Agenda
Minnetonka City Council
Regular Meeting, Monday, July 22, 2019
6:30 p.m.
Council Chambers

1. Call to Order
2. Pledge of Allegiance
4. Approval of Agenda
5. Approval of Minutes:
   A. June 24, 2019 regular council meeting
6. Special Matters: None
7. Reports from City Manager & Council Members
8. Citizens Wishing to Discuss Matters Not on the Agenda
9. Bids and Purchases:
   A. Agreement for police and fire facility project construction manager services
      Recommendation: Approve the agreement (4 votes)
10. Consent Agenda - Items Requiring a Majority Vote:
    A. Minnetonka Firefighters Relief Association By-Laws amendment
       Recommendation: Adopt the resolution (Majority vote)
    B. Ordinance amending various sections of city code related to pollinators
       Recommendation: Adopt the ordinance (Majority vote)
    C. Resolution approving a conditional use permit for an accessory apartment at 3518 Hopkins Crossroad
       Recommendation: Adopt the resolution approving the permit (Majority vote)
11. Consent Agenda - Items Requiring Five Votes: None
12. Introduction of Ordinances:
   A. Ordinance authorizing sale of city property adjacent to 1013 Ford Road
      Recommendation: Introduce the ordinance and approve the purchase agreement
      (4 votes)

13. Public Hearings
   A. On-sale wine and on-sale 3.2 percent malt beverage liquor licenses for My Burger
      Operations, LLC., 10997 Red Circle Dr
      Recommendation: Continue the public hearing from June 24 and grant the
      licenses (5 votes)
   B. Off-sale liquor license for Target Corporation, 4848 Co Rd 101
      Recommendation: Continue the public hearing from May 6, 2019, and grant the
      license (5 votes)

14. Other Business:
   A. Resolution approving the preliminary plat of CONIFER HEIGHTS, 6-lot subdivision
      of existing properties at 5615 Conifer Trail and 5616 Mahoney Ave
      Recommendation: Adopt the resolution approving the preliminary plat (4 votes)
   B. Goose management plan
      Recommendation: Approve goose management plan (Majority vote)

15. Appointments and Reappointments: None

16. Adjournment
Minutes
Minnetonka City Council
Monday, June 24, 2019

1. Call to Order

Mayor Brad Wiersum called the meeting to order at 6:30 p.m.

2. Pledge of Allegiance

All joined in the Pledge of Allegiance.

3. Roll Call

Council Members Bob Ellingson, Deb Calvert, Susan Carter, Mike Happe, Tim Bergstedt and Mayor Brad Wiersum were present. Council Member Rebecca Schack was excused.

4. Approval of Agenda

City Manager Geralyn Barone requested an amendment to the agenda, noting the applicant has requested Item 14.A (Walser Nissan) be tabled.

Calvert moved, Carter seconded a motion to accept the agenda, as amended. All voted “yes.” Motion carried.

5. Approval of Minutes:

A. May 20, 2019 regular council meeting

Carter moved, Bergstedt seconded a motion to approve the minutes of the May 20, 2019 regular council meeting, as presented. All voted “yes”. Motion carried.

B. June 3, 2019 regular council meeting

Carter moved, Bergstedt seconded a motion to approve the minutes of the June 3, 2019 regular council meeting, as presented. Carter, Bergstedt, Ellingson, Calvert and Wiersum voted “yes”. Happe abstained. Motion carried.

6. Special Matters:

A. Retirement recognition for Public Works Director Brian Wagstrom
Wiersum read a proclamation in full for the record recognizing Public Works Director Brian Wagstrom for his 25 years of dedicated service to the City of Minnetonka. He wished Mr. Wagstrom well in his retirement and presented him with a plaque from the city. A round of applause was offered by all in attendance.

Mr. Wagstrom thanked the mayor and council. He stated it had been a pleasure and honor to serve the City of Minnetonka for the past 25 years. He explained he appreciated the trust and confidence the council has afforded him. He thanked the city manager and other staff members for their friendship over the years. He stated he was proud to have had the pleasure to work with the staff members in the Public Works Department.

City Manager Geralyn Barone thanked Mr. Wagstrom for his tremendous service to the community over the past 25 years. She explained he would be dearly missed but wished him well in his retirement.

Happe wished Mr. Wagstrom all the best in his retirement and stated he would be missed.

Calvert stated she was extremely proud of the fact Mr. Wagstrom would work for the City of Minnetonka for 25 years, doing a difficult job with tough hours to the best of his ability. She thanked Mr. Wagstrom for his brilliant service to the community.

B. Recognition of Kari Spreeman as Minnesota’s “Communicator of the Year”

Carter read a proclamation in full for the record and congratulated Communications and Marketing Manager Kari Spreeman for being named the State’s “Communicator of the Year” by the Minnesota Association of Government Communicators. She commended Ms. Spreeman for her tremendous efforts on behalf of the community and appreciated her rebranding and marketing efforts. A round of applause was offered by all in attendance.

Communications and Marketing Manager Kari Spreeman thanked the council for their continued support. She stated it was quite an honor to be recognized for this award.

C. Recognition of Minnetonka Memo/Script and Fire Marketing Plan as Best in State

Happe congratulated Communications and Marketing Manager Kari Spreeman and her communications team, Matt Higgins and Justin Pelegano, for their efforts on the Minnetonka Memo/Senior Script and the Fire Marketing Plan for being
recognized as Best in State by the Minnesota Association of Government Communicators. He explained the redesign of these newsletters incorporated the city’s new brand and demonstrates a modern feel. In addition, he noted the Fire Marketing Plan was a huge success. He thanked the communications team for their efforts on behalf of the community. A round of applause was offered by all in attendance.

Wiersum presented trophies to Communications and Marketing Manager Kari Spreeman, Matt Higgins and Justin Pelagano.

City Manager Geralyn Barone commended the communications team for their creativity and wisdom. She stated she was very proud of their efforts.

Calvert thanked the communications team for their wonderfully innovative work on behalf of the community.

Wiersum thanked all of the city’s employees for their efforts and commended the communications team for their outstanding work.

D. Review of the 2018 financial report with the City’s audit firm of BerganKDV

City Manager Geralyn Barone reported Steve Wischmann with BerganKDV was present to review the city’s 2018 audit. She thanked the Finance Director Merrill King and Assistant Finance Director Joel Merry for their efforts in the finance department.

Steve Wischmann, Bergan KDV, reviewed the 2018 audit and financial report with the council. He commended the city for its strong financial position noting Minnetonka received a clean or unmodified opinion on the 2018 audit. He commented further on the audit process. He discussed the revenues and expenditures for 2018, along with the balances for the city’s enterprise funds. He explained the city has a great finance team and he enjoyed working with staff on the 2018 audit.

Wiersum thanked Mr. Wischmann for this thorough report.

E. Proclamation declaring July 2019 as Monarch and Pollinator Awareness Month

Bergstedt read a proclamation in full for the record declaring July 2019 as Monarch and Pollinator Awareness month in the City of Minnetonka.

7. Reports from City Manager & Council Members
City Manager Geralyn Barone reported on upcoming city events and council meetings. She commented on the mountain biking trail at Lone Lake Park lawsuit noting the court affirmed the city council’s denial of the petition for conducting an environmental assessment worksheet. She explained this item would be coming before the council at a future meeting.

Barone reported city hall would be closed on Thursday, July 4th in observance of Independence Day.

Calvert stated she visited the Minnetonka Summer Festival and indicated she was marveled by the event. She thanked staff for all of their efforts to pull off this wonderful community event.

Wiersum agreed and he offered his appreciation to staff for all of their work and the time that was invested in planning the Minnetonka Summer Festival.

Wiersum stated he attended a church service at Destiny Hill Church this past Sunday after the recent race based bias event happened in the community as a show of support for this congregation. He explained the service was wonderful and he really enjoyed worshipping with this congregation. He encouraged residents to consider worshipping or visiting with this church.

8. Citizens Wishing to Discuss Matters not on the Agenda: None.


10. Consent Agenda – Items Requiring a Majority Vote:

   A. Preliminary and final plat of RUTZICK RIDGE, a two-lot subdivision at 3564 Shady Oak Road

   Calvert explained 27 high priority trees would be lost as part of this project. She encouraged the developer to do everything possible to preserve trees.

   Ellingson moved, Calvert seconded a motion to adopt Res. 2019-050 approving the preliminary and final plats of Rutzick Ridge, a two-lot subdivision at 3564 Shady Oak Road. All voted “yes.” Motion carried.

   B. Labor agreement between the city of Minnetonka and Law Enforcement Labor Services (LELS) Local 442 representing police officers

   Ellingson moved, Bergstedt seconded a motion to approve the Labor Agreement between the City of Minnetonka and Law Enforcement Labor Services (LELS) Local 442 representing police officers. All voted “yes.” Motion carried.
11. Consent Agenda – Items requiring Five Votes: None.

12. Introduction of Ordinances:

   A. Items concerning The Kinsel at Glen Lake at 14317 Excelsior Boulevard:

       1) Rezoning from R-1, low-density residential, to PUD, planned unit development;
       2) Master development plan;
       3) Site and building plan review;
       4) Right-of-way vacation; and
       5) Preliminary and final plats.

City Planner Loren Gordon gave the staff report.

Calvert asked if this project had an affordable housing component. Gordon stated there was not.

Mike Roebuck, Clark Construction, introduced himself to the council.

Calvert encouraged the developer to consider an affordable housing component as part of this project. Mr. Roebuck stated this would add a major expense to the project.

Wiersum recommended the planning commission review the parking for this development. He stated he would like to see proof of parking in place versus an oversized parking lot, but also understood the Glen Lake area was parking challenged. He wanted to be assured that the development was properly parked.

Calvert commented on an email the council received from a resident noting concerns regarding density, traffic, parking and the absence of green space were raised. She encouraged the planning commission to discuss these matters further.

Bergstedt recommended the planning commission review the parking for this development very closely. He expressed concern with the trees that would be lost within this development. He commented on the proposed density for this project and how it would impact the Glen Lake area.
Ellingson agreed the tree loss should be addressed as there was great beauty and character in these trees. He stated he was also concerned with the setbacks.

Carter explained she wanted the density and tree loss investigated further.

Happe commented he believed the developer was trying to shoehorn a very large building onto a small parcel of land. He encouraged the planning commission to consider the vision and character for this area when reviewing this development.

Calvert recommended the city to proceed with caution with respect to this development. She wanted to see the character of this area of the city preserved.

Wiersum stated the developer was proposing to construct a nice building, but noted it was a big building given the size of the parcel. He noted the site would not have a lot of greenspace and this should be considered by the planning commission. He explained the city was going to continue to grow but he questioned when a tipping point would be reached and if this development was too much. He recommended a wholistic view be taken on this project and that the planning commission make a recommendation accordingly.

Bergstedt moved, Calvert seconded a motion to introduce the ordinance to rezone the property from R-1 to a planned unit development and refer it to the planning commission. All voted “yes.” Motion carried.

13. Public Hearings:

A. On-sale wine and on-sale 3.2 percent malt beverage liquor licenses for My Burger Operations, LLC., at 10997 Red Circle Drive

City Manager Geralyn Barone gave the staff report.

Wiersum opened the public hearing.

John Abdale, 10997 Red Circle Drive, stated he was very happy with Minnetonka and to have a My Burger in this city. He explained he typically waited a month or two to see if his patrons were requesting alternate beverage options. He reported his patrons were requesting alcoholic drinks and for this reason he was seeking an on-sale wine and beer license. He thanked the council for their consideration.

Happe moved, Calvert seconded a motion to continue the public hearing to July 22, 2019. All voted “yes.” Motion carried.
14. Other Business:

A. Items concerning Walser Nissan at 15906 Wayzata Blvd:
   1) Ordinance approving a master development plan and final site and building plans, with a parking setback variance; and
   2) Resolution approving a conditional use permit, with a building-to-parking variance, and a sign plan.

This item was removed from the agenda.

B. Concept plan for Newport Midwest at 10400, 10500 and 10550 Bren Road East

City Planner Loren Gordon gave the staff report.

Community Development Director Julie Wischnack discussed the funding sources for these housing projects.

Calvert asked what concerns staff had with the construction timeline. Wischnack explained the proposed timeline was extremely tight given the size and scope of the project.

Calvert requested further information regarding the soil conditions for the project. Gordon stated the site would take some work to engineer properly for water runoff.

Carter questioned what assurances were in place to ensure the market rate project was constructed. Wischnack commented this was a point that would have to be covered in the development agreement. She explained she did not have a good feeling about what the timeline was for this portion of the project.

Carter inquired if there had ever been a discussion about completing the market rate and affordable units together in one building. Wischnack stated she believed this would not be possible for financing reasons. She noted the shared common amenities were a benefit of having the two buildings next to each other.

Calvert commented on the financing that had been approved for the development by the Met Council. She asked if this would change given the fact the market rate and affordable housing units had been uncoupled. Wischnack explained the Met Council was concerned and wanted sureties that both buildings would be constructed.
Wiersum stated he believed the project before the council was brand new compared to the previous plans. He expressed concerns with the tight timeline for this project and asked if there was a percentage of the original project that could be salvaged to get this project moving along more quickly. Wischnack explained some of the architectural elements would be easy to replicate. She stated the stormwater design would have to be redone.

Wiersum questioned if the city would get the other part if the new project design were approved. Wischnack stated the problem was that the impact of the new project was different than the original plans.

Becky Landon, President of Newport Midwest, introduced herself to the council and discussed how the market has changed and explained the market rate apartments were not extremely viable at this time. However, she reported they remain committed to a mixed income community. She indicated she was working diligently to save the tax credits for the proposed 55 units of affordable housing. She reported she would have to obtain a certificate of occupancy by December of 2020 in order to preserve the 9% tax credits. She noted she was working with Colliers to secure a market rate developer to assist with this project. She stated the 55 unit affordable housing unit would take 12 months to construct.

Pete Keeley provided the council with a presentation on the revised site plan for the 55 unit affordable housing project. He discussed how the stormwater rules had changed for this project. He commented on the location of the play area noting the new location was less constrained. He was of the opinion the location of this development would benefit the tenants given its close proximity to the light rail line. He stated the new plan provides better access to the trail and transit for the affordable housing residents. It was noted the exterior building plans had not changed from the original plans.

Calvert stated when the original plans were submitted the city was excited about the proposed connection between the two buildings. However, it appears this connection has been lost in the revised plans. Ms. Landon explained the investors did not support a physical connection between the two buildings. She discussed how she was working to create a visual connection between the two buildings through landscaping and architecture. She noted she had every intent to have shared amenities between the two buildings.

Bergstedt commented on the tight timeline and how a new proposal was before the city. He asked what would happen if the developer did not have a certificate of occupancy come next December. Ms. Landon stated she would have a building without tax credits that would have to be rented out as market rate apartments.
Happe explained the developer was asking the city to trust that the market rate apartments would come, at some point in the future. He questioned how the developer has managed this type of situation in the past. Ms. Landon stated she made the decision the project would be in a better position to secure financing for the affordable housing portion first. She commented on how Newport Midwest looked for opportunities to provide affordable housing in supportive communities. She noted her developments were very reflective of the communities in which they were located. She stated her company takes on challenging developments which always have more risks.

Wiersum asked if there was any consideration in creating a larger affordable apartment complex versus two separate apartment buildings. Ms. Landon stated a number of different scenarios were considered and a fully affordable complex was proposed, but would only work with a significant amount of TIF. She commented another concern was if a larger affordable complex would be too much for this area of the city.

Wiersum commented on the tight timing for this project and explained the city would be challenged to complete this project by December of 2020. He questioned what was the drop dead date for the tax credits on when they could be returned to the state. Ms. Landon stated it was her understanding the tax credits could be returned to the state by the end of this year and the tax credits could still be assigned to another affordable housing project in Minnesota.

Bergstedt explained he had concerns with the tight timeline for this project. He stated he also understood that staff was concerned with this tight timeline. He indicated he appreciated the synergies within this housing project but stated he had concerns on when the market rate units would be constructed. He stated he wanted to be assured that proper due diligence was completed for this brand new plan and stated he was unsure if the proposed timelines were reasonable.

Calvert agreed with Bergstedt. She applauded the developer’s commitment to affordable housing. She explained she appreciated the original concept and was frustrated with the fact investors were unwilling to support mixed-income communities. She indicated she supported having affordable housing near the light rail, however, she feared the tight timeline was a concern given the fact this was a completely new plan.

Happe stated this was a unique concept but understood the timeline was tight. He explained the developer would be taking all of the risk in order to ensure a certificate of occupancy was obtained by December of 2020. He commented he would like to better understand if the proposed timeline could be met.

Carter indicated this was a brand new plan to her and she agreed with the disappointment for the funding on the investor side. She indicated she would like
assurances that the second building would be constructed. She commented she was conflicted because she wanted affordable housing options in the city, but understood there were timeline issues. However, she stated in the end, she would fully support the affordable housing project in the hopes the applicant would do right by the city and would construct the market rate apartments in the future.

Ellingson indicated he was willing to let the developer move forward with the revised affordable housing project.

Wiersum stated there was some level of disappointment that the project would not be moving forward as previously discussed. He estimated that 35% of the project could be saved from the original plans. He requested assurances on the second building and encouraged the developer to fail fast, versus failing slowly. He encouraged the developer to work diligently with staff on this project in order to meet the tight deadline. He stated he would support this project if staff says it can be done by December of 2020. However, if staff does not believe the project can be done, then he anticipated the project would fail quickly and the tax credits could be returned to the state.

City Manager Geralyn Barone asked how long the city had to approve an application, she noted the developer was hoping to have their request approved in 30 days. Wischnack reported the city had 120 days. She encouraged the applicant to set out a realistic timeline for this project. Wiersum thanked staff for this clarification.

Calvert commented staff has the council’s full support if it was not realistic to move this project forward in a professional manner with a limited timeframe. However, if there was a way to move the affordable housing portion of the project forward, she could support that as well.

Carter agreed and stated she would be leaning on staff for their expertise regarding this matter. She explained she did not want a precedent to be set with this development project, where fast decisions were expected for future affordable housing projects.

Wiersum indicated he did not want to put staff in a policy making position. Rather he wanted staff to make a recommendation to the council regarding the time table after submittal from the applicant.

Discussed concept plan with the applicant. No formal action required.
C. Items concerning OAKLAND ESTATES, a four-lot subdivision, at 1922 Oakland Road:

1. Resolution approving the final plat; and
2. Request to mass grade the site.

City Planner Loren Gordon gave the staff report.

Curt Fretham, Lake West Development, thanked the council and staff for their time. He discussed his desire to grade the property as was shown on the grading plan. He explained the grades on these lots were about 10 feet below the street which would make it hard to sell because of the great deal of grading that was required. He stated the four lot subdivision would benefit being graded at the same time versus individually.

Wiersum asked how the council wanted to address the grading issue.

Calvert indicated the council had already approved the preliminary plat. She explained she understood the developer’s concerns but noted the visual element Minnetonka residents really wanted was the trees. She stated she did not support a mass grading of the site.

Bergstedt agreed with Calvert and noted each of these lots would have to be custom graded in order to preserve trees.

Carter agreed with her colleagues noting she supported the final plat with denial of the request to mass grade the site.

Happe moved, Calvert seconded a motion to adopt Resolution 2019-051 approving the final plat and denying the applicant’s request to mass grade the site. All voted “yes.” Motion carried.

15. Appointments and Reappointments: None.
16.  Adjournment

Calvert moved, Carter seconded a motion to adjourn the meeting at 9:31 p.m. All voted “yes.” Motion carried.

Respectfully submitted,

Becky Koosman
City Clerk
City Council Agenda Item #9A
Meeting of July 22, 2019

Brief Description: Agreement for police and fire facility project construction manager services

Recommended Action: Approve the agreement

Background

Over the past several years, the city has been planning for the construction of a remodeled police facility and new building to house the fire department. The project is in the 2019-2023 Capital Improvement Program (CIP) at an estimated cost of $25,000,000. The city council gave final approval to the necessary land use applications at its regular meeting on Jan. 28, 2019. On March 18, 2019, the council authorized the issuance of $25,000,000 in general obligation bonds to finance the facility.

In March 2019, the city solicited competitive proposals utilizing the best value contracting method, as allowed by state law. Under the best value contracting, the city is allowed to consider not only price but also a number of other factors related to the contractor’s qualifications, including quality and timeliness of the contractor’s performance on previous projects. The published criteria specified that the construction budget was $22,000,000 and that proposals in excess of that amount may not be considered for selection.

Proposals were opened on April 16, 2019, in which two proposals were received in the amounts of $25,450,000 and $28,119,000. Both proposals exceeded the construction budget and the city’s architect, Wold Architects and Engineers, recommended that the proposals be rejected. This action was taken by council on May 6, 2019.

At the May 6, 2019 meeting, it was further discussed to move the project forward using a construction manager (CM) – contractor process. In conjunction with city staff and the architect, a construction manager can assist in reviewing the project plans for potential cost-saving methods from a constructability perspective. The construction manager would then oversee the work of the contractor(s) throughout construction and provide an additional project management resource for city staff. The construction manager form of contracting is commonly used by cities and counties and solicits competitive bids for the project construction. Examples of cities and counties that have utilized construction managers are: City of Burnsville Police and City Hall Remodel, City of Hopkins City Hall Remodel and Scott County Government Center.

Construction Manager at Risk Services

On June 5, 2019, and June 6, 2019, city staff conducted interviews for the Construction Manager at Risk (CMAR) delivery method to assist with the project construction. Selection for these professional services was based on cost, expertise, project history, staff commitments and experience with similar type projects. Staff interviewed six firms and selected Kraus-Anderson Construction Company. An agreement for these services is attached and has been reviewed by the city attorney. As a note, the contract delegates authority to the director of public works to approve change orders without council approval, provided that they are within the project budget.
The Construction Manager at Risk delivery method involves a commitment by the construction manager to deliver the project within a guaranteed maximum price (GMP), which is based on updated/revised construction documents and specifications. The construction manager will act as a consultant to the city with expertise in all construction aspects of a project of this type including not only construction methods, but also relocations, staging and schedule reductions. The CMAR would work directly with the architect and the city to look at ways to engineer the plans and specifications prior to assisting with the rebidding. This includes potential changes to items such as materials, equipment and schedule while considering impacts to the original project parameters and a goal of maintaining quality. The CMAR must further manage and control construction costs to not exceed the GMP, as contractually, any costs exceeding the GMP that are not changes to the scope are the financial liability of the CMAR. This delivery method will allow the city to have greater cost control on the project while creating a partnership with the CMAR.

