an entitlement to final payment of the contract price in the amount of \$31,912.99 plus interest pursuant to the Municipal Prompt Payment Act, Minn. Stat. § 471.425, subd. 4. Counsel for BCI also requested that the City produce various documents pursuant to the Minnesota Government Data Practices Act.

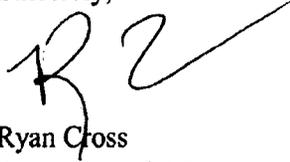
On or about July 1, 2020, BCI and the City agreed to a resolution by which BCI would submit to the City all outstanding close-out documents and drop its claim for any amount above and beyond the final payment amount set forth in the construction contract, and by which the City would likewise drop its claim for liquidated damages and pay BCI the final contract amount of \$31,912.99.

Therefore, as part of the agreed resolution to this matter, and as an inducement to the City to drop its liquidated damages claim and pay BCI the final contract amount of \$31,912.99, BCI hereby fully and completely releases, acquits, and forever discharges the City and its current and former Council members, officers, employees, agents, representatives, insurers, attorneys, and other affiliates from any and all liability for any and all damages, actions, or claims, related to the Project and/or the corresponding February 28, 2018 construction contract, stemming from any action, decision, event, fact, or circumstance that occurred prior to the date of this letter. BCI further retracts any outstanding request for documents it made pursuant to the Minnesota Government Data Practices Act prior to the date of this letter. Notwithstanding the forgoing, BCI maintains its claim for the final payment of \$31,912.99 in full satisfaction of the amount owing BCI under the parties’ February 28, 2018 construction contract.

City of Pequot Lakes  
7/24/2020  
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As part of the agreed resolution to this matter, and as an inducement to BCI to drop its claim for interest and any amount in excess of the final payment amount of \$31,912.99, the City hereby fully and completely releases, acquits, and forever discharges BCI and its current and former shareholders, officers, employees, agents, representatives, insurers, attorneys, and other affiliates from any and all liability for any and all damages, actions, or claims, for liquidated or actual damages related to the claimed failure of BCI to timely complete work on the Project.

Sincerely,



Ryan Cross  
President & CEO  
Boser Construction Inc.

ACCEPTED AND AGREED TO:

CITY OF PEQUOT LAKES, MINNESOTA

By: \_\_\_\_\_  
James Tayloe, Its Mayor

# AIA® Document G702™ - 1992

## Application and Certificate for Payment

<b>TO OWNER:</b>	City of Pequot Lakes 4638 Main Street Pequot Lakes, MN 56472	<b>PROJECT:</b>	Pequot Lakes Maintenance Garage 4635 Derksen Road Pequot Lakes, MN 56472	<b>APPLICATION NO:</b>	10-Adjusted Final Invoice	<b>Distribution to:</b>	
<b>FROM</b>	Boser Construction Inc.	<b>VIA</b>		<b>PERIOD TO:</b>	7/1/2020	<b>OWNER:</b>	<input type="checkbox"/>
<b>CONTRACTOR:</b>	7135 5th Ave NE Sauk Rapids, MN 56379	<b>ARCHITECT:</b>	Wiseth Smith Nolting 7804 Industrial Park Rd Baxter, MN 56425	<b>CONTRACT FOR:</b>	General Construction	<b>ARCHITECT:</b>	<input type="checkbox"/>
				<b>CONTRACT DATE:</b>		<b>CONTRACTOR:</b>	<input type="checkbox"/>
				<b>PROJECT NO:</b>	8638	<b>FIELD:</b>	<input type="checkbox"/>

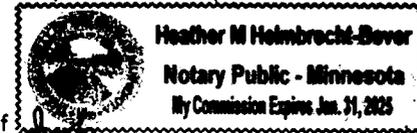
### CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. AIA Document G703™, Continuation Sheet, is attached.

1. ORIGINAL CONTRACT SUM	\$ 894,000.00
2. NET CHANGES IN THE WORK	\$ -
3. CONTRACT SUM TO DATE (LINE 1+2)	\$ 894,000.00
4. TOTAL COMPLETED AND STORED TO DATE (Column G on G703)	\$ 894,000.00
5. RETAINAGE	
a. 5% of Completed Work (Column D + E on G703)	\$ -
b. 0% of Stored Material (Column F on G703)	\$ -
Total Retainage (Lines 5a + 5b, or Total in Column I on G703)	\$ -
6. TOTAL EARNED LESS RETAINAGE (Line 4 minus Line 5 Total)	\$ 894,000.00
7. LESS PREVIOUS CERTIFICATE FOR PAYMENT (Line 6 from prior Certificate)	\$ 862,087.01
8. CURRENT PAYMENT DUE	\$ 31,912.99
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 minus Line 6)	\$ -