**Agreement Costs**

Kraus Anderson Construction Company is proposing a two-phase approach as a part of their agreement as shown below. The preconstruction/bidding services of $12,500 would include all work up to the GMP. Once the GMP is prepared, the city has the option to determine if they choose to move forward with the project.

The construction phase/post construction fees are proposed by Kraus Anderson for staff hours estimated to manage the project and include project manager, superintendent, administrative and safety staff. The city would only be invoiced for hours expended. The agreement also includes a general construction management fee as shown based on a percentage of construction cost. Staff finds these costs in line with a project of this size.

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<tr>
<th>Phase</th>
<th>Estimated Cost</th>
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<tr>
<td>Pre-construction/bidding services</td>
<td>$12,500</td>
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<tr>
<td>Construction phase/post construction</td>
<td>$1,010,000</td>
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<tr>
<td>Construction management fee</td>
<td>$440,000</td>
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At this time, staff is requesting authorization from council for an internal loan for the contract of up to $1,500,000 from the special assessment construction fund to be reimbursed by future bond proceeds.

**Estimated Schedule**

The following schedule is preliminary and subject to change:

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<tr>
<th>Date</th>
<th>Description</th>
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<tr>
<td>July 22, 2019</td>
<td>Staff recommends CMAR contract for council approval</td>
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<tr>
<td>Fall 2019</td>
<td>Staff, architect and CMAR review, value engineer and revise bid documents to prepare GMP</td>
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<tr>
<td>Fall 2019/Winter 2020</td>
<td>Advertise for bids (2 packages – 1 site/1 buildings)</td>
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<td>Council awards contract(s) for construction and sets the date, approves terms and conditions for sale of the bonds and awards bonds</td>
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<tr>
<td>Estimated construction start</td>
<td>Estimated substantial completion</td>
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<td>Summer 2021</td>
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**Recommendation**

Enter into an agreement with Kraus Anderson Construction Company for the City of Minnetonka police and fire facility project and authorize an internal loan for the contract of up to $1,500,000 from the special assessment construction fund to be reimbursed by future bond proceeds.

Submitted through:
- Geralyn Barone, City Manager
- Corrine Heine, City Attorney
- Merrill King, Finance Director

Originated by:
- Will Manchester, P.E., Director of Public Works
AGREEMENT made as of the 22nd day of July in the year 2019
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status and address)
City of Minnetonka
14600 Minnetonka Blvd.
Minnetonka, MN 55345

and the Construction Manager:
(Name, legal status and address)
Kraus-Anderson Construction Company
501 South Eighth Street
Minneapolis, MN 55404

for the following Project:
(Name and address or location)
City of Minnetonka Police and Fire Addition and Renovation
14550 Minnetonka Blvd.
Minnetonka, Minnesota

The Architect:
(Name, legal status and address)
Wold Architects and Engineers
332 Minnesota Street, Suite W2000
Saint Paul, MN 55101

The Owner’s Designated Representative:
(Name, address and other information)
Will Manchester
Public Works Director
City of Minnetonka
11522 Minnetonka Blvd.
Minnetonka, MN 55345

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.
The Construction Manager’s Designated Representative:
(Name, address and other information)

Mark Kotten
Kraus-Anderson® Construction Company
501 South Eighth Street
Minneapolis, MN 55404

The Architect’s Designated Representative:
(Name, address and other information)

John McNamara
Wold Architects and Engineers
332 Minnesota Street
Suite W2000
Saint Paul, Minnesota 55101

The Owner and Construction Manager agree as follows.

**Agreement Title:** The Agreement shall be titled "Standard Form of Agreement Between Owner and Construction Manager at risk where the basis of the payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price."
TABLE OF ARTICLES

1  GENERAL PROVISIONS
2  CONSTRUCTION MANAGER'S RESPONSIBILITIES
3  OWNER'S RESPONSIBILITIES
4  COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
5  COMPENSATION FOR CONSTRUCTION PHASE SERVICES
6  COST OF THE WORK FOR CONSTRUCTION PHASE
7  PAYMENTS FOR CONSTRUCTION PHASE SERVICES
8  INSURANCE AND BONDS
9  DISPUTE RESOLUTION
10  TERMINATION OR SUSPENSION
11  MISCELLANEOUS PROVISIONS
12  SCOPE OF THE AGREEMENT

EXHIBIT A—GUARANTEED MAXIMUM PRICE AMENDMENT

ARTICLE 1  GENERAL PROVISIONS
§ 1.1 The Contract Documents
The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.2 Relationship of the Parties
The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager’s skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 1.3 General Conditions
For the Preconstruction Phase, AIA Document A201™–2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2007, which document is incorporated herein by reference. The term "Contractor" as used in A201–2007 shall mean the Construction Manager. Notwithstanding any language to the contrary in this Agreement or the A201–2007 General Conditions, as modified, the Construction Manager shall not be a constructor or otherwise perform any of the Work with its own forces or with affiliated entities.

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User Notes: CHECK

(1869894502)
ARTICLE 2  CONSTRUCTION MANAGER’S RESPONSIBILITIES
The Construction Manager’s Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The
Construction Manager’s Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction
Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of
the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall
identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.1 Preconstruction Phase
§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner’s program, schedule and
construction budget requirements, each in terms of the other.

§ 2.1.2 Consultation
The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters
as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise consult
with the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems
and equipment. The Construction Manager shall also provide recommendations consistent with the Project
requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for
procurement, installation and construction; and factors related to construction cost including, but not limited to, costs
of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall
prepare and periodically update a Project schedule for the Architect’s review and the Owner’s acceptance. The
Construction Manager shall obtain the Architect’s approval for the portion of the Project schedule relating to the
performance of the Architect’s services. The Project schedule shall coordinate and integrate the Construction
Manager’s services, the Architect’s services, other Owner consultants’ services, and the Owner’s responsibilities and
identify items that could affect the Project’s timely completion. The updated Project schedule shall include the
following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of
commencement and completion required of each Subcontractor; ordering and delivery of products, including those
that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

§ 2.1.4 Phased Construction
The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling,
procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost
information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

§ 2.1.5 Preliminary Cost Estimates
§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction
Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area,
volume or similar conceptual estimating techniques for the Architect’s review and Owner’s approval. If the Architect
or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide
cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and
Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the
Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement
and allowing for the further development of the design until such time as the Owner and Construction Manager agree
on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect’s review and the
Owner’s approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the
Work exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.1.6 Subcontractors and Suppliers
The Construction Manager shall develop bidders’ interest in the Project in a manner consistent with the
requirements for competitive bidding under Minn. Stat. § 471.345. The term “Subcontractor(s)” as used in this
Agreement and in the A201-2007 General Conditions shall mean the prime contractors that have publicly bid for and
been awarded contracts by the Owner, subject to assignment by Owner to Construction Manager.
§ 2.1.7 The Construction Manager shall prepare, for the Architect’s review and the Owner’s acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 2.1.8 Extent of Responsibility
The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require. Required and necessary changes shall be accomplished by appropriate Modification to the Contract Documents.

§ 2.1.9 Notices and Compliance with Laws
The Subject to Section 2.1.8, the Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time
§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner’s review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager’s estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager’s Fee.

§ 2.2.1 All contracts for the Work shall be publicly bid in accordance with Minnesota Statutes, Section 471.345 and awarded by the Owner. The bid solicitation documents must prohibit bidders from withdrawing their bids for a minimum of 45 days. After Owner has evaluated the bids and ranked the bid responses, but prior to the Owner’s award of contracts, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner’s review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager’s estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager’s Fee.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 2.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:
.1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
.2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
.3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager’s Fee;
.4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
.5 A date by which the Owner must accept the Guaranteed Maximum Price.
§ 2.2.4 In preparing the Construction Manager’s Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager’s exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised, revised and in accordance with the schedules agreed to by the Owner, Architect and Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 2.3 Construction Phase
§ 2.3.1 General
§ 2.3.1.1 For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.2 Administration
§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager’s own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection. The Work shall be performed under contracts assigned to the Construction Manager by the Owner on the basis of the bids awarded by the Owner pursuant to the public bid opening, which, upon such assignment by the Owner to Construction Manager, shall hereinafter be referred to as "subcontracts."

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner...
requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner. Intentionally Deleted.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus-cost-plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a “related party” according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2 Intentionally Deleted.

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information reasonably required by the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

§ 2.4 Professional Services
Section 3.12.10 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials
Section 10.3 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER’S RESPONSIBILITIES
§ 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, in a timely manner, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner’s objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner’s obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner’s ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change.
After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect. Intentionally Deleted.

§ 3.1.3 The Owner shall establish and periodically update the Owner’s budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner’s other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner’s budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project’s scope and quality.

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner’s control and relevant to the Construction Manager’s performance of the Work with reasonable promptness after receiving the Construction Manager’s written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner’s control and relevant to the Construction Manager’s performance of the Work with reasonable promptness after receiving the Construction Manager’s written request for such information or services.

§ 3.2 Owner’s Designated Representative
The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner’s representative shall have the authority to make decisions on behalf of the Owner and bind the Owner concerning the Project, and shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner’s authorized representative.

§ 3.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests. The Owner's Representative shall be Will Manchester and is hereby empowered to act on behalf of the Owner in all respects while performing the Owner's responsibilities under this Agreement. By approval of this Agreement, the Owner's city council delegates to the Owner's Representative the authority to make decisions required of the Owner under this Agreement, including approval of Change Orders and Change Directives; provided, however, that the Owner's Representative does not have authority to approve any Change Orders or Change Directives that would cause the Project to exceed the budget approved by the Owner's city council. Any increases in the budget for the Project must receive prior approval by Owner's city council.
§ 3.2.2 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner’s needs and interests, and as are necessary to provide the information and services required under Section 3.1. The Owner shall determine and advise the Architect and Construction Manager of any special legal requirements relating specifically to the Project which differ from those generally applicable to construction in the jurisdiction of the Project.

§ 3.3 Architect

The Owner shall retain as Architect and Engineers as Architect to provide services, duties and responsibilities as described in AIA Document B132™ - 2014, B103™ - 2007, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, as amended, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 For the Construction Manager’s Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager’s Preconstruction Phase services described in Sections 2.1 and 2.2: (Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

A lump sum of $12,500.00.

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within (—) months of the date of this Agreement, by January 20, 2020, through no fault of the Construction Manager, the Construction Manager’s compensation for Preconstruction Phase services shall be equitably adjusted.

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager’s personnel providing Preconstruction Phase services on the Project and the Construction Manager’s costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

§ 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 4.2.2 Payments are due and payable upon presentation thirty (30) days from the date of the Construction Manager’s invoice. Amounts unpaid (—) days after the invoice date for either Preconstruction Phase services or Construction Phase Services after the date on which payment is due shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager. (Insert rate of monthly or annual interest agreed upon.)

%—Four percent (4%) simple annual interest

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager’s performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds—funds for the Construction Manager’s performance of the Contract. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager’s Fee.

§ 5.1.1 The Construction Manager’s Fee: (State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager’s Fee.)

The Construction Manager’s Fee calculation will be done at the time the Guaranteed Maximum Price is established for the Project via the Guaranteed Maximum Price Amendment and shall be determined by multiplying the estimated Cost of the Work by a rate of two percent (2.0%). The Construction Manager’s Fee will become a fixed amount at the time the Guaranteed Maximum Price Amendment is executed and shall not be reduced. To the extent the Owner

Init./
contracts directly with any trade contractors or suppliers for portions of the Work on the Project ("Direct Owner Contracts"), the Construction Manager’s Fee calculation shall include the total amount of any such Direct Owner Contracts multiplied by a rate of two percent (2.0%) as compensation for the Construction Manager’s management and coordination of such Direct Owner Contracts on the Project.

§ 5.1.2 The method of adjustment of the Construction Manager’s Fee for changes in the Work:

The Construction Manager’s Fee shall be increased at the rate of two percent (2.0%) multiplied by the Cost of the Work for additive Change Orders.

§ 5.1.3 Limitations, if any, on a Subcontractor’s overhead and profit for increases in the cost of its portion of the Work:
Unit prices, if any:
(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

| Item | Units and Limitations | Price per Unit ($0.00) |

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed percent (-%) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:
(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

| Item | Units and Limitations | Price per Unit ($0.00) |

§ 5.2 Guaranteed Maximum Price
§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time, by changes in the Work as provided in the Contract Documents. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

(Insert specific provisions if the Construction Manager is to participate in any savings.)

§ 5.2.2.1 The difference (savings) between the Guaranteed Maximum Price less the final Cost of the Work less the Construction Manager’s Fee shall accrue seventy-five percent (75%) to the benefit of the Owner and twenty-five percent (25%) to the benefit of the Construction Manager.

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 5.3 Changes in the Work
§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201–2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner’s prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 and the terms "costs" and "profits" as used in Section 7.3.7 of AIA Document A201–2007.
shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner’s prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term “fee”-terms "fee" and "an amount for overhead and profit" shall mean the Construction Manager’s Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager’s Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager’s Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly. Intentionally Deleted.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed
§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner’s prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 6.2 Labor Costs
§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner’s prior approval, at off-site workshops, approval, at off-site workshops; provided, however, that the Construction Manager shall not perform any trade work with its own forces, other than miscellaneous general conditions items, all of such trade work having been separately bid and contracted for pursuant to the public bid laws. Such wages shall be charged at the hourly rates set forth below:

<table>
<thead>
<tr>
<th>Personnel Category</th>
<th>Rate Per Hour</th>
</tr>
</thead>
<tbody>
<tr>
<td>Laborer Foreman</td>
<td>$84.75/hour</td>
</tr>
<tr>
<td>Laborer Journeyman</td>
<td>$81.13/hour</td>
</tr>
<tr>
<td>Carpenter Foreman</td>
<td>$90.99/hour</td>
</tr>
<tr>
<td>Carpenter Journeyman</td>
<td>$88.09/hour</td>
</tr>
<tr>
<td>Operators</td>
<td>$93.05/hour</td>
</tr>
</tbody>
</table>

The rates set forth above shall be subject to adjustment in accordance with the applicable collective bargaining agreement as of May 1, 2020 and May 1 of each subsequent year.

§ 6.2.2 Wages or salaries of the Construction Manager’s supervisory and administrative personnel when stationed at the site with the Owner’s prior approval.

(If it is contemplated that the wages or salaries of certain personnel stationed at the Construction Manager’s principal or other office shall be included in the Cost of the Work, identify, in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work, site, at the Construction Manager’s principal office or offices, or elsewhere for the portion of their time spent in the performance of the Work at the hourly rates set forth below:

<table>
<thead>
<tr>
<th>Personnel Category</th>
<th>Rate Per Hour</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senior Project Manager</td>
<td>$143.00/hour</td>
</tr>
<tr>
<td>Project Manager</td>
<td>$124.00/hour</td>
</tr>
<tr>
<td>Project Superintendent</td>
<td>$121.00/hour</td>
</tr>
<tr>
<td>General Superintendent</td>
<td>$131.00/hour</td>
</tr>
<tr>
<td>Field Superintendent</td>
<td>$121.00 / hour</td>
</tr>
<tr>
<td>---------------------------</td>
<td>---------------</td>
</tr>
<tr>
<td>Clerical</td>
<td>$58.00 / hour</td>
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<tr>
<td>Accounting</td>
<td>$58.00 / hour</td>
</tr>
<tr>
<td>Safety Director</td>
<td>$131.00 / hour</td>
</tr>
<tr>
<td>Safety Engineer</td>
<td>$114.00 / hour</td>
</tr>
<tr>
<td>Quality Director</td>
<td>$124.00 / hour</td>
</tr>
<tr>
<td>MEP Specialist</td>
<td>$131.00 / hour</td>
</tr>
<tr>
<td>VDC/BIM</td>
<td>$110.00 / hour</td>
</tr>
</tbody>
</table>

The rates set forth above shall be in effect through December 31, 2019. Thereafter the rates shall be increased by three percent (3.0%) per year as of January 1 of each subsequent year.

§ 6.2.3 Wages and salaries of the Construction Manager’s supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work at the hourly rates set forth in Section 6.2.2.

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3—pensions for construction workers described in Section 6.2.1. Such costs for taxes, insurance, contributions, and assessments (excluding benefits) shall be forty-five percent (45%) of gross payroll. Gross payroll consists of wages and benefits.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments or incentive compensation paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner’s prior approval.

§ 6.3 Subcontract Costs
Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction
§ 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner’s property at the completion of the Work or, at the Owner’s option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items
§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools Construction Manager-owned materials, supplies, and tools not included on Exhibit “B” referenced in Section 6.5.2 that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner’s prior approval; total of the purchase price of any comparable item and
related owning and operating costs during the term of such item’s use on the Project. Rental charges for facilities, machinery, equipment, and hand tools rented from the Construction Manager shall be as set forth on the attached Exhibit "B". Other rental charges shall not be higher than standard rates at the place of the Project.

§ 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 6.5.5 That portion of the reasonable expenses of the Construction Manager’s supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner’s prior approval.

§ 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial projects. The premiums for other liability insurance, including, but not limited to, commercial general liability insurance, excess umbrella liability insurance, automobile liability insurance, professional liability insurance and pollution liability insurance, shall be charged as a Cost of the Work at the rate of ninety-five hundredths of one percent (0.95%) of the Guaranteed Maximum Price (excluding this charge), and such amount shall be considered approved by the Owner. Self-insured deductibles or retentions carried by the Construction Manager for amounts of the coverages required by the Contract Documents, with the Owner’s prior approval.

§ 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.

§ 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201–2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner’s consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager’s Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner’s prior approval.

§ 6.6.7 Deposits lost for causes other than the Construction Manager’s negligence or failure to fulfill a specific responsibility to the Owner as set forth in the Contract Documents.

§ 6.6.8 Legal, mediation and arbitration costs, including attorneys’ fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner’s prior approval, which approval shall not be unreasonably withheld.
§ 6.8 Costs Not To Be Reimbursed
§ 6.8.1 The Cost of the Work shall not include the items listed below:
1. Salaries and other compensation of the Construction Manager’s personnel stationed at the Construction Manager’s principal office or offices other than the site office, except as specifically provided in Section 6.2, 6.2 and 6.5.5, or as may be provided in Article 11;
2. Expenses of the Construction Manager’s principal office and offices other than the site office;
3. Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
4. The Construction Manager’s capital expenses, including interest on the Construction Manager’s capital employed for the Work;
5. Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
6. Any cost not specifically and expressly described in Sections 6.1 to 6.7;
7. Costs, other than costs included in Change Orders approved by the Owner, Owner or Construction Change Directives, that would cause the Guaranteed Maximum Price to be exceeded; and
8. Costs for services incurred during the Preconstruction Phase.

§ 6.9 Discounts, Rebates and Refunds
§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment therefor from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.10 Related Party Transactions
§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above. Notwithstanding anything in this Section 6.10 to the contrary, Kraus-Anderson Insurance Agency shall not be considered a "related party."

Init. /

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§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 Accounting Records
The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. Without limiting the preceding sentence, the detailed records must include a record of all sales taxes paid by subcontractors for materials and supplies used in and equipment incorporated into the Project, together with supporting invoices that show the date of the taxable transaction, a description of the materials, supplies or equipment on which sales tax was paid, the amount of sales tax paid, and the state to which the taxes were paid. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES
§ 7.1 Progress Payments
§ 7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

§ 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the tenth day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the last day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than twenty (20) days after the Architect receives the Application for Payment. Owner payment obligations to Construction Manager, and Construction Manager payment obligations to Subcontractors shall be governed by the Municipal Prompt Payment Act, Minnesota Statutes, Section 471.425, specifically including the requirement that Construction Manager pay Subcontractors within ten (10) days of receipt of payment from the Owner.

(Federal, state or local laws may require payment within a certain period of time.)

§ 7.1.4 With each the final Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, received invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such
data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager’s Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201–2007;

.2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

.3 Add the Construction Manager’s Fee, less retainage of percent (—%)—five percent (5.00 %) of the value of the Work completed. The Owner and the Construction Manager may agree upon retainage reductions. There shall be no retainage withheld on the Construction Manager’s Fee, the Construction Manager’s General Conditions costs, or material-only purchases made by the Construction Manager. The Construction Manager’s Fee shall be computed upon the Cost of the Work described in the two preceding clauses at the rate stated in Section 5.1 or, if the Construction Manager’s Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work described in the two preceding clauses bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.4 Subtract retainage of percent (—five percent (5.00 %) from that portion of the Work that the Construction Manager self-performs;

.5 Subtract the aggregate of previous payments made by the Owner;

.6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner’s auditors in such documentation; and

.7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 7.1.9 Except with the Owner’s prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 7.1.10 In taking action on the Construction Manager’s Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner’s auditors acting in the sole interest of the Owner.

§ 7.1.11 Upon Substantial Completion, all retainage and other amounts due Construction Manager shall be paid to Construction Manager in full less one hundred fifty percent (150%) of the reasonable estimated cost of any incomplete
Work and any unsettled Claims. Such withheld amount shall be paid to the Construction Manager monthly as such incomplete Work is completed and Claims are settled.

§ 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

.1 the Construction Manager has fully performed the Contract except for the Construction Manager’s responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment;

.2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and

.3 a final Certificate for Payment has been issued by the Architect.

The Owner’s final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect’s final Certificate for Payment, or as follows:

Payment or any binding determination of a dispute under the Contract Documents.

§ 7.2.2 The Owner’s auditors will review and report in writing on the Construction Manager’s final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner’s auditors report to be substantiated by the Construction Manager’s final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner’s auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect’s reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201–2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201–2007. The Architect is not responsible for verifying the accuracy of the Construction Manager’s final accounting.

§ 7.2.3 If the Owner’s auditors report the Cost of the Work as substantiated by the Construction Manager’s final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201–2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager’s receipt of a copy of the Architect’s final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner’s auditors becoming binding on the Construction Manager. If the Construction Manager fails to request mediation, Owner may request mediation at any time after the expiration of the 60-day period. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect’s final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner’s request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager’s Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201–2007, A201–2007 and as set forth in this Article 8.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)

§ 8.1 Insurance

§ 8.1.1 Worker’s Compensation

<table>
<thead>
<tr>
<th>Statutory</th>
<th>Each Accident</th>
</tr>
</thead>
<tbody>
<tr>
<td>(A) Worker’s Compensation</td>
<td>$100,000</td>
</tr>
</tbody>
</table>
(B) Employer’s Liability $ 500,000 Disease - Policy Limit
$ 100,000 Disease - Each Employee

§ 8.1.2 Commercial General Liability $ 2,000,000 General Aggregate
$ 2,000,000 Products/Completed Operations Aggregate
$ 1,000,000 Each Occurrence
$ 1,000,000 Personal & Advertising Injury
$ 500,000 Fire Damage
$ 10,000 Medical Expense

§ 8.1.3 Commercial Automobile Liability $ 1,000,000 Combined Single Limit Each Accident

§ 8.1.4 Umbrella Excess Liability $ 10,000,000 Combined Single Limit

§ 8.2 Bonds

§ 8.2.1 The Construction Manager shall be required to provide a Payment or Performance Bond pursuant to Section 11.4 of the A201-2007 General Conditions.

<table>
<thead>
<tr>
<th>Type of Insurance or Bond</th>
<th>Limit of Liability or Bond Amount ($0.00)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Performance and Payment Bond</td>
<td>100% of the Contract Sum.</td>
</tr>
</tbody>
</table>

§ 8.3 Builder’s Risk Insurance

§ 8.3.1 The Owner shall provide the Builder’s Risk Insurance.

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201-2007. However, for Claims arising from or relating to the Construction Manager’s Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:
(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

[ ] Arbitration pursuant to Section 15.4 of AIA Document A201–2007

[ X ] Litigation in a court of competent jurisdiction

[ ] Other: (Specify)

§ 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 for Claims arising from or relating to the Construction Manager’s Construction Phase services, unless the parties agree to appoint another individual, not a party to the Agreement, to serve as the Initial Decision Maker, or
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)
ARTICLE 10  TERMINATION OR SUSPENSION
§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price
§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days’ written notice to the Construction Manager for the Owner’s convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days’ written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager’s compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

1. Take the Cost of the Work incurred by the Construction Manager to the date of termination;
2. Add the Construction Manager’s Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager’s Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
3. Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price
Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2007.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager’s Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.
§ 10.3 Suspension
The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Construction Manager’s Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS
§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–2007.

§ 11.2 Ownership and Use of Documents
Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law
Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.4 Assignment
The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner’s rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, or makes such assignment with or without consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions:

§ 11.5.1 Notices: Any notice required or permitted to be given by any party upon another party is given in accordance with this Agreement if it is directed to the party by delivering it personally to the individuals described below or sent by United States certified mail, return receipt requested, postage properly addressed as follows or such other address as the parties may designate by written notice in the same manner.

If to Owner:
Will Manchester
Public Works Director
City of Minnetonka
11522 Minnetonka Blvd.
Minnetonka, MN 55305

If to Construction Manager:

Kraus-Anderson® Construction Company
Attn: Mark Kotten
501 South Eighth Street
Minneapolis, MN 55404

§ 11.5.2 Construction Phase Administration of Owner’s Direct Contractors
§ 11.5.2.1 To the extent the Owner contracts directly with any trade contractors or suppliers for portions of the Work on the Project ("Direct Owner Contractors"), the Construction Manager shall provide on-site administration of the Direct Owner Contracts in cooperation with the Architect as set forth below and in AIA Document A232™–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition.

§ 11.5.2.2 The Construction Manager shall provide administrative, management and related services to coordinate scheduled activities and responsibilities of the Direct Owner Contractors with each other and with those of the Construction Manager, Construction Manager’s Subcontractors, the Owner and the Architect.
§ 11.5.2.3 The Construction Manager shall update the Project schedule, incorporating the activities of the Owner, Architect, and Direct Owner Contractors on the Project.

§ 11.5.2.4 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner, Architect and Direct Owner Contractors.

§ 11.5.2.5 Utilizing information from the Direct Owner Contractors, the Construction Manager shall schedule and coordinate the sequence of construction and assignment of space in areas where the Direct Owner Contractors are performing Work, in accordance with the Contract Documents and the latest approved Project schedule.

§ 11.5.2.6 The Construction Manager shall endeavor to obtain satisfactory performance from each of the Direct Owner Contractors. The Construction Manager shall recommend courses of action to the Owner when requirements of a Contract are not being fulfilled.

§ 11.5.2.7 Not more frequently than monthly, the Construction Manager shall review and recommend payment of the amounts due the respective Direct Owner Contractors. The Construction Manager’s certification for payment shall constitute a representation to the Owner, based on the Construction Manager’s evaluations of the Work and on the data comprising the Contractors’ Applications for Payment, that, to the best of the Construction Manager’s knowledge, information and belief, the Work has progressed to the point indicated and the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Construction Manager. The issuance of a Certificate for Payment shall further constitute a recommendation to the Architect and Owner that the Contractor be paid the amount certified.

§ 11.5.2.8 The certification of an Application for Payment or a Project Application for Payment by the Construction Manager shall not be a representation that the Construction Manager has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences for the Direct Owner Contractor’s own Work, or procedures; (3) reviewed copies of requisitions received from subcontractors and material suppliers and other data requested by the Owner to substantiate the Direct Owner Contractor’s right to payment; or (4) ascertained how or for what purpose the Direct Owner Contractor has used money previously paid on account of the Contract Sum.

§ 11.5.2.9 The Construction Manager shall review the safety programs developed by each of the Direct Owner Contractors solely and exclusively for purposes of coordinating the safety programs with those of the other Contractors. The Construction Manager’s responsibilities for coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Direct Owner Contractors, Subcontractors, agents or employees of the Direct Owner Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

§ 11.5.2.10 The Construction Manager shall determine in general that the Work of each Direct Owner Contractor is being performed in accordance with the requirements of the Contract Documents and notify the Owner, Contractor and Architect of defects and deficiencies in the Work. The Construction Manager shall have the authority to reject Work that does not conform to the Contract Documents and shall notify the Owner and Architect about the rejection. Upon written authorization from the Owner, the Construction Manager may require and make arrangements for additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed, and the Construction Manager shall give timely notice to the Architect of when and where the tests and inspections are to be made so that the Architect may be present for such procedures.

§ 11.5.2.11 The Construction Manager shall have authority to act on behalf of the Owner only to the extent provided in this Agreement and AIA Document A233™–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition. The Construction Manager shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work of each of the Direct Owner Contractors. The Construction Manager shall be responsible to the Owner for the Construction Manager’s negligent acts or omissions, but shall not be responsible for acts or
omissions of the Direct Owner Contractors or their agents or employees or for a Direct Owner Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents.

§ 11.5.2.12 The Construction Manager shall review requests for changes, assist in negotiating Direct Owner Contractors' proposals, and submit recommendations to the Architect and Owner regarding such requests.

§ 11.5.2.13 When the Construction Manager considers each Direct Owner Contractor's Work or a designated portion thereof is substantially complete, the Construction Manager shall, jointly with the Contractor, prepare for the Architect a list of incomplete or unsatisfactory items and a schedule for their completion. The Construction Manager shall assist the Architect in conducting inspections to determine whether the Work or designated portion thereof is substantially complete.

§ 11.5.2.14 The Construction Manager shall coordinate the correction and completion of the Direct Owner Contractors' Work. Following issuance of a Certificate of Substantial Completion of the Work or a designated portion thereof, the Construction Manager shall evaluate the completion of the Work of the Direct Owner Contractors and make recommendations to the Architect when Work is ready for final inspection. The Construction Manager shall assist the Architect in conducting final inspections.

§ 11.5.2.15 The Construction Manager shall forward to the Owner, with a copy to the Architect, the following information received from the Direct Owner Contractors: (1) certificates of insurance received from the Direct Owner Contractors; (2) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (3) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (4) any other documentation required of the Direct Owner Contractor under the Contract Documents, including warranties and similar submittals.

ARTICLE 12  SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The following documents comprise the Agreement:

1. AIA Document A133™-2009, Standard Form of Agreement Between Owner and Construction Manager as Contractor at risk where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as amended

2. AIA Document A201-2007, General Conditions of the Contract for Construction, as amended

3. AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:

4. AIA Document E202™-2008, Building Information Modeling Protocol Exhibit, if completed, or the following:

5. Other documents:
   (List other documents, if any, forming part of the Agreement.)

   Exhibit A – GMP Amendment (when signed by the Owner and Construction Manager)
   Exhibit B – Tools and Equipment Rates
This Agreement is entered into as of the day and year first written above.

City of Minnetonka

OWNER (Signature)

(Printed name and title)

Kraus-Anderson Construction Company

CONSTRUCTION MANAGER (Signature)

(Printed name and title)
Certification of Document's Authenticity
AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 10:14:51 ET on 07/17/2019 under Order No. 0776015799 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133TM – 2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

(Signed)

(Title)

(Dated)
for the following PROJECT:
(Name and location or address)
Police and Fire Addition and Renovation
14550 Minnetonka Boulevard
Minnetonka, Minnesota 55345

THE OWNER:
(Name, legal status, (Name and address)
City of Minnetonka
14600 Minnetonka Boulevard
Minnetonka, Minnesota 55345

THE ARCHITECT:
(Name, legal status, (Name and address)
Wold Architects and Engineers
332 Minnesota Street
Suite W2000
Saint Paul, Minnesota 55101

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User Notes:

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ARTICLE 1   GENERAL PROVISIONS
§ 1.1 BASIC DEFINITIONS
§ 1.1.1 THE CONTRACT DOCUMENTS
The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor’s bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.1.2 THE CONTRACT
The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect’s consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect’s consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect’s duties.

§ 1.1.3 THE WORK
The term “Work” means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor’s obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT
The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS
The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS
The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE
Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect’s consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL-ARCHITECT/INITIAL DECISION MAKER
The Initial-Architect/Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.1.9 SITE
The term Site refers to that portion of the Property on which the Work is to be performed or which has been otherwise set aside for use by the Contractor.

§ 1.1.10 PUNCH LIST
The term Punch List means, collectively, unfinished items of the construction of the Project, which unfinished items of construction are minor or insubstantial details of construction, mechanical adjustment or decoration remaining to

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be performed, the non-completion of which would not materially affect the use of the Project, and which are capable of being completed within thirty (30) days of Substantial Completion, subject to the availability of special order parts and materials.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS
§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

1. The Agreement
2. Change Orders and Supplemental Instructions.
3. Addenda, with those of later date having precedence over those of earlier date.
4. The Supplementary Conditions.
5. The General Conditions of the Contract for Construction.
6. Drawings and Specifications.

§ 1.3 CAPITALIZATION
Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION
In the interest of brevity the Contract Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE
§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment owners of, and copyrights in and to, the Instruments of Service are governed by the Owner's agreement with Architect. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants', Architect's, Architect's consultants', or Owner's reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.
§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM
If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, prior to commencement of Work they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER
§ 2.1 GENERAL
§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner’s approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term “Owner” means the Owner or the Owner’s authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic’s lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner’s interest therein.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER
§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner’s obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner’s ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. Work with the exception of utilities to be field verified by the Contractor. The Contractor shall be responsible to have public and private utilities located within the areas being disturbed to implement the work on site.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner’s control and relevant to the Contractor’s performance of the Work with reasonable promptness after receiving the Contractor’s written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2, up to (8) eight copies of the Contract Documents. Following the initial issue of Drawings and Project Manuals, additional copies requested by the Contractor will be furnished at the cost of reproduction, postage and handling.

§ 2.3 OWNER’S RIGHT TO STOP THE WORK
If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.


User Notes:
§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK
If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner, to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term “Contractor” means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect’s administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and of construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review pursuant to Section 3.2 is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require; and necessary changes shall be accomplished by appropriate Modification to the Contract Documents.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract.
3.3 SUPERVISION AND CONSTRUCTION PROCEDURES
3.3.1 The Contractor shall supervise and direct the Work, using the Contractor’s best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, as between the Owner and the Contractor except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage to the extent arising solely from those Owner-required means, methods, techniques, sequences or procedures.

3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor’s employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

3.4 LABOR AND MATERIALS
3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. After the Contract has been executed, the Owner and Architect will consider a formal request for the substitution of products in place of those specified only under the conditions set forth in Section 01 25 00 – Substitutions and Product Options.

3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor’s employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Persons permitted to perform Work under Contractor or any Subcontractor or Sub-Subcontractor shall meet all employment eligibility, safety training, security or drug/alcohol testing requirements required and permitted by law. Any person not complying with all such requirements shall be immediately removed from the Site.

3.5 WARRANTY
3.5.1 The Contractor warrants to the Owner and Architect for a period of one-year after the date of Substantial Completion of the Work or designated portion thereof or after the date of commencement of warranties established under Subparagraph 9.9.1 that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants for a period of one-year after the date of Substantial Completion of the Work or designated portion thereof or after the date of commencement of warranties established under Subparagraph 9.9.1 that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor’s warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

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§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.5.3 The Contractor’s general warranty and any additional or special warranties are not limited by the Contractor’s obligations to specifically correct defective or nonconforming Work as provided in Article 12.

§ 3.5.4 The Contractor must furnish all special warranties required by the Contract Documents to the Owner no later than Substantial Completion.

§ 3.6 TAXES
The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. The Contractor and all Subcontractors must keep detailed records of all sales or use taxes paid for materials and equipment purchased as part of the Work. The Contractor must provide documentation of such sales taxes paid as required by Section 9.3.

§ 3.7 PERMITS, FEES, NOTICES, NOTICES, AND COMPLIANCE WITH LAWS
§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for all permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. The Owner will pay City Development Fees, Metropolitan Waste Control Commission (MWCC) Sewer Availability Charge (SAC), Water Availability Charge (WAC), and Electrical Connection Charges.

The Owner has paid $0 for the plan review fee; the Contractor is responsible to pay any remaining plan review fees, the building permit and surcharge fee to the local jurisdiction.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide written notice to the Owner and the Architect before conditions are disturbed and in no event later than twenty-one (21) days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor’s cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect’s determination or recommendation, that party may proceed to submit a Claim as provided in Article 45-15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of human remains, burial markers, or archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features.

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Requests for adjustments in If such conditions are encountered, the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided shall be equitably adjusted, subject to the claim provisions set forth in Article 15.

§ 3.8 ALLOWANCES
§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

.1 Allowance allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

.2 Contractor’s costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the such stated allowances; and

.3 Whenever whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor’s costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness in sufficient time to avoid delay in the Work.

§ 3.9 SUPERINTENDENT AND PROJECT MANAGER
§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent Contractor’s Project Manager shall represent the Contractor, and communications given to the superintendent Contractor’s Project Manager shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether The Contractor’s Project Manager must provide his or her email address and cell phone number to Owner and Architect and must be available to be contacted during all business hours, and outside of business hours in the event of an emergency.

the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.2 When requested by the Owner or Architect, the project manager shall:

1. Assist in resolving scope conflicts between sub-contractors in a timely fashion to ensure project progress matches published construction schedule.

2. Have sub-contractors attend construction progress meetings.

3. Manage the resolution of issues that arise during the punchlist/closeout/warranty period when the job superintendent is no longer on site.

§ 3.9.3 The Contractor shall not employ a proposed superintendent or Project Manager to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent or Project Manager without the Owner’s consent, which shall not unreasonably be withheld or delayed unless such person becomes unable to perform his or her duties due to death, disability, resignation, or termination of employment. If the superintendent or Project Manager is no longer capable of performing his or her duties as described above, the Contractor shall promptly submit to the Owner the resume of any person Contractor requests to instate as a substitute, and unless the Owner reasonably objects, such person shall be substituted.

§ 3.10 CONTRACTOR’S CONSTRUCTION SCHEDULES
§ 3.10.1 The Contractor, promptly after being awarded within twenty-one (21) days of the execution of the Contract, shall prepare and submit for the Owner’s and Architect’s information a Contractor’s construction schedule for the Work. Work as required by Section 01 32 00 Construction Scheduling. The schedule shall not exceed time limits.
current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. Thereafter, the Contractor shall prepare and update the construction schedule on a monthly basis ("Current Construction Schedule"), if not more frequently at the Contractor’s discretion, to be submitted to the Owner with each Application for Payment.

§ 3.10.2 The Contractor shall prepare a submittal schedule, Contractor, within twenty-one (21) days of the execution of the Contract, shall prepare a submittal schedule as required by Section 01 32 00 Construction Scheduling, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Owner and Architect’s approval. The Owner and Architect’s approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor’s construction schedule, and (2) allow the Owner and Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the Owner and Architect’s time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to and approved by the Owner and Architect.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE
The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders, make available, at the Project site, the Contract Documents, including Change Orders, Current Construction Schedule, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be the approved Shop Drawings, Product Data, Samples, and similar required submittals. The Contractor shall display a Current Construction Schedule at the Site for reference and reliance by the Owner and Architect. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES
§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action. Shop drawings submitted prior to issuance of the building permit are at the Contractors risk.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Separate Contractors. The Contractor must provide the Owner and the Architect with copies of all submittals made to regulatory agencies.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified...
materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect. The Contractor must correct at its cost, and without any adjustment in Contract Time, any Work the correction of which is required due to the Contractor's failure to obtain approval of a submittal required to have been obtained prior to proceeding with the Work, including, but not limited to, correction of any conflicts in the work resulting from such failure.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of review of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.2 Except as may be specifically provided in the Contract Documents, the Contractor shall provide all necessary temporary facilities, including power, water, sanitation, scaffolding, storage, and security.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored as close as reasonably
practicable under the circumstances to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor’s consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP
§ 3.15.1 Subject to Section 3.2.3, Work will be performed in accordance with the Contract Documents and the Minnetonka City Code or other applicable law governing the Contractor’s performance of the Work in effect as of the date of the Agreement. The Contractor must not permit work outside of hours established in the Contract Documents on a Saturday, Sunday or other City/County, State or federal holiday without the written consent of the Owner, given after prior written notice to the Owner and Architect. The Contractor must notify the Owner as soon as possible if Work must be performed outside such times in the interest of the safety and protection of persons or property at the Site or adjacent thereto, or in the event of an emergency. In no event shall the Contractor permit Work to be performed at the Site without the presence of the Contractor’s superintendent and person responsible for the protection of persons and property at the Site, if different from the superintendent.

§ 3.15.2 The Contractor must comply with the Minnetonka City Noise Ordinance (Section 850) of the Minnetonka City Code and any successor or substitute provisions covering the regulation of noise levels. It is the duty of the Contractor to familiarize itself with those provisions and perform the Work in compliance with those provisions.

§ 3.15.3 The Contractor must keep the Site and adjacent areas free from accumulation of waste materials or rubbish caused by operations under the Contract-Contract, and must keep tools, construction equipment, machinery and surplus materials suitably stored when not in use. If the Contractor fails to do so in a manner reasonably satisfactory to the Owner or the Architect within forty-eight (48) hours after notice or as otherwise required by the Contract Documents, the Owner may clean the Site and back charge the Contractor for all costs associated with the cleaning. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor’s tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.4 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK
The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS
The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturer is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION
§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect’s consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys’ fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or
anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers’ compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term “Architect” means the Architect or the Architect’s authorized representative.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner’s representative during construction until the end of the warranty period which ends one year from the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor’s rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor’s failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect’s consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.
§ 4.2.5 Based on the Architect’s evaluations of the Contractor’s Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action, one of the following actions: Rejected; Review Comments; Revise and Resubmit. upon the Contractor’s submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect’s action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness so as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect’s professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, coordinating the work, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect’s review of the Contractor’s submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect’s review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect’s approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner’s review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect’s responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect’s response to such requests will be made within a time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect’s decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect’s response to such requests will be made within any time limits agreed upon or otherwise with reasonable promptness. promptness, but in no event later than fifteen (15) days after receipt of such request. If
appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection. Work shall be performed under contracts assigned to the

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor’s Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.Construction Manager by the Owner on the basis of the bids awarded by the Owner pursuant to the public bidding process.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor’s Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

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§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS
§ 5.4.1 Each subcontract agreement for a portion of the Work assigned to the Contractor as described in Section 5.2.1 is assigned by the Contractor to the Owner, provided that

1. assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
2. assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor’s rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor’s compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor’s obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
§ 6.1 OWNER’S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS
§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner’s own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term “Contractor” in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner’s own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner’s own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY
§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor’s construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor’s Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner’s or separate contractor’s completed or partially completed construction is fit and proper to receive the Contractor’s Work, except as to defects not then reasonably discoverable.
§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Owner, separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP
If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK
§ 7.1 GENERAL
§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.2 CHANGE ORDERS
§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:
  .1 The change in the Work;
  .2 The amount of the adjustment, if any, in the Contract Sum; and
  .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Change Proposals. The Contractor must submit change proposals covering a contemplated Change Order within a reasonable time after request of the Owner, or the Architect or within a reasonable time after the event giving rise to the Contractor's claim for a change in the Contract Sum or Contract Time. No increase in the Contract Sum or extension of the Contract time will be allowed for the Contractor for the cost or time involved in making change proposals. Change proposals will define or confirm in detail the Work which is proposed to be added, deleted, or changed and must include any adjustment which the Contractor believes to be necessary in (i) the Contract Sum, or (ii) the Contract Time. any proposed adjustment must include detailed documentation including but not limited to: cost, properly itemized and supported by sufficient substantiating data to permit evaluation including cost of labor, materials, supplies and equipment, rental cost of machinery and equipment, additional bond cost, plus the Contractor's Fee.

§ 7.2.3 If the Owner determines that a change proposal is appropriate, the Architect will prepare and submit a request for a Change Order providing for an appropriate adjustment in the Contract Sum or Contract Time, or both, for further action by the Owner. No Change Order is effective until the Owner, Contractor and Architect sign the Change Order.