The undersigned Contractor certifies that to the best of the Contractor's Knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

**CONTRACTOR:**  
By:  Date: 7-1-2020  
State of: Minnesota  
County of: Benton



Subscribed and sworn to before  
me this 1<sup>st</sup> day of July  
Notary Public:   
My Commission expires: January 31st, 2025

### ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architects knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED ..... \$ 31,912.99  
(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

**ARCHITECT:**  
By:  Date: 7/20/2020

This certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$ -	\$ -
Total approved this month	\$ -	\$ -
<b>TOTALS</b>	<b>\$ -</b>	<b>\$ -</b>
<b>NET CHANGES by Change Order</b>	<b>\$ -</b>	



# AIA Document G703™ – 1992

**Continuation Sheet**

AIA Document G702-1992, Application and Certification for Payment, or G736-2009,  
 Project Application and Project Certificate for P: ISD #728  
 containing Contractor's signed certification is at 11500 193rd Avenue NE  
 In tabulations below, amounts are in US dollars Elk River, MN 55330  
 Use Column I on Contracts where variable retainage for line items may apply.

**Application No:** 10-Adjusted Final  
**Application Date:** 7/1/2020  
**Period To:** 7/1/2020  
**Architect's Project No:** \_\_\_\_\_

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D+E+F)	Retainage Rate: 5%	
			E WORK COMPLETED				H BALANCE TO FINISH (C - G)	I RETAINAGE (IF VARIABLE RATE)
			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD				
	Bond	\$ 10,511.00	10,511.00			10,511.00	100%	
	Shop Drawings	\$ 16,287.00	16,287.00			16,287.00	100%	
	Mobilization	\$ 9,827.70	9,827.70			9,827.70	100%	
	GC's	\$ 53,012.00	53,012.00			53,012.00	100%	
	Div 3 Concrete	\$ 105,000.00	105,000.00			105,000.00	100%	
	Metal Fabrications	\$ 879.90	879.90			879.90	100%	
	Div 6 Wood	\$ 500.00	500.00			500.00	100%	
	Finish Carpentry	\$ 3,649.80	3,649.80			3,649.80	100%	
	Div 7	\$ 7,047.00	7,047.00			7,047.00	100%	
	Div. 8 Frames, Doors, and HDWR	\$ 11,100.00	11,100.00			11,100.00	100%	
	Div. 8 Window Install & Glazing	\$ 1,520.00	1,520.00			1,520.00	100%	
	Div. 8 O.H. Doors	\$ 9,425.00	9,425.00			9,425.00	100%	
	Div 9. FRP	\$ 1,500.00	1,500.00			1,500.00	100%	
	Div. 9 Drywall	\$ 9,600.00	9,600.00			9,600.00	100%	
	Div. 9 Acoustical Ceilings	\$ 3,500.00	3,500.00			3,500.00	100%	
	Div. 9 Resilient Flooring	\$ 2,493.00	2,493.00			2,493.00	100%	
	Div. 9 Painting	\$ 5,630.00	5,630.00			5,630.00	100%	
	Div 10	\$ 1,960.60	1,960.60			1,960.60	100%	

Div 13 Labor	\$	45,000.00	45,000.00			45,000.00	100%		
Div. 13 Materials	\$	191,613.00	191,613.00			191,613.00	100%		
Div. 21 Sprinklers	\$	35,980.00	35,980.00			35,980.00	100%		
Div. 22 Plumbing	\$	133,700.00	133,700.00			133,700.00	100%		
Div. 26 Electrical	\$	54,635.00	54,635.00			54,635.00	100%		
Div. 31 Earthwork	\$	69,770.00	69,770.00			69,770.00	100%		
Div. 32 Aggregate Paving & Base	\$	59,270.00	59,270.00			59,270.00	100%		
Div. 32 Curbs and Paving	\$	7,760.00	7,760.00			7,760.00	100%		
Div. 32 Chainlink Fence	\$	27,416.00	27,416.00			27,416.00	100%		
Div. 32 Seeding	\$	15,413.00	15,413.00			15,413.00	100%		
<b>GRAND TOTAL</b>		<b>894,000.00</b>	<b>894,000.00</b>			<b>894,000.00</b>	<b>100%</b>		

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