7.2.3 Methods used in determining adjustments to the Contract Sum may include those listed in Section 7.3.3.
§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
.2 Unit prices stated in the Contract Documents or subsequently agreed upon;
.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
.4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner and Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

.1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
.2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
.5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.
§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect’s professional judgment, to be reasonably justified. The Architect’s interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK
The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

ARTICLE 8 TIME
§ 8.1 DEFINITIONS
§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term “day” as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION
§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion of the Project and any interim Substantial Completion dates within the Contract Time. If Contractor’s Work shall fall behind schedule for reasons that are not excused under the terms of the Contract, Contractor shall add additional workers or shifts, and/or work overtime as necessary to maintain the Construction Schedule.

§ 8.2.4 The Contractor represents that the Contract Sum includes all costs, overhead and profit which may be incurred throughout the Contract Time and the period between Substantial and final Completion. Accordingly, the Contract may not make any claim for delay damages based in whole or in part on the premise that the Contractor would have completed the Work prior to the expiration of the Contract Time but for any claimed delay.

§ 8.2.5 Float is a measurement of time indicating how late any activity or group of activities in a schedule can be completed without impacting the critical path and the scheduled end date of the Project. Float is a shared commodity for use of the Owner and the Contractor (and if applicable any Separate Contractors) and is not for the exclusive use of any one party. The parties have full use of the float until it is depleted.
§ 8.3 DELAYS AND EXTENSIONS OF TIME
§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor’s control; or by delay authorized by the Owner pending mediation and arbitration; or by delay resulting from arbitration or litigation as provided herein; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9  PAYMENTS AND COMPLETION
§ 9.1 CONTRACT SUM
The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES
Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit four copies to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor’s Applications for Payment.

§ 9.2.2 Projects with multiple sites or multiple phased projects, provide separate schedule of values for each building, phase or site.

§ 9.2.3 The schedule of values shall be broken down with separate line items for labor and materials corresponding to each specification section.

§ 9.3 APPLICATIONS FOR PAYMENT
§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit four copies to the Architect an itemized Application for Payment (AIA Document G702 and G703) prepared in accordance with the schedule of values, if required under Section 9.2.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor’s right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. When an Application for Payment includes any materials or equipment purchased as part of Work on which the Contractor paid sales or use taxes, the Application for Payment must be supported by a copy of the original invoice for the taxed item, with the amount and percentage rate of sales or use tax clearly identified.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner’s title to such
materials and equipment or otherwise protect the Owner’s interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor’s knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor’s Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect’s reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect’s evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect’s knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor’s right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect’s opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect’s opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

1. defective Work not remedied;
2. third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
3. failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
4. reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
5. damage to the Owner or a separate contractor;
6. reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
7. repeated failure to carry out the Work in accordance with the Contract Documents; or
8. schedules are not updated in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the


User Notes:
Contractor failed to make payment for amounts owed to such Subcontractor or material or equipment supplier for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS
§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven (7) days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor’s portion of the Work. Per 471.425 Minnesota Statutes, the prime contractor must pay any subcontractor within ten (10) days of the prime contractor’s receipt of payment from the Public Body/Owner for undisputed services provided by the subcontractor. The prime contractor must pay the subcontractor interest on any undisputed amounts not paid on time as provided in Section 471.425. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Subsubcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven (7) days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 FAILURE OF PAYMENT
If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor’s Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days’ written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor’s reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 SUBSTANTIAL COMPLETION
§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of
items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor’s list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect’s inspection discloses any item, whether or not included on the Contractor’s list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish complete all items on the list accompanying the Certificate, which shall be reasonable under the circumstances. The Contractor will submit a punchlist completion schedule within ten (10) days of receipt of Certificate of Substantial Completion. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. Warranties on punchlist items will commence on the date of final payment.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents as set forth in the Agreement.

§ 9.9 PARTIAL OCCUPANCY OR USE
§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT
§ 9.10.1 Upon receipt of the Contractor’s written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect’s knowledge, information and belief, and on the basis of the Architect’s on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect’s final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor’s being entitled to final payment have been fulfilled.
§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, including, without limitation, MN IC-134 Withholding Affidavit for Contractors (re: certification of satisfaction of state withholding taxes paid) for itself and all Subcontractors (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

1. lien, Claims, security interests or encumbrances arising out of the Contract and unsettled;
2. failure of the Work to comply with the requirements of the Contract Documents; or
3. terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

1. employees on the Work and other persons who may be affected thereby;
2. the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor’s Subcontractors or Sub-subcontractors; and
3. other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor’s obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor’s organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor’s superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY
If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS
§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, if a material or substance reasonably believed by the Contractor to be hazardous, toxic, petroleum or a constituent thereof, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor’s written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor’s reasonable additional costs of shut-down, delay and start-up.
§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect’s consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys’ fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to the presence on the site of any (a) hazardous or toxic material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), (b) petroleum or a constituent thereof, or (c) any material or substance that might cause bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), property, except to the extent that such damage, loss or expense is due to the sole fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor’s fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, provided that such material or substance was not required by the Contract Documents, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner’s fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.4 EMERGENCIES
In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor’s discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS
§ 11.1 CONTRACTOR’S LIABILITY INSURANCE
§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor’s operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

.1 Claims under workers’ compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor’s employees;
.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor’s employees;
.4 Claims for damages insured by usual personal injury liability coverage; which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor, or (2) by another person;
.5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
.6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
.7 Claims for bodily injury or property damage arising out of completed operations; and
.8 Claims involving contractual liability insurance applicable to the Contractor’s obligations under Section 3.18.

9 Commercial General Liability insurance shall include all major divisions of coverage and be on a comprehensive basis including:
a. Premises Operations (including X, C, and U coverages as applicable).
b. Independent Contractors’ Protective.
c. Products and Completed Operations.

10 A General Liability or Umbrella Liability Policy on a claims-made basis will not be accepted.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents Agreement or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor’s completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents, two years after Substantial Completion of the Work.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days’ prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness. If this insurance is written on the Comprehensive General Liability policy form, the Certificates shall be AIA Document G705, Certificate of Insurance. If this insurance is written on a Commercial General Liability policy form, ACORD form 25S will be acceptable. In addition to the required certificates, copies of policy endorsements indicating the Owner as Additional Insured shall be provided to the Owner.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect’s consultants as additional insureds; Owner as additional insured for claims caused in whole or in part by the Contractor’s negligent acts or omissions during the Contractor’s operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor’s negligent acts or omissions during the Contractor’s completed operations.

§ 11.2 OWNER’S LIABILITY INSURANCE
The Owner shall be responsible for purchasing and maintaining the Owner’s usual liability insurance.

§ 11.3 PROPERTY INSURANCE
§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder’s risk “all-risk” or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an “all-risk” or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsehood,
testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect’s and Contractor’s services and expenses required as a result of such insured loss.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner-Contractor shall pay costs not covered because of such deductibles, deductibles as a Cost of the Work.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 11.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE
The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds. The testing exclusion shall be removed from this policy.

§ 11.3.3 LOSS OF USE INSURANCE
The Owner, at the Owner’s option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner’s property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner’s property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days’ prior written notice has been given to the Contractor.

§ 11.3.7 WAIVERS OF SUBROGATION
The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect’s consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees,
for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect’s consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner’s property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgage clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner’s duties. The cost of required bonds shall be charged against proceeds received as fiduciary-received. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. After such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner’s exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall arbitrators shall be chosen as provided in Paragraph 15.4. The Owner shall in that case make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions § 11.3.11 In the event of partial occupancy or use in accordance with Paragraph 9.9, the Owner shall notify the insurance company and obtain a “Use and Occupancy Waiver” such that the policy will not be invalidated by occupancy.

§ 11.3.12 All insurance policies shall contain a provision stating that coverages afforded under any of the aforesaid insurance policies shall not be cancelled or materially changed without at least thirty (30) days prior written notice to the Owner.

§ 11.3.13 All insurance policies shall be underwritten with responsible insurance carriers with Best’s Rating of not less than A and X and otherwise satisfactory to the Owner and licensed to provide insurance in the state in which the project is located. Non-admitted carriers may be considered on an individual basis.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering Contractor shall furnish bond or bonds as described below, covering the faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required the payments of all obligations arising thereunder. The Contract will not be signed until the Owner has received the proper bond specified under this Article, issued by a bonding company licensed to do business in the State where the construction will take place, and on the current list of Company’s Holding Certificates of Authority as acceptable Sureties on Federal Bonds and as acceptable reinsuring companies as published in Circular 570 (Amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. All bonds signed by an agent must be accompanied by a certified copy of the authority to act.
§ 11.4.1.1 Furnish both AIA A312 Performance Bond and AIA A312 Payment Bond in the Contract Documents on the amount of 100% of the Contract Price.

§ 11.4.1.2 The Performance Bond and Payment Bond shall be submitted in the exact form specified in Section 11.4.1.1, above, and with the certificates specified in Section 11.4.1.3, below, and no other modifications or addendum whatsoever shall be allowed.

the date of execution, § 11.4.1.3 Duly executed, notarized and updated Acknowledgements of both the Principal and Surety and the Surety’s Power of Attorney must be attached to each of the two required bonds.

of the Contract, § 11.4.1.4 Bond amounts shall not exceed the single bond limit for the Contractor’s bonding company as set forth in the Federal Register current as of the bid date.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK
§ 12.1 UNCOVERING OF WORK
§ 12.1.1 If a portion of the Work is covered contrary to the Architect’s request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect’s examination and be replaced at the Contractor’s expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner’s expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor’s expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK
§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION
The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect’s services and expenses made necessary thereby, shall be at the Contractor’s expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION
§ 12.2.2.1 In addition to the Contractor’s obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner or Architect to do so unless the Owner or Architect has previously given the Contractor a written acceptance of such condition. The Owner or Architect shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner or Architect fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.
§ 12.2.3.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor’s correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor’s liability with respect to the Contractor’s obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK
If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS
§ 13.1 GOVERNING LAW
The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 13.4 located, excluding that jurisdiction’s choice of law rules.

§ 13.2 SUCCESSORS AND ASSIGNS
§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall bind the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner’s rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE
Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES
§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS
§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public
authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor must schedule all tests, inspections or specific approvals required by law or the Contract Documents so as to avoid any delay in the Work. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner’s expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect’s services and expenses shall be at the Contractor’s expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST
Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 13.7 TIME LIMITS ON CLAIMS
The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in no case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

§ 13.8 EQUAL OPPORTUNITY
§ 13.8.1 The Contractor shall maintain policies of employment as follows:
§ 13.8.1.1 The Contractor and the Contractor’s Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of non-discrimination.
§ 13.8.1.2 The Contractor and the Contractor’s Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.

§ 13.9 NON-MINNESOTA CONTRACTOR. Non-Minnesota Contractors for contracts that exceed or can reasonably be expected to exceed $100,000 shall comply with the following Minnesota Department of Revenue Requirements (MN Law, MS 290.9705):

§ 13.9.1 File form SDE (Exemption from Surety Deposits for Non-Minnesota Contractors) with the Minnesota Revenue, Mail Station 6501, St. Paul, Minnesota 55146-6501. An exemption will be granted if:

1. The Contractor provides a cash surety or bond (8% of total contract), secured by an Insurance Company licensed in Minnesota, which guarantees compliance with all provisions of Minnesota withholding, sales and corporate income tax laws, or:

2. The Contractor provides evidence of full compliance with such laws on previous construction work in Minnesota during the last three years.

§ 13.9.2 Submit a copy of form SDE, certified by the Department of Revenue, with the Contractor’s initial Application for Payment.

§ 13.9.3 If an exemption is not granted, 8 percent of each Application for Payment will be withheld as surety and deposited with the Department of Revenue, to be refunded with interest after the Contractor’s State tax obligations are fulfilled.

§ 13.10 FIREARMS PROHIBITED

§ 13.10.1 No provider of services pursuant to this contract, including but not limited to employees, agents, suppliers or subcontractor’s of the Contractor shall carry or possess a firearm on the Owner’s premises or while acting on behalf of the Owner pursuant to the terms of this agreement. Violation of this provision shall be considered a substantial breach of the Agreement; and, in addition to any other remedy available to the Owner under law or equity. Violation of this provision is grounds for immediate suspension or termination of this contract.

§ 13.11 RESPONSIBLE CONTRACTOR REQUIREMENTS

§ 13.11.1 The Contractor shall comply with the requirements of Minnesota Statutes 16C.285.

§ 13.12. DOCUMENT RETENTION AND AUDIT PROVISIONS

.1 Audit Disclosure. The Contractor must allow the Owner or its duly authorized agents reasonable access to the Contractor’s books and records that are pertinent to all services provided under the Contract, including books and records of any approved subcontractors, for six years after the effective date of the Contract.

.2 Government Data. Contractor acknowledges that all of the data created, collected, received, stored, used, maintained or disseminated by Contractor in performing the Contract may be subject to the disclosure requirements of the Minnesota Government Data Practices Act (Minn. Stat. ch. 13, the “MGDPA”), and that Contractor must assist the Owner with any requests for data under the MGDPA. Contractor agrees to promptly notify Owner of any request for data that Contractor receives related to this Agreement.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

1. Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

2. An act of government, such as a declaration of national emergency that requires all Work to be...
stopped;

3. Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or

4. The Owner has failed to furnish to the Contractor promptly, upon the Contractor’s request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days’ written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner’s obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days’ written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract for cause if the Contractor

1. repeatedly refuses or fails to supply enough or adequate properly skilled workers or proper materials;

2. fails to make payment to Subcontractors or suppliers for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;

3. repeatedly disregards, fails to comply with any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority, orders of a public authority having jurisdiction related to the Contractor’s performance of the Work;

4. otherwise is guilty of substantial breach of a provision of the Contract Documents, fails to perform the Work in accordance with the Contract Documents or otherwise materially breaches any provision of the Contract Documents;

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies, the Owner may terminate the Contract after providing the Contractor with seven days’ written notice to cure the default. If the default is not cured, the termination for default is effective on the date specified in the Owner’s written notice of the Owner and after giving the Contractor § 14.2.3 Upon receipt of written notice from the Owner of termination, the Contractor must:

and the Contractor’s surety, if any, seven days’ written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

1. cease operations as directed by the Owner in the notice and, if required by the Owner, participate in an inspection of the Work with the Owner and the Architect to record the extent of completion thereof; to identify the Work remaining to be completed or corrected, and to determine what temporary facilities, tools, equipment and construction machinery are to remain at the Site pending completion of the Work;

2. exclude the Contractor; take actions necessary, or that the Owner may reasonably direct, for the protection and preservation of any stored materials and equipment and completed Work; from the site;

3. remove its tools, equipment and construction machinery from the Site, and

4. except as directed by the Owner, terminate all existing subcontracts and purchase orders and enter into no further subcontracts or purchase orders.
§ 14.2.4 Following written notice from the Owner of termination, the Owner may:
take possession of all materials, equipment, tools, and—
1. take possession of the Site and of all materials and
   equipment thereon, and at the Owner’s option, such temporary facilities, tools, construction
   equipment and machinery thereon owned by the Contractor or rented by the Contractor that the
   Owner elects to utilize in completing the Work;
2. Accept assignment of subcontracts pursuant to Section 5.4;  
3. accept assignment of subcontracts and purchase
   orders, and
   3. complete the Work by whatever reasonable method the Owner may deem expedient.

Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work. § 14.2.5 Upon termination for cause, the Contractor must take those actions described in Section 14.2.3, and the Owner may take those actions described in Section 14.2.4, subject to the prior rights of the Contractor’s Surety.

§ 14.2.3-14.2.6 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be cause, the Contractor is not entitled to receive further payment until the Work is finished, completed and the costs of completion have been established. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.4-14.2.7 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect’s services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive less amounts which the Owner is entitled to offset from the unpaid Contract balance including actual or Liquidated Damages, exceeds the costs of completing the Work, including compensation for the Owner’s and the Architect’s services made necessary thereby, such excess will be paid to the Contractor or Surety, as directed by the Surety. If such costs exceed the unpaid Contract balance, the Contractor must pay the difference to the Owner upon written demand. This obligation for payment survives termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE Suspension by the Owner for Convenience
§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in delay or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

1. that performance is, was or would have been so suspended, delayed or interrupted was, or would have
   been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or

2. that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE Termination by the Owner for Convenience

§ 14.4.1 § 14.4.1 The Owner may, at any time, terminate the Contract or any portion thereof or of the Work for the Owner’s convenience and without cause.

§ 14.4.2 § 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner’s convenience, the Contractor shall:

1. Cease operations as directed by the Owner in the notice; and, if required by the Owner,
   participate in an inspection of the Work with the Owner and the Architect/Engineer to record the
   extent of completion thereof, to identify the Work remaining to be completed or corrected, and to
determine what temporary facilities, tools, equipment and construction machinery are to remain at
the Site pending completion of the Work;
2. take—
   2. Take actions necessary, or that the Owner may reasonably direct, for the protection and preservation
      of any stored materials and equipment and completed Work;
the Work—remove its tools, equipment and construction machinery from the Site, and—except for Work directed to be performed prior to the effective date of termination stated in the notice. Except as directed by the Owner, terminate all existing subcontracts and purchase orders related to the Work and enter into no further subcontracts and purchase orders or purchase orders therefor.

§14.4.3 In case of such termination for the Owner’s convenience, the Contractor shall be entitled to receive—payment will be entitled to compensation only for the following items:

1. Payment for Work executed, acceptable Work performed up to the date of termination;
2. The costs of preservation and protection of the Work if requested to do so by the Owner;
3. The Costs incurred by reason of such termination, including, without limitation, the cost of terminating contracts;
4. Documented transportation costs associated with removing Contractor-owned equipment; and
5. Documented mobilization and close-out costs.

§14.4.4 The Contractor’s obligations surviving final payment under the Work not executed Contract, including without limitation those with respect to insurance, indemnification, and correction of Work that has been completed at the time of termination, remains effective notwithstanding termination for convenience of the Owner.

ARTICLE 15 CLAIMS AND DISPUTES
§ 15.1 CLAIMS
§ 15.1.1 DEFINITION
A Claim is a written demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time, or other relief with respect to the terms of the Contract. The term “Claim” also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS
Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial-Architect/Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE
Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial-Architect/Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST
If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME
§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor’s Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled critical path of construction.
§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES
The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

1. damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

2. damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party’s termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION
§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker’s sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner’s expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the
demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor’s default, the Owner may, but is not obligated to, notify the surety and request the surety’s assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic’s lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 MEDIATION
§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 The parties shall share the mediator’s fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 ARBITRATION
§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations—limitations or repose. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 CONSOLIDATION OR JOINDER
§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).
§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.
Certification of Document's Authenticity
AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification 10:16:19 ET on 07/17/2019 under Order No. 0776015799 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ - 2007, General Conditions of the Contract for Construction, as published by the AIA in its software, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

(Signed)

>Title

(Dated)
# 2019 TOOLS/EQUIPMENT RATES

## Most Often Rented Tools

Rates are based on 8 Hr. day, 40 Hr. week, 176 Hr. Month (22 Days)

<table>
<thead>
<tr>
<th>Tool Description</th>
<th>Weekly Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Air Compressor 185 CFM- Diesel</td>
<td>$335.25</td>
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<tr>
<td>Air Compressor Twin Tank- Elec</td>
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<tr>
<td>ATV- Ranger 2- Passenger</td>
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<tr>
<td>Blanket- Insulated</td>
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<td>Bobcat - Auger Head - Round/Hex Shaft</td>
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<tr>
<td>Bobcat Attachments- Forks</td>
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<tr>
<td>Bobcat Attachments- Grappler Bucket</td>
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<td>Bobcat Attachments- Hydro Hammer</td>
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<td>Bobcat Attachments- Sweeper w/Attachments</td>
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<td>Bobcat- Skid Steer Bobcat (tire machine)</td>
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<tr>
<td>Carpet Tools- Carpet Puller</td>
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<tr>
<td>Cart-Trash Cart- 1 Yard</td>
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<td>Compactor- Jumping Jack</td>
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<td>Compactor- Plate Tamper</td>
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<td>Containment Unit</td>
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<td>Cut-Out Tool/Roto-Zip</td>
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<td>Drill- SDS Roto Hammer Max</td>
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<td>Drill- Hammer SDS Roto Hammer 3/8&quot; Corded</td>
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<td>Drill- Hammer SDS Roto Hammer 3/8&quot; Cordless</td>
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<td>Drill- 18 Volt</td>
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<td>Drill- Right Angle 3/8&quot;</td>
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<td>Fan - 36&quot; Barrel</td>
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<td>Fan- Pedestal Fan</td>
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<td>Forklift- Rough Terrain 5,000#-</td>
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<td>Forklift- Pneumatic</td>
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<td>Forklift- Rough Terrain 10,000#-</td>
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<td>Gang Box- Chest Type</td>
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<td>Generator 3800 Watts</td>
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<td>Generator- Elec Generator 6500 watt</td>
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<td>Glass Cup</td>
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<td>Grinder- 7&quot;</td>
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<td>Grinder- Floor Ginder</td>
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<td>Grinder- 4 1/2&quot;</td>
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<td>Ground Thaw- 2000 sf</td>
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<td>Hammer- Jack Hammer- Electric 60#</td>
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<td>Heater- Milk House Heater</td>
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<tr>
<td>Hepper Aire Scrubber- 2000CFM</td>
<td>$160.54</td>
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<table>
<thead>
<tr>
<th>Equipment Description</th>
<th>Weekly Rate</th>
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<tr>
<td>Jobsite Office Trailer- 8' x 36'</td>
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<td>Jobsite Office Trailer- 10' x 40'</td>
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<tr>
<td>Jobsite Office Trailer- 12' x 60'</td>
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<td>Ladder- Extension 24'</td>
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<td>Ladder- Extension 32'</td>
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<td>Ladder- Step, 6', Fiberglass</td>
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<td>Laser- Laser Level- Rotating</td>
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<tr>
<td>Lift- Scissor Lift 19' Reach</td>
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<tr>
<td>Mixer- Mixer Concrete</td>
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<td>Nailer- Air/Pneumatic- Framing</td>
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<td>Nailer- Coil Roofing</td>
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<td>Panther- Floor Stripper Model 7700</td>
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<td>Planer- Door</td>
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<td>Pressure Washer - Gas</td>
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<td>Pump Water- 2&quot; Trash</td>
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<td>Router</td>
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<tr>
<td>Sander - Belt, 3&quot; x 21&quot;</td>
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<td>Saw- Circular 7-1/4&quot;</td>
<td>$29.75</td>
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<td>Saw- Compound Miter Sliding 12&quot;</td>
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<td>Saw- Partner- Electric</td>
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<td>Saw- Table- 10&quot;</td>
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<td>Saw- Walk Behind Concrete Saw</td>
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<td>Survey- Eye Level</td>
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<td>Sweeper- Walk Behind- Battery Powered</td>
<td>$281.42</td>
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<td>Wheelbarrow</td>
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## Consumables

<table>
<thead>
<tr>
<th>Consumables</th>
<th>Price</th>
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<tbody>
<tr>
<td>Broom - Push - Fine Bristle</td>
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<tr>
<td>Broom - Push - Coarse Heavy Duty - 4&quot; Bristle</td>
<td>$43.85</td>
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<tr>
<td>Poly - 6 Mil-Clear - 12x100 roll</td>
<td>$68.31</td>
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<tr>
<td>Poly - 6 Mil-Reinforced - 12 x100 Roll</td>
<td>$84.00</td>
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<tr>
<td>Shovel- Aluminum Scoop</td>
<td>$36.00</td>
</tr>
<tr>
<td>50lbs Sweeping Compound</td>
<td>$17.50</td>
</tr>
<tr>
<td>Walk Off Mats - 36&quot; x 24&quot; Pkg (30 pulls)****</td>
<td>$30.00</td>
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</tbody>
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City Council Agenda Item #10A
Meeting of July 22, 2019

Brief Description: Minnetonka Firefighters Relief Association By-Laws amendment

Recommended Action: Adopt the resolution

Background

Recruitment, training and retention of the city of Minnetonka’s valued paid-on-call (POC) firefighters has been and continues to be a community and organizational priority. Retirement benefits for our POC firefighters are a critical component of the city’s formula for compensation and successful retention using the POC fire service delivery structure. Under state statute authority (M.S. chapters 26, 356 and 424A), the Minnetonka Firefighters Relief Association was founded in 1972 to pay retirement, disability and survivor benefits to Minnetonka POC firefighters, and the benefits are primarily funded by State Fire Aid and the association’s separate fund investment earnings.

The Relief Association has adopted pension benefit level increases periodically since its establishment. Under state law, every Minnesota fire relief association must maintain a funding level, “full funding,” that ensures all legally committed retirement benefits to be paid to its current and retired members is available for those purposes in its assets. In more recent years, each time an increase was proposed, as legally required, the association had a special actuarial study performed to project the likely impact of the proposed increase upon the funding status of the fund, and when it was projected to remain fully funded, both the association membership and the city council ratified the benefit level increase. From 2002 and 2008, benefit levels were increased 26.5 percent. Since the Great Recession, however, benefit levels have remained constant.

On June 11, 2019, the membership of the Minnetonka Firefighters Relief Association adopted an amendment to its by-laws to increase retirement benefits to be paid by its pension fund, which is an action required before formal presentation of the issue to the city council. On June 17, the city council reviewed with staff and members of the Relief Association Board of Trustees how retirement benefits are paid for POC firefighters in Minnesota and the city of Minnetonka, the history of Minnetonka’s POC retirement benefits, and the specific pension benefit increase adopted by the Relief Association. A full copy of the study session report is attached.

As discussed at the study session, Minnesota relief associations have authority to increase their benefit level without ratification by their affiliated local government. However, only those benefits ratified by the governing council of their municipalities must be financially backed by the local government. Therefore this evening, the Minnetonka Relief Association is requesting formal approval of the adopted by-laws amendment by the city council.

Recommendation

At its study session on June 17, 2019, the city council indicated clear support for the association-adopted benefit increase. Therefore, staff recommends council adoption of the attached resolution approving an increase to the lump sum pension benefit of the Minnetonka Firefighters Relief Association from an amount equal to 130 times the earned monthly pension.
benefit to an amount equal to 150.6 times the earned monthly pension benefit as provided under Article XII, Section 2, Subd. 4 of the association by-laws, also attached.

Submitted through:
   Geralyn Barone, City Manager
   John Vance, Fire Chief
   Corrine Heine, City Attorney

Originated by:
   Merrill King, Finance Director

Attachments:  Proposed council resolution
               Minnetonka Fire Relief Association By-Laws
               City Council Study Session Report from the meeting of June 17, 2019
Resolution No. 2019-

Resolution approving Minnetonka Firefighters Relief Association By-Laws amendment

Be it resolved by the City Council of the City of Minnetonka, Minnesota as follows:

Section 1. Background.

1.01. The Minnetonka Firefighters Relief Association provides retirement, disability and survivor benefits to the city’s paid-on-call firefighters. These benefits have been a significant factor in the Fire Department’s ability to attract quality, long-term paid-on-call firefighters.

1.02. The association and city council have worked cooperatively to establish a competitive retirement benefit package for paid-on-call firefighters that includes both relief association pension benefits and a separate deferred compensation program.

1.03. The association has approved an amendment to its by-laws, which would increase the lump sum pension benefit from 130 times the earned monthly pension benefit to an amount equal to 150.6 times the earned monthly pension benefit, or an increase of approximately 15.85%.

1.04. Under state law, by-law amendments that affect the amount of pension benefits to be paid must be approved by the city council in order to make those benefits subject to the financial support requirements under Minn. Stat. § 424A.02.

Section 2. Council Action.

2.01. The city council approves the following amendment to the Minnetonka Firefighters Relief Association By-Laws, effective July 22, 2019.

a. Increasing the lump sum pension benefit from an amount equal to 130 times the earned monthly pension benefit to an amount equal to 150.6 times the earned monthly pension benefit.

Adopted by the City Council of the City of Minnetonka, Minnesota, on July 22, 2019.

Brad Wiersum, Mayor

Attest:

Becky Koosman, City Clerk
**Action on this resolution:**

Motion for adoption:
Seconded by:
Voted in favor of:
Voted against:
Abstained:
Absent:
Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a meeting held on July 22, 2019.

______________________________
Becky Koosman, City Clerk
CITY OF MINNETONKA
FIREMEN'S RELIEF ASSOCIATION

BY-LAWS

Effective July 22, 2019

ARTICLE I: NAME

SECTION 1: The name of the association shall be City of Minnetonka Firemen's Relief Association.

ARTICLE II: PURPOSE

SECTION 1: The purpose of the City of Minnetonka Firemen's Relief Association is to provide retirement relief and other benefits to its members and dependents. The City of Minnetonka Firemen's Relief Association is a governmental entity that receives and manages public money to provide retirement relief and other benefits for individuals providing the governmental services of fire suppression.

ARTICLE III: GENERAL DEFINITIONS

SECTION 1: Surviving Spouse: the term Surviving Spouse means any person who was legally married to the deceased Active Member, Service Pensioner, Disability Pensioner or Deferred Pensioner at the time of death.

SECTION 2: Active Member: the term Active Member means a member of the Minnetonka Volunteer Fire Department who is in active status according to the current Policy Manual of the Minnetonka Volunteer Fire Department.

SECTION 3: Deferred Member: the term Deferred Member means a member of the Association with at least 10 years of active service with the Relief Association and has terminated service from the Minnetonka Volunteer Fire Department, but has not yet reached the age of 50 years or has reached the age of 50 and has not applied for benefits.

SECTION 4: Retired Member: the term Retired Member means a member of the Minnetonka Volunteer Fire Department who has actively served on the Minnetonka Volunteer Fire Department for 10 years or more and has been a member of the Association with 10 years or more of active service, and has attained the age of 50 years and applied for benefits.

SECTION 5: Temporary Disabled Member: the term Temporary Disabled Member means a member who is unable to perform the duties of their employment and/or the duties of a firefighter and who is under the care of a physician for a period of eight (8) consecutive days or more.

SECTION 6: Permanent Disabled Member: the term Permanent Disabled Member means a member who is unable to engage in performance of his/her duties as a firefighter by reason of a medically determinable physical or psychological impairment, which can be expected to last for a continuous period of not less than twelve months or can be expected to result in death in less than twelve months.

SECTION 7: Surviving Child: the term Surviving Child means any child of the member, by reason of birth or legal adoption who is under the age of 18 years, living while the deceased member was on the payroll of the Minnetonka Volunteer Fire Department, or who was born within nine months after the deceased member was withdrawn from the payroll of the Minnetonka Volunteer Fire Department.

SECTION 8: Service Pensioner: the term Service Pensioner means a former Active Member currently receiving benefits based on completed years of service.

SECTION 9: Disability Pensioner: the term Disability Pensioner means a former Active Member receiving benefits based on disability status.

SECTION 10: Voting Member: the term Voting Member means any Active or Temporarily Disabled member.

SECTION 11: Fiduciary responsibility: In the discharge of their respective duties, the officers and trustees shall be held to the standard of care enumerated in Minnesota Statutes, Section 11A.09. In addition, the trustees must act in accordance with chapter 356A. Each member of the board is a fiduciary and shall undertake all fiduciary activities in accordance with the standard of care of section 11A.09, and in a manner consistent with chapter 356A. No trustee of the City of Minnetonka Firemen's Relief Association shall cause the relief association to engage in a transaction if the fiduciary knows or should know that a transaction constitutes one of the following direct or indirect transactions:

1. sale or exchange of any real property between the relief association and a board member;
2. lending of money or other extension of credit between the
Section 12: Beneficiary: Any person or estate entitled under this plan to receive a benefit upon the death of a participant.

Section 13: Year of Active Service: For purposes of computing benefits or service pensions payable, a year of service shall be defined as a period of (12) twelve full months of active service in the City of Minnetonka Firemen's Relief Association. Commencing January 1, 1997 service pensions will be prorated monthly for fractional years of service pursuant to Minnesota Statute 424A.02, Subd. 1. A “month” is a completed calendar month of active service measured from the member’s start date of entry to the same date in the subsequent month.

Section 14: Active service time: The active performance of fire suppression duties or the supervision of fire suppression duties. Members shall be required to meet the expected performance requirements of the Minnetonka Volunteer Fire Department.

Section 15: Trustees: The individuals designated as such by Minnesota Statutes 424A.04 and by virtue of elected office, those that qualify as an ex-officio trustee.

Section 16: Domestic Relations Order: Any judgment, decree or order (including approval of a property settlement agreement) that complies with the provisions of Minn. Statutes 518.58, 518.581.

Article IV: Membership

Section 1: A Minnetonka Volunteer Fire Department member who is in active status shall be eligible to apply for membership in this Association.

Section 2: Applications for membership shall be made in writing on a form supplied by the Secretary of the Relief Association. Upon approval of the application the Board of Trustees shall appoint the applicant to membership within sixty (60) days of the date of application.

Section 3: Resignation, termination or any other such action how so ever designated which disqualifies an individual from active membership in the Minnetonka Volunteer Fire Department shall automatically terminate membership in the Association. However, any person who has served a minimum number of years provided in Article XII shall be allowed to retain membership subject to such regulations as may hereinafter be enacted.

Section 4: If a firefighter separates from the Minnetonka Volunteer Fire Department but is later rehired by the Department before collecting retirement benefits from the Association, that firefighter may be reinstated as an active member of the Association. The person will fill out an application and The Board of Trustees shall act on said application within sixty (60) days of the date of the application.

Section 5: Any member may be expelled from the Association for cause by two-thirds vote of all members of the Board of Trustees at a special meeting. Notice of the meeting and a written statement of charges shall be sent, via registered mail, to the individual at least 15 days prior to the special meeting. The member shall be given the opportunity to be heard at a meeting that takes place not less than (5) five days before the effective date of the expulsion. The reasons for expulsion shall be set forth in a resolution of the findings approved by two-thirds of all members of the Board. Cause for expulsion shall include, but not be limited to, resignation or termination from the Minnetonka Volunteer Fire Department, failure to account for money belonging to the Association, or fraudulent benefit claims from or attempts to defraud the Association in any way.

Article V: Board of Trustees

Section 1: The Board of Trustees shall be composed of six (6) Trustees, each of whom shall be elected for a revolving three (3) year term or until their successor has been elected and qualified, at the annual meeting of the Association from its members. Two of the Trustees shall be elected each year. One of the elected members of the Board shall be a non-active member. In the event that a non-active member does not seek election, the vacant position may be filled by an active member. Immediately following the Annual Meeting or special election the Board of Trustees shall meet for the purpose of electing the Officers of the Board: President, Vice-President, Secretary and Treasurer. In addition, the statutory ex-officio members of the Board of Trustees shall be the Chief of the Minnetonka Volunteer Fire Department, the Mayor of the City of Minnetonka, and the City Clerk or Finance Director/Treasurer of the City of Minnetonka.
SECTION 2: It shall be the duty of the Board of Trustees to prepare modes and plans for the safe and profitable investment of the unappropriated funds of the Association. The Board shall have the books and accounts of the Secretary and Treasurer audited annually, and shall submit a written report of the same to the Association, the State of Minnesota and City Clerk of the City of Minnetonka.

SECTION 3: The investment of the funds of the Association shall be in the exclusive control of the Board of Trustees and in conformance with State Statutes.

SECTION 4: If a vacancy occurs during the term of office of any Trustee, the members of the Association shall elect a member of the Association to serve the unexpired term of the vacated position. The Secretary of the Association shall notify all members that a special meeting of the Association shall be held for the purpose of electing a member of the Board. Said notice shall be given as prescribed in Article VII.

SECTION 5: A trustee of the Board of Trustees may be removed for cause. Cause for removal shall include, but shall not be limited to, the breach of duties as set forth in Article VI of these By-Laws. One or more of the Trustees may be removed at a meeting of the membership which is called for that purpose by a majority vote of those entitled to vote at an election of Trustees. Notice of the meeting shall be given to each member and shall include the purpose of the meeting. The Trustee shall be furnished with a statement of the particular charges at least five (5) days before said meeting. At the meeting, the Trustee shall have the opportunity to be heard. If a Trustee is removed, the replacement shall be elected at the same meeting and such replacement shall serve out the unexpired term of office.

SECTION 6: The President, the Secretary, and the Treasurer shall receive compensation as determined by the Association payable from the Special Fund. The other members of the Board of Trustees may receive compensation as determined by the Association from the General Fund.

SECTION 7: The Board of Trustees may designate committees, the members of which shall be appointed by the President, subject to the consent of the Board. One of the committees shall be the Aid Committee, composed of the Vice President and two other members of the Association who may or may not be members of the Board of Trustees. The Vice President shall be the Chairman of this committee, whose duty shall be to see that assistance is rendered to each sick or disabled member and to the survivors of any deceased member.

SECTION 8: All reports and resolutions shall be submitted in writing, and no report from a committee shall be accepted unless it is the majority of a committee, provided however that a minority shall always be permitted its views in writing.

ARTICLE VI: DUTIES OF OFFICERS

SECTION 1: It shall be the duty of the President to attend and preside at all meetings of the Association and the Board of Trustees. The President may sign checks issued by the Treasurer and all other papers which require the President's signature. The President shall exercise careful supervision over the affairs of the Association.

SECTION 2: It shall be the duty of the Vice President to assist the President. It shall be the duty of the Vice President to perform the duties of the President in his absence. In the absence of the President and the Vice President, it shall be the duty of the Board of Trustees to elect a President Pro Tem, who shall perform the duties of the office.

SECTION 3: It shall be the duty of the Secretary to keep a true and accurate record of the proceedings of all meetings of the Association and of the Board of Trustees. The Secretary shall keep a correct record of all amendments, alterations and additions to the Articles of Incorporation, By-Laws or Orders of Business in a separate book from the minute books of the Association. The Secretary shall cause due notice of all special meetings of the Association and the Board of Trustees to be given. The Secretary shall receive all moneys due, and failing to do so may be impeached and expelled from the Association. The Secretary shall keep a roll of the membership, with the date of joining, resignation, discharge, base sum for retirement calculations at time of deferment, dues and assessments paid and record of pensions furnished. The Secretary's books shall be at all times open to the inspection of the Board of Trustees. The Secretary shall, prior to entering upon the duties of the office, give bond in such sum and with such sureties as may be required and approved by the Board of Trustees, conditioned upon faithful discharge of the trusts and the full performance of the duties of the office. Such bond will be paid for from the Special Fund of the Association.

SECTION 4: It shall be the duty of the Treasurer to receive from the Secretary all moneys belonging to the Association and hold them subject to the order of the President countersigned by the Secretary. The Treasurer shall keep separate and distinct accounts of the General and Special Funds, and shall prepare and present to the Board of Trustees a full and detailed statement of the assets and liabilities of each fund separately prior to the annual meeting of the Association. Failing in these obligations, the Treasurer may
be impeached and expelled from the Association. The Treasurer shall deliver to the successor in office, or any committee appointed by the Board of Trustees to receive the same, all moneys, books, papers, etc. pertaining to the office immediately upon expiration of the term of office. The Treasurer shall, prior to entering upon the duties of the office, give a bond in such sum which equals (10) ten percent of the assets, not to exceed $500,000 as required by Minnesota Statutes 69.051, Subd. 2, as amended.

ARTICLE VII: MEETINGS

SECTION 1: The annual meeting of the Association for the election of Trustees and other business shall be held February. The secretary shall notify all members of the Association at least (10) ten days prior to meeting with regards to time, location and agenda.

SECTION 2: The Board of Trustees shall meet in regular sessions in the odd numbered months of the year. The Secretary of the Association shall notify all members of the Board of Trustees and the Association of all meetings with regards to time and location.

SECTION 3: Special meetings of the Association and of the Board of Trustees may be called by the President or two members of the Board of Trustees, and shall be called upon written request of six (6) or more members of the Association. Special meetings shall be held within thirty (30) days of the receipt of written request to the President. Members or Trustees shall be notified by the Secretary of such special meetings at least (10) ten days prior to meeting and the object of the meetings shall be stated in such notices.

SECTION 4: A majority of the Board of Trustees then in office and thirty percent (30%) of the voting members of the Association shall constitute a quorum for the transaction of business at their respective meetings. Should there be less than a quorum after roll call, business transactions may continue. Less than a quorum at roll call will adjourn a meeting to a future time, which the Secretary shall make known to affected members.

SECTION 5: All meetings of the Association shall be conducted according to Robert's Rules of Order, as revised:

ORDER OF BUSINESS
1. Call to order.
2. Roll call.
3. Reading of minutes of previous Association & Board of Trustees meetings.
4. Secretary's Report.
5. Treasurer's Report.
8. Unfinished business.
9. Election of Trustees.
11. Adjournment.

SECTION 6: Each member shall be entitled to one vote upon any matter voted upon by the membership. Cumulative voting and voting by proxy shall not be permitted. Voting by absentee ballot for the purpose of election of Trustees may be permitted, but only by order of the Board of Trustees.

ARTICLE VIII: GENERAL FUND

SECTION 1: The funds received by this Association from dues, fines, initiation fees, entertainments and other miscellaneous sources shall be kept in the General Fund on the Books of the Secretary and Treasurer and may be disbursed for any reasonable purpose related to the welfare of the Association and its' members.

SECTION 2: No money or funds of the General Fund of this Association shall be disbursed for any purpose not provided for in Section 1 unless authorized by a favorable vote of two-thirds of members present at a regular or special meeting of the Association.

SECTION 3: No disbursement of this fund shall be made, except by checks drawn by the Treasurer and countersigned by the President. No check shall be issued until the claim to which it relates has been approved by the Board of Trustees.

SECTION 4: All money belonging to this fund shall be deposited to the credit of the Association in such banks, trust companies, savings and loan associations, or other depositories as the Board of Trustees may designate.

ARTICLE IX: SPECIAL FUND

SECTION 1: All funds received by this Association from any tax sources, and all funds or property donated, granted or devised to this Association for the benefit of this fund, shall be kept in a Special Fund in the books of the Secretary and Treasurer and shall not be disbursed for any purpose except those authorized by law.

SECTION 2: No money or funds of the Special Fund of this Association shall be disbursed, except for those purposes specifically authorized by State Statutes.
SECTION 3: No disbursements of this fund shall be made, except by checks drawn by the Treasurer and countersigned by the President. All disbursements of $5000.00 or more shall also be countersigned by the City of Minnetonka Finance Director. Except when issued for salaries, pensions and other fixed charges, the exact amount of which has previously been determined by the Board of Trustees or members, no checks shall be issued until the claim for which it relates has been approved by the Board of Trustees.

SECTION 4: All money, funds, and investments of the Special Fund shall be deposited with, or held for safekeeping in accordance with the Board of Trustees Policy Establishing Standards for Investments and Minnesota State Statutes.

SECTION 5: All money or funds in the Special Fund shall be invested in accordance with the Board of Trustees Policy Establishing Standards for Investments (herein referred to as the Investment Policy) and Minnesota State Statutes. The Investment Policy may be amended only with the approval of the Minnetonka City Council.

ARTICLE X: APPLICATION FOR BENEFITS

SECTION 1: All applications for relief or pensions shall be made in writing on forms furnished by the Secretary of the Association. It shall be the responsibility of the members making said application to initiate such action.

SECTION 2: All applications for sick and disability benefits shall be submitted to the Secretary of the Association accompanied by a certificate from the attending physician or surgeon setting forth the nature of the illness or injury, the cause and duration thereof, and the length of time the applicant has been unable to perform the duties as a firefighter and/or the duties of their employment.

SECTION 3: Applications for sick and disability benefits shall be made by or on behalf of the applicant within thirty (30) days after the sickness or disability commences. No sickness or disability benefits shall be paid for a period covering less than eight (8) days.

SECTION 4: All applications for pension shall be submitted to the Secretary of the Association. Applications shall be verified by an oath of the applicant and shall state the age of the applicant, the period of service in and the date of retirement from the Minnetonka Volunteer Fire Department, the length of time as a member of the Association, and such other information as the Board of Trustees may require.

SECTION 5: It shall be the duty of the board to approve applications for service pensions or ancillary benefits, if the applicant meets all of the eligibility requirements set forth in these bylaws. It shall also be the duty of the board not to approve the application if any of the eligibility requirements are not met. If an application is not approved, the board shall return the application to the applicant within 30 days, noting thereon, with particularity, which requirements the applicant does not meet. Thereafter, the applicant shall be furnished with the opportunity to be heard by the full board, within 30 days of the receipt of request for appeal, on the question of whether the applicant meets all of the eligibility requirements. If the application is approved, the service pension shall be paid as a service pension to such applicant. Decision of the board shall be final as to the decision of appeal of such benefits or pensions. No person receiving a pension shall be paid any other benefits of this Association, except fifty percent (50%) of the base death benefit.

SECTION 6: The Board of Trustees shall arrange for reviewing and confirming the continuing eligibility of the persons receiving benefits, to occur on a regular basis but no less than once a year.

ARTICLE XI: SICK AND DISABILITY BENEFITS

SECTION 1: Each member of the Association, except those on deferred pension roll, who is sick or disabled to the extent that the member is unable to perform the duties of their employment and/or the duties of a firefighter and who is under the care of a physician for a period of eight (8) consecutive days or more, shall be entitled to a benefit of $5.00 per day commencing with the first day of such sickness or disability, but the total of such benefits paid to any one member shall not exceed $500.00 in any twelve (12) month period. The Board of Trustees shall have the option to extend the benefit in extenuating circumstances.

SECTION 2: If a member shall become permanently disabled as defined in Article XI, Section 3, the Association will pay a disability pension to such member monthly in the amount of the base sum (See ARTICLE XIII) times each year of service pursuant to Article III, section 13, not to exceed thirty times the base sum per month. Commencing January 1, 2006 new members to the association may only receive a lump sum disability payment equal to 130 times the earned monthly pension.

SECTION 3: A permanent disability is defined as the inability to engage in performance of the member’s duties as a firefighter by reason of a medically determinable physical or psychological impairment, which can be expected to last
for a continuous period of not less than twelve months or can be expected to result in death in less than twelve months. An applicant shall not be considered under a disability unless the member furnishes adequate proof of the existence thereof. An applicant's statement as to pain or other symptoms will not alone be conclusive evidence of disability as defined in this section.

SECTION 4: No member shall be paid disability benefits except upon the written report of a physician or chiropractor of the member's choice and acceptable to the Board of Trustees. This report shall set forth the diagnosis and prognosis of the disability, disease or injury of the member and its probable duration or permanence. Each such report shall be filed with the association. The Board of Trustees has the discretion to request that another doctor, selected by the board, examine the applicant. Final determination of disability will be based on the reports of at least one doctor and by a (2/3) two-thirds majority vote of a quorum of the Board of Trustees present at the subsequent Board of Trustee meeting.

SECTION 5: If the applicant for disability benefits feels he/she has been aggrieved by any action of the Board, the applicant shall, within sixty (60) days from notice of such action of the Board, file written objections and the reasons thereof with the Board and shall be allowed to appeal the determination pursuant to the review procedure in ARTICLE X, Section 5.

ARTICLE XII: DEATH BENEFITS AND PENSIONS

SECTION 1: Deleted.

SECTION 2, SUBDIVISION 1: A member who has retained membership in the Association for at least 10 years and has actively served on the Minnetonka Volunteer Fire Department for 10 years or more and has reached the age of 50 years or more, upon retirement from the Minnetonka Volunteer Fire Department, shall be paid monthly for the remainder of the member's natural life the base sum for each year of active service pursuant to Article III, Section 13, to a maximum of thirty times the base sum per month.

SECTION 2, SUBDIVISION 2: Commencing January 1, 1997, at time of application for pension said member may elect to receive a lump sum payment equal to 130 times the earned monthly pension benefit in lieu of any other benefits under these By-Laws and shall be paid at the age of 50 or the retirement date, whichever is later. In the event of the death of the applicant prior to the payment of the lump sum pension, it shall be paid to the Executor, Administrator, or Personal Representative of the deceased.

SECTION 2, SUBDIVISION 3: Commencing January 1, 2006, new members to the association may only receive a lump sum payment at time of application for pension equal to 130 times the earned monthly pension benefit in lieu of any other benefits under these By-Laws and shall be paid at the age of 50 or the retirement date, whichever is later. In the event of the death of the applicant prior to the payment of the lump sum pension, it shall be paid to the Executor, Administrator, or Personal Representative of the deceased.

SECTION 2, SUBDIVISION 4: For applications for pension made on or after July 22, 2019, the lump sum pension amount shall be equal to 150.6 times the earned monthly pension benefit in lieu of any other benefits under these By-Laws and shall be paid at the age of 50 or the retirement date, whichever is later. In the event of the death of the applicant prior to the payment of the lump sum pension, it shall be paid to the Executor, Administrator, or Personal Representative of the deceased.

SECTION 2, SUBDIVISION 5: A member of the Association who has actively served on the Minnetonka Volunteer Fire Department for 10 years or more and has been a member of the Association for 10 years or more, but has not reached the age of 50 years, may retire from the Minnetonka Volunteer Fire Department and be placed on the deferred pension roll. The base sum to be applied to a member’s benefit calculation shall be the base sum in effect at the time of retirement from the Minnetonka Volunteer Fire Department. When reaching the age of 50 years or more, the member shall elect to be paid monthly for the remainder of the member's natural life the base sum for each year of active service pursuant to Article III, Section 13, to a maximum of thirty times the base sum per month or elect to receive a lump sum payment as prescribed in Article XII, Section 2, Subdivision 2. A member that joined the association after January 1, 2006 may only receive a lump sum payment as prescribed in Article XII, Section 2, Subdivision 3. During the time a member is on the deferred pension roll, the member will not be eligible for any disability benefits as provided for in Article XI of these By-Laws and shall be relieved of paying dues. At age 50 or more said member must then apply to the Board as prescribed in Article X for said benefit to begin.

SECTION 3: In the event of the death of an active member, service pensioner, disability pensioner, or while on the deferred pension roll, their spouse, if any, shall be paid monthly for the remainder of said spouse's natural life, the sum of one hundred percent (100%) of the base sum for each year of active service pursuant to Article III, Section 13, to a
maximum of 30 times the base sum per month. If such member who has no surviving spouse leaves a surviving child or children, such child or children as a group shall be paid monthly, until reaching the age of 18, one hundred (100%) of the base sum for each year of active service pursuant to Article III, Section 13, to a maximum of 30 times the base sum per month. The total of all survivorship payments shall not exceed the base sum per month for each year of active service pursuant to Article III, Section 4.

ARTICLE XIII: CALCULATION OF BENEFITS

SECTION 1: Probationary time with the Minnetonka Volunteer Fire Department shall be included in calculating years of membership in the Association as well as years of service in the Department. All periods of time during which a member does not meet the minimum expected performance requirements of the Minnetonka Volunteer Fire Department, received a disability pension, suspensions, and all leaves of absence for more than 90 cumulative days, shall be excluded in computing the member's years of active service. Service pensions will be prorated monthly for fractional years of service.

SECTION 2: The base sum to be used in calculating benefits is as follows:

Effective January 1, 2002, the base sum shall be $42.00 per month, per full year of service. Effective January 1, 2003, the base sum shall be $43.68 per month, per full year of service. Effective January 1, 2004, the base sum shall be $45.43 per month, per full year of service. Effective January 1, 2005, the base sum shall be $47.25 per month, per full year of service. Effective January 1, 2006, the base sum shall be $49.14 per month, per full year of service. Effective February 1, 2007, the base sum shall be $51.11 per month, per full year of service. Effective January 1, 2008, the base sum shall be $53.15 per month, per full year of service.

ARTICLE XIV: AMENDMENTS

SECTION 1: The By-Laws of this Association may be amended, provided such amendment(s) are in compliance with Minnesota State Statutes, at any regular or special meeting thereof by a favorable vote of two-thirds of the members present and voting, provided further that notice of any amendment(s) shall be given by distributing a copy to all attendees at a regular or special meeting not more than thirty-one (31) days prior to the meeting when such amendment(s) are acted upon.

ARTICLE XV: LIMITS ON BENEFITS

SECTION 1: A domestic relations order shall be accepted by the plan administrator if in compliance with state and federal law. No benefits shall be paid under a domestic relations order which requires the plan to provide any type or form of benefit, or any option, not otherwise provided under the plan or under state law.

SECTION 2: No service pension or ancillary benefits paid or payable from the special fund of a relief association to any person receiving or entitled to receive a service pension or ancillary benefits shall be subject to garnishment, judgment, execution, or other legal process, except as provided in Minnesota Statutes Sections 518.58, 518.581.

SECTION 3: No person entitled to a service pension or ancillary benefits from the special fund of a relief association may assign any service pension or ancillary benefit payments, nor shall the association have the authority to recognize any assignment or pay over any sum which has been assigned.

SECTION 4: No provision which places limits on benefits as contained within Section 415 of the Internal Revenue Code shall be exceeded. Plan participants cannot receive an annual benefit greater than the amount specified in Section 415 of the code, as may subsequently be amended.

ARTICLE XVI: ACCEPTANCE

SECTION 1: The revisions to the By-Laws of this Association were approved by the membership at a Special Meeting held on June 11, 2019. Benefit level increases were authorized by the City Council of the City of Minnetonka at the Regular Meeting held on ____________.
City Council Study Session Item #3  
Meeting of June 17, 2019

**Brief Description:** Minnetonka Fire Department paid-on-call firefighter retirement benefits

**Background**

Recruitment, training and retention of the city of Minnetonka’s valued paid-on-call (POC) firefighters has been and continues to be a community and organizational priority. At a total of almost $3.6 million in 2019, the city’s annual fire department operating budget includes funding for the modest hourly earnings of our ~80 POC firefighters as well as state-paid contributions to a separate pension fund and city-paid contributions to individual deferred compensation accounts. Retirement benefits for our POC firefighters are a critical component of the city’s formula for compensation and successful retention using the POC fire service delivery structure.

The Minnetonka Relief Association is planning to formally request the city council to consider adoption of an increase in pension benefits for the city’s POC firefighters to be paid by the organization’s separate pension fund. The following report will provide background information on how retirement benefits are paid for POC firefighters in Minnesota and the city of Minnetonka, the history of Minnetonka’s POC retirement benefits, and outline the benefit increase being requested by the Relief Association. Firefighter representatives of the Minnetonka Fire Relief Association Board will be in attendance this evening to present and discuss the request. On June 11, 2019, the organization’s membership adopted the request, and it will be formally presented to the council for adoption at one of the council’s regular meetings. Note the Relief Association is required to approve a request prior to formally presenting it to the council.

**Minnesota Fire Relief Associations**

The public firefighting service in Minnesota is unusual relative to all other states in the country in that, with the exception of only a few cities including the largest cities of Minneapolis, St. Paul, St. Cloud, Duluth and Rochester, the services are primarily delivered by POC and volunteer firefighters who earn pension benefits via separate pension funds, each almost always managed by a separate local pension association. There are 580 such “fire relief associations” in Minnesota that are strictly governed by state law (Minnesota Statutes, chapters 69, 356 and 424A) and that must annually report to the State Auditor’s Office. At the end of 2017, the total assets of each of these funds ranged from $61,000 to $22.6 million. The great majority of fire relief associations in the state have fewer than 30 active firefighter members.

Like the city of Minnetonka, all of the cities similar to Minnetonka in the metro to which we regularly compare ourselves have POC firefighters with fire relief associations except St. Louis.

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1 According to the U.S. Fire Administration (a division of FEMA), 87 percent of fire departments nationally are volunteer or mostly volunteer. With 97.4 percent of fire departments in Minnesota staffed by volunteer and mostly volunteer firefighters, the state has the second highest percentage amongst all states in the country. (See [https://apps.usfa.fema.gov](https://apps.usfa.fema.gov/))

2 Another 30 relief associations have transferred their assets and responsibilities to the Statewide Volunteer Firefighter Retirement Plan administered by PERA. (See [www.auditor.state.mn.us](http://www.auditor.state.mn.us/))
Park³ and Burnsville, both of which have only career firefighters whose pensions are covered by the Public Employees Retirement Association (PERA) for Police and Fire.⁴ At the end of 2018, the assets of the Minnetonka Fire Relief Association were $16.1 million, which is the second largest in the state behind Eden Prairie with $22.6 million at the end of 2017.

Similar to all pension plans, Minnesota fire relief association plans are typed as either defined-contribution (DC) or defined-benefit (DB). With the defined-contribution plans, revenues are split evenly and deposited in individual members’ accounts with investment earnings and losses divided pro rata, and members receive a one-time lump-sum payment when they retire. With the DB plans, members receive a retirement benefit that is predetermined based on a formula. For Minnesota DB fire relief association plans, benefits may be payable either as a one-time lump sum payment at retirement or as a monthly payment (like an annuity) made from the time of retirement until the member’s death.

Most Minnesota fire relief association plans are DB plans. As of the end of 2017, less than 15 percent of relief associations (85 communities) were DC, and those include our comparable cities of Brooklyn Park, Eagan, Edina and Maple Grove. All of the remaining are DB plans, and of those, another 80 percent offer only one-time lump sum payments. Our comparable cities of Lakeville and Woodbury have POC pension associations that are DB lump sum plans. The remaining five percent offer only monthly service pensions (only two communities) or a combination of monthly or lump sum (22 communities). The latter includes Minnetonka and our comparable cities of Apple Valley, Eden Prairie and Plymouth.

Types of Fire Relief Association Plans in Minnesota

![Diagram showing the percentages of different types of fire relief association plans in Minnesota.]

Minnesota fire relief associations are private non-profit entities governed by their individual bylaws, and state law requires that their governing boards include representatives of the affiliated local government who have voting powers on the boards. The benefit formulas, benefit levels and ancillary benefits outlined in the bylaws of a DB relief association are determined by

³ St. Louis Park has a small cadre of POC firefighters with alternative PERA pension coverage.
⁴ The city of Minnetonka’s full-time fire and sworn police employees also receive their employment pensions as members of PERA Police and Fire.
limitations set out in state law and by the membership as represented and brought forward by
the board to a membership vote. Relief associations have authority to increase their benefit
level without ratification by their affiliated local government. However, only those benefits ratified
by the governing council of their municipalities must be financially backed by the local
government.

The primary sources of revenue for relief associations in the state to support the benefits of their
members are State Fire Aid, municipal contributions, and investment earnings. State Fire Aid is
derived from a two percent state tax on insurance premiums and is allocated based on the
market value of real property and population in the fire service area of each association. The
state legislature also provides a lesser amount of supplemental funding to the plans from the
state’s general coffers that is similarly distributed. In 2018, the city of Minnetonka received
$391,293 in State Fire Aid for the purposes of funding our fire relief association’s fund. This
amount is $10,000 more than in 2017 and $40,000 more than five years prior.

**Minnetonka State Fire Aid 2005-2018**

![Graph showing State Fire Aid for Minnetonka from 2005 to 2018](image)

Under state law, every Minnesota fire relief association must maintain a funding level that
ensures all legally committed retirement benefits to be paid to its current and retired members is
available for those purposes in its assets. The funding level is measured as a ratio of assets to
liabilities, and a ratio of 100 percent or greater is fully funded, and anything less than 100
percent is not. Each association is required to submit an audited financial statement annually to
the State Auditor and have an actuarial study to determine its funding level completed at least
every other year. Determining funding level of DB plans is far more complicated than DC plans,
because DC plans maintain consistent 100 percent funding; DC plans have no liabilities as they
distribute all revenue received to individual members’ accounts.

Like all pension funds, relief association funds are reliant upon investment returns, and
therefore, natural variability in the market can greatly impact their funding levels. If at the point in
time (January 1) of the year an actuarial study is conducted the funding level of a Minnesota
relief association is found to be below 100 percent, the local government affiliated with the
association is required by state law to shore up the unfunded liability to cover the level of
benefits previously ratified by the municipality. Minnesota state law requires the unfunded
liability be rectified through required contributions by the municipality over a ten-year period.
This is a relatively short period, because most government pensions in the U.S. require amortization of unfunded liabilities over a period of 30 years, and best practices in pension administration suggest they be amortized over the average work life period of the membership. When last measured in 2009, the average work life period of vested Minnetonka POC fire relief members was eighteen years.

At the beginning of 2009, the Great Recession caused nearly all of the 600-plus relief associations in Minnesota at that time to be less than fully funded, but the aggressive refunding requirement and the market’s improvement over time have now mostly resolved this financial deficit issue. After the market fall of 2008, the average funding ratio of all DB relief association plans in the state like Minnetonka’s (combination lump-sum and monthly) was 71.7 percent, and Minnetonka’s was 77 percent. At the beginning of 2018, that average of all like plans was 110.5 percent, and Minnetonka’s was 113 percent.\(^5\)

**Minnetonka Fire Relief Association**

The Minnetonka Fire Relief Association was established in 1972, and its nine-member board of trustees includes the mayor, finance director and fire chief as ex-officio voting members. The association currently has approximately 80 active members, 11 deferred members, 4 members retired for medical reasons, 57 retired members receiving monthly benefits, and about a dozen surviving spouses receiving monthly benefits.

The defined-benefit (DB) plan provided only a monthly annuity benefit until 1997 when the bylaws were changed to allow retiring members to choose whether to receive their benefits as either a monthly annuity or as a single lump sum. In 2006, the bylaws were amended again to provide that firefighters hired after 2006 may only receive a lump sum benefit. Currently, there are only 12 active and deferred retired members who have the option to receive their future pension benefit at retirement as a monthly annuity. Paying the retirement benefits as a lump-sum can be financially advantageous for a pension fund’s long-term fiscal strength, because the benefit liabilities are not ongoing for the life of the retired member as they are for monthly annuity payouts.

The benefit is defined by formula in the Association bylaws. Those eligible who choose to receive a monthly annuity at retirement are currently to be paid $53.15 per year of service. And, those who receive a lump-sum payment at retirement receive 130 times $53.15 ($6,955) per year of service. Benefits are payable on retirement after reaching age 50 and completing at least ten years of service.

Historically, funding for benefits of the Minnetonka Relief Association has been supported by the city’s State Fire Aid allocation and investment interest derived by the fund. Over the last twenty years, the Relief Association’s fund has only twice experienced periods with unfunded liability and the city was then required to make contributions. At the end of 2002 after two years of investment income losses, the funded ratio dropped to 96 percent, and the city contributed $165,000 over three years to assist in shoring up the fund. And, as mentioned previously, a significant market loss in 2008 dropped the funding status to 77 percent, which prompted city contributions of $797,000 over the following five years. The first year after this second fall, the

\(^5\) At the beginning of 2018, the average funding ratio of all “lump-sum only” DB plans in the state was 138.5 percent.
funded ratio improved significantly to 93 percent by the end of 2009 and was greater than fully funded by the end of 2014.

![Fund Status 2001-2018](image)

After the fund and the city had recovered from the first loss experience in the early 2000s, the city began annually budgeting $75,000 to accumulate a reserve in the city’s General Fund to financially prepare for any future losses. Beginning in 2009, the city used $50,000 of that base budget line-item to institute a city-paid deferred compensation retirement benefit to POC firefighters paid to each individual per hour worked, leaving $25,000 per year to accumulate in the reserve. To offset foregoing benefit level increases after the Great Recession hit at the end of 2008, the city has significantly increased the level of city commitment to the POC deferred compensation since its establishment. By 2019, the city’s budget for this additional retirement benefit was $185,000, and at the end of 2018, the General Fund fire pension reserve had a balance of $240,900.6

![Minnetonka POC Firefighter City-Paid Deferred Comp](image)

Costs based upon actual hours worked. *Budget

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6 Some of the city’s General Fund fire pension reserve was spent during the five years after the Great Recession to pay for the mandated city contributions to the shore up the relief association fund’s unfunded liabilities during that time.
In 2010, the city formed a task force of relief association members and board trustees to work with actuarial consultants to explore and design a potentially alternative pension plan for POC firefighters. Goals of their work were to design a plan structure that would: ensure stable and sustainable pension funding, including appropriate and regular increases; provide for transition benefits to “hold harmless” current association members; encourage firefighter longevity, especially after becoming “fully trained”; and make the financial pension rewards better align with effort on the force. After presenting a proposed alternative plan structure to the relief association membership, the effort was suspended indefinitely due to the retirements of key city leadership staff during its development who were critical for it to be established.

The Minnetonka Fire Relief Association has adopted benefit level increases periodically since its establishment. In more recent years, each time an increase was proposed, as required by state law, the association had a special actuarial study performed to project the likely impact of the proposed increase upon the funding status of the fund, and when it was projected to remain fully funded, both the association membership and the city council ratified the benefit level increase. From 2002 and 2008, benefit levels were increased 26.5 percent. Since the Great Recession, however, benefit levels have remained constant.

**Current benefit increase proposal**

As indicated previously, the pension fund of the Minnetonka Fire Relief Association had a funding status of over 113 percent as of January 1, 2018, and consistent with history, the board and membership are considering a benefit increase. However, the increase currently being proposed takes into consideration a potential for future economic uncertainties. Unlike previous increases, the request conservatively would increase only the benefit for those retirees receiving/electing a lump sum payment at retirement by 15.8 percent; the pension benefit per year of service would increase from $6,955 to $8,000. At the same time, the benefit level would stay constant for any of the remaining dozen eligible members should they choose a monthly annuity benefit. In this manner, the increase would have significantly less impact upon the fund’s future liability.

The following actuarial studies were completed to provide context for consideration of the proposal, including a stress test for economic uncertainties using a worst-case scenario only.

- First, if the economy and value of the Association’s fund remained the same as the date of the most recent full actuarial analysis, **the proposed increase would only reduce the funding ratio to 110.8 percent, down from 113 percent.**

- Second, if **no increase** was instituted and the economy experienced a **recession** equal to that of 2008 (worst-case scenario), **the funding ratio would drop to 82.5 percent.** As required by state law, the city would have a **first year mandatory contribution to the fund of $221,800.** No estimate was provided for the likely additional costs in several subsequent years. Note that by the end of 2019, the fire pension reserve in the General Fund will have a single-use balance of $265,900.

- However, if the **proposed increase** was instituted and the economy experienced a **recession** equal to that of 2008 (worst-case scenario), **the funding ratio would drop to**

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7 A full actuarial analysis has not yet been completed for January 1, 2019. Therefore, this is the most recent data from which the proposal may be analyzed.
80.9 percent, a difference of only 1.6 percent from the ratio without the proposed increase. The city would have a first year mandatory contribution to the fund of $263,300, a difference of only $41,500 in the first year from the amount without the proposed increase.

- Finally, if the fund was to withstand a recession equal to that of 2008 (worst-case scenario) and remain fully 100 percent funded, the funding ratio would need to be 137 percent.

Attached to this report is a copy of the language adopted by the Minnetonka Fire Relief Association’s membership to amend their association bylaws to institute the proposed benefit increase.

Next Steps and Recommendations

Staff will bring the request to the city council for consideration of approval at its July 22, 2019 meeting. If approved, the association intends to make it effective immediately. City staff does not object to the proposed increase, and if approved, staff would recommend increasing the city’s annual contribution to the General Fund reserve from $25,000 to $75,000 in anticipation of future downturns in the economy and investment markets.

Since its institution, increases in city-paid contributions to the POC deferred compensation benefit were intended to compensate for the years in which the benefit level of the Relief Association pension benefits were frozen. For example, the rate was increased by three percent in 2019, because it was assumed the Relief Association pension benefit would not be increased. If the current association request is approved by the city council, staff further recommends that the rate of city-paid contributions to the deferred compensation benefit remain constant for 2020, and the city consider rate increases in each future year if no Relief Association benefit increase is approved during the prior year.

If the council does not approve the proposed increase, the association may consider adopting the increase without council approval. However, if the association was to do so and should the fund suffer an unfunded liability, the benefit level would drop back down to the level previously approved by the city. The city would only be responsible for making any required contributions calculated at the lower benefit level.

Discussion Points

- What additional information does the city council need to consider the Minnetonka Fire Relief Association membership’s request?

- Does the council support the Fire Relief Association’s request to increase the benefit for those retirees receiving/electing a lump sum payment at retirement from $6,955 to $8,000 per year of service?

- Does the council support increasing the budgeted amount from $25,000 to $75,000 per year for the fire pension reserve in the General Fund?
• *Does the council support a policy to have the rate of city-paid contributions to the deferred compensation benefit remain constant for 2020, and the city consider rate increases in each future year if no Relief Association benefit increase is approved during the prior year?*

Submitted through:
Geralyn Barone, City Manager
Corrine Heine, City Attorney
John Vance, Fire Chief

Originated by:
Merrill King, Finance Director

Attachment: Amendment to the Minnetonka Relief Association Bylaws to institute proposed benefit increase
ARTICLE XII: DEATH BENEFITS AND PENSIONS

SECTION 1: Deleted.

SECTION 2, SUBDIVISION 1: A member who has retained membership in the Association for at least 10 years and has actively served on the Minnetonka Volunteer Fire Department for 10 years or more and has reached the age of 50 years or more, upon retirement from the Minnetonka Volunteer Fire Department, shall be paid monthly for the remainder of the member's natural life the base sum for each year of active service pursuant to Article III, Section 13, to a maximum of thirty times the base sum per month.

SECTION 2, SUBDIVISION 2: Commencing January 1, 1997, at time of application for pension said member may elect to receive a lump sum payment equal to 130 times the earned monthly pension benefit in lieu of any other benefits under these By-Laws and shall be paid at the age of 50 or the retirement date, whichever is later. In the event of the death of the applicant prior to the payment of the lump sum pension, it shall be paid to the Executor, Administrator, or Personal Representative of the deceased.

SECTION 2, SUBDIVISION 3: Commencing January 1, 2006, new members to the association may only receive a lump sum payment at time of application for pension equal to 130 times the earned monthly pension benefit in lieu of any other benefits under these By-Laws and shall be paid at the age of 50 or the retirement date, whichever is later. In the event of the death of the applicant prior to the payment of the lump sum pension, it shall be paid to the Executor, Administrator, or Personal Representative of the deceased.

SECTION 2, SUBDIVISION 4: For application for pension made on or after [insert date approved by relief association], the lump sum pension amount shall be equal to 150.6 times the earned monthly pension benefit in lieu of any other benefits under these By-Laws and shall be paid at the age of 50 or the retirement date, whichever is later. In the event of the death of the applicant prior to the payment of the lump sum pension, it shall be paid to the Executor, Administrator, or Personal Representative of the deceased.

SECTION 2, SUBDIVISION 54: A member of the Association who has actively served on the Minnetonka Volunteer Fire Department for 10 years or more and has been a member of the Association for 10 years or more, but has not reached the age of 50 years, may retire from the Minnetonka Volunteer Fire Department and be placed on the deferred pension roll. The base sum to be applied to a member’s benefit calculation shall be the base sum in effect at the time of retirement from the Minnetonka Volunteer Fire Department. When reaching the age of 50 years or more, the member shall elect to be paid monthly for the remainder of the member's natural life the base sum for each year of active service pursuant to Article III, Section 13, to a maximum of thirty times the base sum per month or elect to receive a lump sum payment as prescribed in Article XII, Section 2, Subdivision 2. A member that joined the association after January 1, 2006 may only receive a lump sum payment as prescribed in Article XII, Section 2, Subdivision 3. During the time a member is on the deferred pension roll, the member will not be eligible for any disability benefits as provided for in Article XI of these By-Laws and shall be relieved of paying dues. At age 50 or more said member must then apply to the Board as prescribed in Article X for said benefit to begin.

SECTION 3: In the event of the death of an active member, service pensioner, disability pensioner, or while on the deferred pension roll, their spouse, if any, shall be paid monthly for the remainder of said spouse's natural life, the sum of one hundred percent (100%) of the base sum for each year of active service pursuant to Article III, Section 13, to a maximum of 30 times the base sum per month. If such member who has no surviving spouse leaves a surviving child or children, such child or children as a group shall be paid monthly, until reaching the age of 18, one hundred (100%) of the base sum for each year of active service pursuant to Article III, Section 13, to a maximum of 30 times the base sum per month. The total of all survivorship payments shall not exceed the base sum per month for each year of active service pursuant to Article III, Section 4.

Adopted by the membership of the Minnetonka Fire Relief Association on June 11, 2019.
City Council Agenda Item #10B  
Meeting of July 22, 2019

Brief Description  Ordinance amending various sections of city code related to pollinators

Recommendation  Adopt the ordinance

Background

Community resiliency has become an important city planning topic in recent years. Generally defined, a resilient community is one that can effectively prepare for, recover from, and adapt to the adverse impacts of both natural and human-created events. An important component of community resiliency is the protection, maintenance, and restoration of natural habitat. Minnetonka has historically used a variety of strategies to promote protection, maintenance, and restoration of the natural environment, including:

<table>
<thead>
<tr>
<th>Education</th>
<th>Stewardship Activities</th>
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<tr>
<td>Articles in the Minnetonka Memo, e-newsletters, social media, city website, and employee intranet</td>
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Mayors' Monarch Pledge

In 2017, the city began participating in the National Wildlife Federation’s Mayors’ Monarch Pledge. The city has committed to a wide range of actions including habitat restoration and protection, multifaceted public outreach efforts and events, partnership with other agencies, and long-range planning for sustainable practices on city properties. The pledge itself includes 24 possible action steps. To date, the city has accomplished 21 of the 24 steps. Remaining action steps include:

- Increase the percentage of native plants, shrubs, and trees that must be used in city landscaping ordinances and encourage the use of milkweed where appropriate.
• Change landscape ordinances to support integrated pest management and reduce the use of pesticides and insecticides.

• Adopt pesticide practices that are not harmful to pollinators.

Proposed Ordinance Amendments

Staff is proposing amendments to several sections of the zoning ordinance to support two of the three remaining action steps. The intent of the amendments is to increase pollinator habitat in the community. Pollinator habitat can include wildflowers and certain shrubs, trees, aquatic plants, buffer plants, and grasses. Increasing native habitat – which is also used by other animal species – has the additional benefits of capturing runoff, reducing erosion, improving air quality, and enhancing climate resilience.

Planning Commission Review and Recommendation

The planning commission considered the proposal on June 27, 2019. A public hearing was opened to take comment; no comments were received. The planning commission asked general questions about the Mayor’s Monarch Pledge and specific questions about the one remaining step related to pesticide practices. Commissioners noted they were proud of the work the city has already done on this issue and unanimously recommended approval of the ordinance amendments. The commission report and meeting minutes are attached.

Following Planning Commission Review

Following the commission meeting, staff realized that an answer to a commission question about insecticides was stated incorrectly. Staff indicated that Roundup is a commonly used and recognized neonicotinoid (“neonic”) insecticide. To clarify and be more accurate, Roundup is a plant growth regulator (auxin) that is used as an herbicide for plant control (not insects). Derived from nicotine, neonics act as a neuro-toxin to insects. They are often used in the agriculture and horticulture industry to control insect pests. Probably the most well-known common name is Imidacloprid.

This correction to the public record was made through a change memo at the planning commission’s July 11, 2019, meeting.

Staff Recommendation

Staff recommends the city council adopt the ordinance amending various sections of city code related to pollinators.

Submitted through
Gerayln Barone, City Manager
Julie Wischnack, AICP, Community Development Director
Loren Gordon, AICP, City Planner

Originated by:
Christine Petersen, Natural Resources Program and Outreach Coordinator
Aaron Schwartz, Natural Resources Specialist
Susan Thomas, AICP, Assistant City Planner
MINNETONKA PLANNING COMMISSION
June 27, 2019

Brief Description
Ordinance amending various sections of city code related to pollinators

Recommendation
Recommend the city council adopt the ordinance

Background
Community resiliency has become an important city planning topic in recent years. Generally defined, a resilient community is one that can effectively prepare for, recover from, and adapt to the adverse impacts of both natural and human-created events. An important component of community resiliency is the protection, maintenance and restoration of natural habitat. Minnetonka has historically used a variety of strategies to promote protection, maintenance, and restoration, including:

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• Increase the percentage of native plants, shrubs, and trees that must be used in city landscaping ordinances and encourage the use of milkweed where appropriate.

• Change landscape ordinances to support integrated pest management and reduce the use of pesticides and insecticides.

• Adopt pesticide practices that are not harmful to pollinators.

Proposed Ordinance Amendments

Staff is proposing amendments to several sections of the zoning ordinance to support two of the three remaining action steps. The intent of the amendments is to increase pollinator habitat in the community. Pollinator habitat can include wildflowers and certain shrubs, trees, aquatic plants, buffer plants, and grasses. Increasing native habitat – which is also used by other animal species – has the additional benefits of capturing runoff, reducing erosion, improving air quality, and enhancing climate resilience.

The primary ordinance changes proposed are:

1) **Purpose:** The purpose of the zoning ordinance is to promote the public health, safety, and welfare of the community. The first section of the ordinance outlines the variety of ways this is accomplished, including conserving the environmental assets of the city. As proposed, “habitat” would be added to the existing list of assets:

   conserving the natural beauty and environmental assets of the city including areas of steep slopes, mature trees, and wetlands, and habitat;

2) **Definitions:** As proposed, five new definitions would be added to the definition section of the zoning ordinance:

   **Habitat** – the place(s) where an organism lives, including the resources and conditions required for its survival.

   **Landscape plan** – a plan that details the location, size and species of existing and proposed plantings on a property or development site. The plan may include other features such as fences, retaining walls, or berms.

   **Native cultivar** - a variation of a native plant, deliberately selected, cross-bred or hybridized for desirable traits.

   **Native plant** – a plant that was found naturally in an area prior to human introduction, usually defined as pre-European settlement.

   **Pollinator** – an animal that transfers pollen between flowering plants, including but not limited to hummingbirds, butterflies and moths, bees, and other insects.

3) **Landscaping Requirements**

   The zoning ordinance requires site and building plan (SBP) review and approval prior to construction of any building in the city, with the exception of single-family homes. SBP review/approval may also be necessary for modifications to existing multi-family
residential, commercial, office, or industrial buildings. Landscaping plans – meeting minimum monetary values and specific planting requirements – are a component of any SBP approval. Staff proposes amending the existing planting requirements to include the following:

At least 25 percent of proposed new plantings must be species beneficial to pollinators derived from the city’s native or native cultivar plant list, unless approved by the city. The city may allow credit for existing, native and/or significant plant materials beneficial to pollinators that are preserved as part of the landscape plan.\(^1\)

This new standard would not require developers/builders to “do” or “spend” more on landscaping. Rather, a portion of the landscaping already required would simply need to be pollinator-focused. There are several existing resources on eminnetonka.com to assist developers/builders in incorporating plant materials beneficial to pollinators: Planting for Pollinators, Attracting Birds, Butterflies, and Wildlife. Staff will also draft guidance documents and resources that can be provided during individual meetings.

- **Organization**

  Staff proposes reordering and rewording existing landscape plan requirements for clarity.

**Staff Comment**

The proposed ordinance amendments – in particular the requirement that 25 percent of the plantings at new development be species beneficial to pollinators – could be considered innovative and forward-thinking. Staff knows of no other communities in Minnesota, including the 13 other Mayors’ Monarch Pledge cities in the state, which have adopted specific, pollinator-focused landscaping requirements. However, the proposed amendments could also be considered a simple continuation of Minnetonka’s historical efforts to protect, maintain and restore its natural resources assets.

**Staff Recommendation**

Recommend the city council adopt the ordinance amending various sections of city code related to pollinators.

Originators: Christine Petersen, Natural Resources Program and Outreach Coordinator  
Aaron Schwartz, Natural Resources Specialist  
Susan Thomas, AICP, Assistant City Planner  
Leslie Yetka, Natural Resources Manager

Through: Loren Gordon, AICP, City Planner

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\(^1\) As is staff's current practice, decisions on credit for existing species would be based on specific and unique site conditions. Similarly, there may be specific and unique sites where pollinator-beneficial species may not be appropriate.
Supporting Information

Introduction
The ordinance amendments were introduced to the city council on May 20, 2019. Councilmembers unanimously supported the amendments.

Pyramid of Discretion

Voting Requirement
The planning commission will make a recommendation to the city council. Both the commission recommendation and council approval requires only a majority vote.

Deadline for Action
N/A
Mr. Murdock stated that other locations have found that the average customer service interaction for patrons who preordered and picked up the order at the pick-up window lasts 15 seconds. There would be no squawk box or menu panel. A large percentage of the Chipotle pick-up windows’ clientele are drivers for food delivery services.

The public hearing was opened. No testimony was submitted and the hearing was closed.

Chair Kirk asked if efface would be used. Cauley stated that the representation is not a final determination of materials that would be used.

Hanson noted that there is a lot going on in Opus. This feels like a good indication of what will be happening in the area.

Sewall suggested signage that would alert drivers that the pick-up window would operate differently than a traditional drive-thru window. He supports the proposal.

Luke moved, second by Knight, to recommend that the city council adopt the resolution approving an amendment to the master development plan and final site and building plans with a parking variance and a resolution approving a conditional use permit for a restaurant with a drive-up window and outdoor seating area.

Hanson, Henry, Knight, Luke, Sewell, and Kirk voted yes. Powers was absent. Motion carried.

This item is scheduled to be reviewed by the city council at its meeting on July 8, 2019.

D. Ordinance amending various sections of city code related to pollinators.

Chair Kirk introduced the proposal and called for the staff report.

Petersen, Thomas, and Yetka reported. Thomas recommended approval of the application based on the findings listed in the staff report.

Henry confirmed with Peterson that positive changes have already been taking place in Minnetonka. Petersen stated that the amount of herbicides with neonicotinoids used in Minnetonka has already been decreased. Minnetonka has been using goats to remove invasive vegetative species instead of using chemicals. Volunteers completing restoration work has been occurring in Minnetonka for about 20 years.

Petersen said that Janet VanSloun has been working with volunteers for a couple of years to remove buckthorn on the west side of Big Willow Park. This year, swamp milkweed has sprouted and is host to ten monarch caterpillars. Restoration can be highly effective and the fewer chemicals used the better.
Petersen explained that the Mayor’s Monarch Pledge specifically addresses the ways that municipalities can contribute to monarch protection and pollinator habitat. The structure and focus helps suggest actions that relate to the organization and community.

Chair Kirk asked if staff has ideas for additional items that should be added to the list. Yetka responded that the last step related to pesticides would be a significant one. Substantive changes to chemical use would be a high bar.

Chair Kirk questioned if mosquito control efforts would be impacted. Petersen understood that the first-round, widespread treatment for mosquitoes uses chemicals that are targeted and used in specific areas shown to be problematic.

Henry asked if the chemicals used for spraying for mosquitoes are considered neonicotinoids. Yetka answered in the negative. Those chemicals target mosquito larvae. It is not the same mechanism that impacts pollinators. The chemical used for mosquitos is not emitted into the air.

In response to Henry’s question, Thomas explained that the ordinance would apply to any land use application that would be required to have a landscape plan.

Henry suggested adding native plants to the city’s tree sale. Petersen said that the trees and shrubs selected for the sale have benefits for pollinators. Perennials are sold at the pollinator field-day event which she invited everyone to attend July 10, 2019 at Lone Lane Park from 4 p.m. to 7 p.m. There will be two native plant sale vendors selling grasses, shrubs, and vegetation including milkweed.

Luke noted that restriction of the type of chemicals used in Minnetonka is not included in the ordinance. Thomas stated that the best way to address the use of chemicals is being reviewed. A council policy may be created to address the issue.

Hanson was proud and impressed, but he thought more could be done.

In response to Sewall’s question, Yetka explained that the 25 percent criteria was created by staff. The goal is to be enduring, layered, and sustainable. The challenge will be to prompt a shift in thinking. Sewall agreed. He thought requiring 50 percent of landscaping to be native would be reasonable. He supports the proposal.

Chair Kirk felt it would be good to start the initiative in a way that would ensure 100 percent success. He supports revisiting the percentage amount in a year. Sewall agreed.

The public hearing was opened. No testimony was submitted and the hearing was closed.

Chair Kirk supports the proposal.
Knight asked if development of the lite rail would be able to meet the proposed ordinance’s requirements. Thomas explained that the proposed ordinance works as a positive and promotes creating habitat, not as a restriction.

Luke likes the idea of requiring developers to plant native vegetation for landscaping, but she did not want to prevent a project like a bike trail or lite rail from happening in an effort to protect existing habitat. She suggested councilmembers consider the wording. Thomas explained that the zoning ordinance helps promote public safety, health, and welfare. Yetka noted that the city’s ordinances already protect woodland preservation areas and wetland communities which are types of habitats. The mitigation component is a part of that to allow flexibility.

Hanson noted that the proposed ordinance would not be punitive, but would be a positive influence. The language is not specific enough to require mitigation. He appreciated the thoughtfulness to protect the city.

Henry was glad that steps would be taken to increase the number of pollinators. He asked what the next steps would be to address chemical usage. Yetka did not have a timeline. The Mayor’s Monarch Pledge has been being worked on for two years. She hoped the chemical issue would be tackled during the next year. Petersen added that natural resources staff have been talking with residents about native habitat. This is an active part of the city’s outreach and engagement programs.

Sewall felt the mechanisms would still be in place to allow the best decisions to be made for the city and the environment.

_Hanson moved, second by Knight, to recommend that the city council adopt the ordinance amending various sections of the city code related to pollinators._

_Hanson, Henry, Knight, Luke, Sewell, and Kirk voted yes. Powers was absent. Motion carried._

9. Adjournment

_Hanson moved, second by Luke, to adjourn the meeting at 9 p.m. Motion carried unanimously._

By: ____________________________

Lois T. Mason
Planning Secretary
Ordinance No. 2019-

An ordinance amending Minnetonka City Code Sections 300.01, 300.02, 300.25, and 300.27 as they relate to pollinators

The City Of Minnetonka Ordains:

Section 1. Section 300.01 Subd.2 of the Minnetonka City Code, regarding the zoning ordinance, is amended to read as follows:

   This ordinance is enacted to promote the public health, safety and general welfare of the city of Minnetonka through the following:

   g) conserving the natural beauty and environmental assets of the city including areas of steep slopes, mature trees, and wetlands, and habitat;

Section 2. Section 300.02 of the Minnetonka City Code, regarding definitions, is amended to include the following definitions in appropriate alphabetic order and the succeeding definitions are renumbered consecutively:

   Habitat – the place(s) where an organism lives, including the resources and conditions required for its survival.

   Landscape plan – a plan that details the location, size and species of existing and proposed plantings on a property or development site. The plan may include other features such as fences, retaining walls, or berms.

   Native cultivar - a variation of a native plant, deliberately selected, cross-bred or hybridized for desirable traits.

   Native plant – a plant that was found naturally in an area prior to human introduction, usually defined as pre-European settlement.

   Pollinator – an animal that transfers pollen between flowering plants, including but not limited to hummingbirds, butterflies and moths, bees, and other insects.

Section 3. Section 300.25 Subd.11 of the Minnetonka Code, regarding shoreland alteration, is amended to read as follows:

The stricken language is deleted; the underlined language is inserted.
The removal of natural vegetation within shore and bluff impact zones must be restricted to prevent erosion into public waters and to preserve soil nutrients in the soil, habitat, and to preserve shoreland aesthetics.

Section 4. Section 300.27 Subd. 14 of the Minnetonka City Code, regarding landscape plan requirements, is amended to read as follows:

Landscape plans shall be prepared by a landscape architect or other qualified person acceptable to the city planner, drawn to a scale of not less than one inch equals 50 feet and shall show the following:

a) Property:
   1) boundary lot lines of the property with accurate dimensions;

b) 2) locations of existing and proposed buildings, parking lots, roads and other improvements;
   3) existing and proposed easements;

c) 4) proposed grading plan with two foot contour intervals;

d) location, approximate size and common name of existing trees and shrubs;

e) a planting schedule containing symbols, quantities, common and botanical names, size of plant materials, root condition and special planting instructions;

f) planting details illustrating proposed locations of all new plant material;

g) locations and details of other landscape features including berms, fences and planter boxes;

h) details of restoration of disturbed areas including areas to be sodded or seeded;

i) location and details of irrigation systems; and

j) details and cross sections of all required screening.

b) Existing Vegetation:

1) All trees that will be removed, relocated, or preserved;

2) Any shrubs or planting beds that will be removed or modified;

3) Tree protection measures for trees to be saved;

4) Any other vegetation identified as significant by city staff.

c) New Plantings:
1) A planting plan with the location of each new plant with the species and size labeled;

2) A plant schedule with symbols, quantities, common and botanical names, size, container/root type, and any details or remarks summarizing the plant material to be used;

3) Planting details for planting trees and shrubs.

4) Areas to be seeded or sodded, or otherwise established with groundcover. Note, gravel or landscape rock does not, by itself, constitute landscaping.

d) Other landscape elements:

1) Fences, retaining walls, patios, and other similar features, and associated construction details.

2) Berms and associated grading details.

3) Lighting and associated details.

4) Irrigation systems and associated details.

Section 5. Section 300.27 Subd.15 of the Minnetonka City Code, regarding minimum landscaping requirements, is amended to read as follows:

a) A reasonable attempt must be made to preserve as much existing vegetation as is practicable and to incorporate it into the landscape plan.

b) All open areas of a lot which are not used or improved for required parking areas, drives or storage shall must be landscaped with a combination of overstory trees, understory trees, shrubs, flowers and ground cover materials. The plan for landscaping shall must include ground cover, bushes, shrubbery, trees, sculpture, foundations, decorative walks or other similar site design features or materials in a quantity having a minimum value in conformance with the following table:

<table>
<thead>
<tr>
<th>Project Value</th>
<th>Minimum Landscape Value</th>
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<tbody>
<tr>
<td>Below $1,000,000</td>
<td>2% of project value</td>
</tr>
<tr>
<td>$1,000,001-$2,000,000</td>
<td>$20,000 + 1% of project value</td>
</tr>
<tr>
<td>$2,000,001-$3,000,000</td>
<td>$30,000 + 0.75% of project value</td>
</tr>
<tr>
<td>$3,000,001-$4,000,000</td>
<td>$37,500 + 0.25% of project value</td>
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<tr>
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In instances where healthy native or significant plant materials of acceptable species exist on a site prior to its development, the application of the standards in this subdivision may be adjusted by the city to allow credit for such material, provided that such adjustment is consistent with the intent of this ordinance. -The city may permit the
seeding of areas reserved for future expansion of the development if consistent with the intent of this ordinance.

b)____ A reasonable attempt shall be made to preserve as many existing trees as is practicable and to incorporate them into the site plan.

c)____ At least 25 percent of proposed new plantings must be species beneficial to pollinators derived from the city’s native or native cultivar plant list, unless approved by the city. The city may allow credit for existing, native and/or significant plant materials beneficial to pollinators that are preserved as part of the landscape plan.

d)____ Not more than 25 percent of the required number of trees may be composed of any one species unless approved by the city. The following trees are not allowed as new plantings:

1) a species of the genus Ulmus (elm), except those elms bred to be immune to Dutch elm disease;
2) box-elder;
3) ash;
4) female ginkgo; or
5) Colorado spruces.

c)____ All new landscape trees and shrubs must meet the American Standard for Nursery Stock and American National Standard relating to planting guidelines, quality of stock and appropriate sizing of the root ball. Landscape trees must be balled and burlapped or moved from the growing site by tree spade. Deciduous trees will be not less than one and one quarter inches but not more than three inches caliper for balled and burlapped trees, and not less than three inches but not more than six inches caliper for spade-moved trees. Coniferous trees will not be less than six feet in height but no more than eight feet for balled and burlapped trees, and not less than eight feet in height but not more than fourteen feet for spade-moved coniferous trees.

The city may allow larger balled and burlapped or spade moved trees if these trees are accompanied with a three year guarantee.

d)____ All site areas not covered by buildings, sidewalks, parking lots, driveways, patios or similar hard surface materials shall be covered with sod or an equivalent ground cover approved by the city. This requirement shall not apply to site areas retained in a natural state.

e)____ In order to provide for adequate maintenance of landscaped areas, an underground sprinkler irrigation system shall be provided as part of each new development, except one and two-family dwellings and additions to existing structures which do not at least equal the floor area of the existing structure. A sprinkler irrigation system shall be provided for must include a properly installed and operating...
rain sensor or other smart irrigation controller, and must be installed in all landscaped areas except areas to be preserved in a natural state.

f) Not more than 25 percent of the required number of trees shall be composed of one species unless approved by the city. No required tree shall be any of the following:

1) a species of the genus ulmus (elm), except those elms bred to be immune to dutch elm disease;

2) box elder;

3) ash;

4) female ginko; or

5) Colorado spruce.

Section 6. A violation of this ordinance is subject to the penalties and provisions of Chapter XIII of the city code.

Section 7. This ordinance is effective the day after publication.

Adopted by the city council of the City of Minnetonka, Minnesota, on July 22, 2019.

Brad Wiersum, Mayor

Attest:

Becky Koosman, City Clerk

Action on this Ordinance:

Date of introduction: May 20, 2019
Date of adoption: 
Motion for adoption: 
Seconded by: 
Voted in favor of: 
Voted against: 
Abstained: 
Absent: 
Ordinance adopted.

Date of publication: 

The stricken language is deleted; the underlined language is inserted.
I certify that the foregoing is a true and correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota, at a meeting held on July 22, 2019.

Becky Koosman, City Clerk
City Council Agenda Item #10C
Meeting of July 22, 2019

Brief Description
Resolution approving a conditional use permit for an accessory apartment at 3518 Hopkins Crossroad

Recommendation
Adopt the resolution approving the permit

Background
The subject property is located in the northwest corner of the Hopkins Crossroad/Farm Lane intersection. It is improved with a roughly 2,715 sq.ft. home constructed in 1960.

The current property owner, Hollie Schroeder, purchased the home in 2018. Ms. Schroeder indicates that at the time of purchase, the basement of the home contained an accessory apartment. The apartment includes a bedroom, bathroom, kitchen, and living spaces. City staff can find no record of any permits being issued to create this separate dwelling area. The city assessor last evaluated the home in 2003, and no apartment was noted at that time. Staff speculates that the apartment was, therefore, created sometime in the last 15 years.

Proposal
To ensure compliance with zoning regulations, the property owner is requesting the city approve a conditional use permit for the existing apartment.

Planning Commission Review and Recommendation
The planning commission considered the proposal as part of its June 27, 2019 consent agenda. Staff recommended approval, noting that the apartment would meet all conditional use permit standards. The commission unanimously recommended the city council approve the conditional use permit.

Since the Planning Commission Meeting
The written report to the commission states that the city does not have a rental inspection program. While this is true, the city has adopted the 2015 International Property Maintenance Code. All properties are subject to these regulations. A condition of approval has been added to the resolution noting this.

Staff Recommendation
Adopt the resolution approving a conditional use permit for an accessory apartment at 3518 Hopkins Crossroad.

Submitted through
Geralyn Barone, City Manager
Julie Wischnack, AICP, Community Development Director
Loren Gordon, AICP, City Planner
Originated by:
   Susan Thomas, AICP, Assistant City Planner
Brief Description  Conditional use permit for an accessory apartment at 3518 Hopkins Crossroad

Recommendation  Recommend the city council adopt the resolution approving the permit

Background

The subject property is located in the northwest corner of the Hopkins Crossroad/Farm Lane intersection. It is improved with a roughly 2,715 sq.ft. home constructed in 1960.

The current property owner, Hollie Schroeder, purchased the home in 2018. Ms. Schroeder indicates that at the time of purchase the basement of the home contained an accessory apartment. The apartment includes bedroom, bathroom, kitchen, and living spaces. City staff can find no record of any permits being issued to create this separate dwelling area. The city assessor last evaluated the home in 2003 and no apartment was noted at that time. Staff speculates that the apartment was, therefore created, sometime in the last 15 years.

Proposal

To ensure compliance with zoning regulations, the property owner is requesting the city approve a conditional use permit for the existing apartment.

Staff Analysis

Staff finds that the accessory apartment is reasonable.

1) The apartment meets the intent of the accessory apartment ordinance. It would afford efficient utilization of an existing home, while maintaining the character of existing single-family neighborhood.

2) The apartment is located in the basement of an existing home. Given this, the apartment would not alter the single-family character of the area or substantially impact the surrounding neighborhood.

3) The proposed apartment would meet all conditional use permit standards. These standards are outlined in the “Supporting Information” section of this report.

Staff Recommendation

Recommend that the city council adopt the resolution approving a conditional use permit for an accessory apartment at 3518 Hopkins Crossroad.

Originator: Susan Thomas, Principal Planner
Through: Loren Gordon, AICP, City Planner
### Supporting Information

**Surrounding Land Uses**  
All properties surrounding the subject lot are zoned and guided low density residential.

**Planning**  
Guide Plan designation: low density residential  
Zoning: R-1

**Accessory Apartments**  
By City Code §300.10 Subd.4(d), accessory apartments are conditionally-permitted uses in single-family residential zoning districts.

**CUP Standards**  
The proposed accessory apartment would meet the general conditional use permit standards as outlined in City Code 300.16 Subd.2.

1. The use is consistent with the intent of this ordinance;

2. The use is consistent with the goals, policies and objectives of the comprehensive plan;

3. The use does not have an undue adverse impact on governmental facilities, utilities, services or existing or proposed improvements; and

4. The use does not have an undue adverse impact on the public health, safety or welfare.

The proposal apartment would also meet the specific conditional use permit standards as outlined in City Code 300.16 Subd.3.

1. To be created only on property zoned for single family detached dwellings and no more than one apartment to be created in any dwelling;

**Finding**  
The accessory unit is the only apartment on the property.

2. Structures in which an accessory apartment is created to be owner-occupied, with the owner residing in either unit on a continuous basis except for temporary absences throughout the period during which the permit is valid;

**Finding:** As a condition of approval, the property owner must live in one of the dwelling units.

3. Adequate off-street parking to be provided for both units of housing with such parking to be in a garage, carport or on a paved area specifically intended for that purpose but not within a required turnaround;

**Finding:** The existing garage and driveway provide adequate off-street parking for both housing units.
4. May be created by the conversion of living space within the house but not by conversion of garage space unless space is available for a two car garage on the lot without the need for a variance;

**Finding:** The apartment does not impact garage space.

5. An accessory apartment must be no more than 35 percent of the gross living area of the house or 950 square feet, whichever is smaller. The gross living area includes the accessory apartment. The city council may approve a larger area where the additional size would not substantially impact the surrounding neighborhood.

**Finding:** Based on the submitted plans, the accessory apartment is roughly 950 square feet in area; this would be 35 percent of the gross living area of the home.

6. Exterior changes to the house must not substantially alter the single family character of the structure;

**Finding:** The apartment is located in the basement of the existing home. It does not alter the single-family character of the home or substantially impact the surrounding neighborhood.

7. No apartment to be created except in compliance with all applicable building, housing, electrical, plumbing, heating and related codes of the city;

**Finding:** The accessory apartment has already been created and city staff can find no record of any permits for this separate dwelling area. This requirement would be difficult to enforce. While staff would highly recommend the property owner have the home inspected for compliance with code, the city does not have a rental inspection requirement.

8. To be permitted only where it is demonstrated that the accessory unit will not have an undue adverse impact on adjacent properties and where there will not be a substantial alteration of the character of the neighborhood; and

**Finding:** The apartment is located in the basement of the existing home. It does not alter the single-family character of the area or substantially impact the surrounding neighborhood.

9. All other provisions of this ordinance relating to single family dwelling units to be met, unless specifically amended by this subdivision.

**Finding:** The accessory apartment would comply with all other ordinance standards.
Neighborhood Comments
The city sent notices to 31 area property owners and has received no comments to date.

Pyramid of Discretion

Motion Options
The planning commission has three options:

1. Concur with staff’s recommendation. In this case a motion should be made recommending the city council approve the CUP.

2. Disagree with staff’s recommendation. In this case a motion should be made recommending denial of the request. This motion must include a statement as to why the request is denied.

3. Table the request. In this case a motion should be made to table the item. The motion should be made include a statement as to why the request is being tabled with direction to staff, the applicant or both.

Voting
The planning commission will make a recommendation to the city council, which has final authority on the applicant’s request. Approval of the requested CUP requires the affirmative vote of a simple majority of councilmembers.

Deadline for Decision
September 16, 2019
Location Map

Project: Schroeder Residence
Address: 3518 Hopkins Xrd
To whom this may concern:

I purchased this property in March of 2018, with a full mother in law suite finished in the basement. Its 950 square feet of private space, with a separate entrance and off street parking. For purposes of taxes and compliance with the city, I would like to apply to have my property recognized as a duplex, so that I can rent out the basement. I have attached a hand drawing and measurements. It has one bedroom, den, living room, kitchen, bathroom and shared laundry. Please let me know what you need from me to get this request finalized.

Thanks for your consideration,
Hollie Schroeder
701-388-0910
Outside

Designated Off Street parking for rental
Paver path being installed Mid June to rental entrance
Front of house
Rental Entrance
Back of house/Rental Entrance
Rental Entrance
Main floor Living Space
Basement Rental Unit

Submission by Applicant

May 20, 2019

Living Room with Private Entrance

Kitchen

Bathroom & Shower

Master

Den
Shared Space
FLOOR PLAN
Scale: 1/2" = 10'

Main floor = 1912 Square feet w/ garage & Breeze way

1912 Square feet
• Adopted a resolution approving the final plat and denying the request to mass grade the site prior to issuance of the grading permit for Oakland Estates at 1922 Oakland Road.

The next planning commission meetings are scheduled to be held July 11, 2019 and July 18, 2019.

The annual boards and commissions dinner is scheduled for July 15, 2019 from 5:30 p.m. to 8:30 p.m.

6. Report from Planning Commission Members

Hanson appreciated city staff visiting employees working in the Opus area to gain feedback on amenities and park items that workers would like added to the area.

Chair Kirk attended the ribbon cutting for the pickle-ball courts in Lone Lake Park. It was well attended. Tournaments will be able to be held since there are eight courts.

7. Public Hearings: Consent Agenda

No items were removed from the consent agenda for discussion or separate action.

Hanson moved, second by Henry, to approve the items listed on the consent agenda as recommended in the respective staff reports as follows with a modification provided in the change memo dated June 27, 2019:

A. Resolution approving a side yard setback variance to replace the flat roof of an existing garage with a pitched roof at 14523 Orchard Road.

Adopt the resolution approving a side yard setback variance to replace the flat roof of an existing garage with a pitched roof at 14523 Orchard Road.

B. Resolution approving a variance for a front porch addition at 5000 Acorn Ridge Road.

Adopt the resolution approving a front yard setback variance for a screened porch addition at 5000 Acorn Ridge Road.

C. Resolution approving an expansion permit for a new garage at 5625 Eden Prairie Road.

Adopt the resolution approving an expansion permit to allow the construction of a detached, three-car garage within the bluff impact zone at 5625 Eden Prairie Road.

D. Resolution approving a conditional use permit for an accessory apartment at 3518 Hopkins Crossroad.
Recommend that the city council adopt the resolution approving a conditional use permit for an accessory apartment at 3518 Hopkins Crossroad.

*Henry, Knight, Luke, Sewell, Hanson, and Kirk voted yes. Powers was absent. Motion carried and the items on the consent agenda were approved as submitted.*

Chair Kirk stated that an appeal of the planning commission’s decision must be made in writing to the planning division within 10 days.

8. Public Hearings

A. Resolution denying a variance for a front porch addition at 18724 South Lane.

Chair Kirk introduced the proposal and called for the staff report.

Ingvalson reported. He recommended denial of the application based on the findings listed in the staff report.

Chair Kirk asked if the property would qualify as a small lot. Ingvalson explained that the site would meet two out of three requirements to be considered a small lot. The average lot size within 400 feet of the site must be smaller than 15,000 square feet; the lot must have been created prior to 1966; and the lot cannot exceed 15,000 square feet. The lot is 20,000 square feet, so it is not considered a small lot.

Ingvalson clarified that an enclosed porch would be required to meet a 35-foot front yard setback and a porch that would not be enclosed would be required to meet a 30-foot setback. Staff did not find a unique circumstance with the property.

Aliaksandr Smolau, 18724 South Lane, applicant, stated that:

- The house was located on the lot in 1918.
- He provided pictures of remodeling the house.
- He explained the improvements he is making including adding insulation.
- He listed the benefits of the porch including that it would provide closet space and prevent heat from escaping when the door would be opened.
- He plans to build an attached garage in the future.

Henry thought the addition would be good for the house and the neighborhood. He lives in the neighborhood and it is nice to see the house improved. It is a fine line between honoring the code requirements and standards to approve a variance. He saw the proposal as an improvement.

Knight was torn. The front of the house on the west side is closer to the road. The proposal would not extend the entire front of the house, just an enclosed porch. The
Resolution 2019-  
Resolution approving a conditional use permit for an accessory apartment  
3 at 3518 Hopkins Crossroad  

Be it resolved by the City Council of the City of Minnetonka, Minnesota, as follows:

Section 1. Background.

1.01 The subject property is located at 3518 Hopkins Crossroad. It is legally described as:

TRACT A, REGISTERED LAND SURVEY NO. 0343, Hennepin County, Minnesota

Also

The East 252 feet of Outlot 4, ROBINWOOD 3rd ADDITION, Hennepin County, Minnesota

1.02 The home on the property was constructed in 1960.

1.03 The current property owner, Hollie Schroeder, purchased the home in 2018. Ms. Schroeder indicates that at the time of purchase, the basement of the home contained an accessory apartment. The apartment includes a bedroom, bathroom, kitchen, and living spaces. City staff can find no record of any permits being issued to create this separate dwelling area.

1.04 To ensure compliance with zoning regulations, the property owner is requesting the city approve a conditional use permit for the existing apartment.

1.05 On June 27, 2019, the planning commission held a hearing on the application. The applicant was provided the opportunity to present information to the commission. The commission considered all of the comments and the staff report, which are incorporated by reference into this resolution. The commission recommended that the city council approve the permit.

Section 2. Conditional Use Permit Standards.

2.01 City Code §300.16, Subd.2, lists the following general standards that must be met for granting of a conditional use permit:

1. The use is consistent with the intent of this ordinance;
2. The use is consistent with the goals, policies, and objectives of the comprehensive plan;

3. The use does not have an undue adverse impact on governmental facilities, utilities, services or existing or proposed improvements; and

4. The use does not have an undue adverse impact on public health, safety, or welfare.

2.02 City Code §300.16, Subd.3(d) lists the following specific standards that must be met for granting of a conditional use permit for an accessory apartment:

1. To be created only on property zoned for single-family detached dwellings and no more than one apartment to be created in any dwelling;

2. Structures in which an accessory apartment is created to be owner-occupied, with the owner residing in either unit on a continuous basis except for temporary absences throughout the period during which the permit is valid;

3. Adequate off-street parking to be provided for both units of housing with such parking to be in a garage, carport or on a paved area specifically intended for that purpose but not within a required turnaround;

4. May be created by the conversion of living space within the house but not by conversion of garage space unless space is available for a two-car garage on the lot without the need for a variance;

5. An accessory apartment must be no more than 35 percent of the gross living area of the house or 950 square feet, whichever is smaller. The gross living area includes the accessory apartment. The city council may approve a larger area where the additional size would not substantially impact the surrounding neighborhood.

6. Exterior changes to the house must not substantially alter the single-family character of the structure;

7. No apartment to be created except in compliance with all applicable building, housing, electrical, plumbing, heating and related codes of the city;

8. To be permitted only where it is demonstrated that the accessory unit will not have an undue adverse impact on adjacent properties and where there will not be a substantial alteration of the character of the neighborhood; and

9. All other provisions of this ordinance relating to single-family dwelling units to be met, unless specifically amended by this subdivision.
Section 3. Findings.

3.01 The proposed apartment would meet the general conditional use permit standards as outlined in City Code §300.16 Subd.2.

3.02 The proposed apartment would meet the general conditional use permit standards as outlined in City Code §300.16 Subd.3(d).

1. The accessory unit is the only apartment on the property.
2. As a condition of this resolution, the property owner must live in one of the dwelling units.
3. The existing garage and driveway provide adequate off-street parking for both housing units.
4. The apartment does not impact garage space.
5. Based on the submitted plans, the accessory apartment is roughly 950 square feet in area; this would be 35 percent of the gross living area of the home.
6. The apartment is located in the basement of the existing home. It does not alter the single-family character of the area or substantially impacts the surrounding neighborhood.
7. The accessory apartment has already been created, and city staff can find no record of any permits being issued for this separate dwelling area. This requirement would be difficult to enforce. While the city would highly recommend the property owner have the home inspected for compliance with code, the city does not have a rental inspection requirement.
8. The accessory apartment would comply with all other ordinance standards.

Section 4. City Council Action.

4.01 The above-described conditional use permit is approved, subject to the following conditions:

1. The structure must be owner-occupied. The property owner must reside in either living unit on a continuous basis except for temporary absences throughout the period during which the permit is valid.
2. All other provisions of the ordinance relating to single-family dwelling units must be met unless specifically amended by this resolution.
3. The property is subject to the 2015 International Property Maintenance Code published by International Code Conference, Inc., including the
4. The city council may reasonably add or revise conditions to address any future unforeseen problems.

5. Any change to the approved use that results in a significant increase in traffic or a significant change in character would require a revised conditional use permit.

Adopted by the City Council of the City of Minnetonka, Minnesota, on July 22, 2019.

Brad Wiersum, Mayor

ATTEST:

Becky Koosman, City Clerk

ACTION ON THIS RESOLUTION:

Motion for adoption:
Seconded by:
Voted in favor of:
Voted against:
Abstained:
Absent:
Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a duly authorized meeting held on July 22, 2019.

Becky Koosman, City Clerk
City Council Agenda Item #12A
Meeting of July 22, 2019

Brief Description: Ordinance authorizing sale of city property adjacent to 1013 Ford Road

Recommended Action: Introduce the ordinance and approve the purchase agreement

Background

In 2017, Cathy van der Schans contacted the city about the possibility of purchasing a portion of excess right of way adjacent to the property at 1013 Ford Road. Ms. Van der Schans is the manager of the limited liability company that owns the property at 1013 Ford Road. The intended use of the city property is for open space and personal recreational use.

The sale property consists of approximately 14,000 square feet. It is a portion of a larger tract of unused right of way that the State of Minnesota conveyed to the city in 2016. There is a wetland approximately 5,295 square feet in area on the sale property. Due to the wetland, the sale property would not be a buildable lot on its own, and combination with the buyer’s adjacent property is required. Based on a recommendation of the city’s land committee, which is comprised of city staff from various departments, the city manager recommends the sale.

The city attorney has prepared a purchase agreement that details the terms of sale. The key terms of the purchase agreement are as follows:

- Sale price of $68,000. The sale price was determined by an independent appraisal, the costs of which were paid by the buyer. (Proceeds from the sale will be deposited in the Storm Water Fund.)
- Buyer pays all costs of survey, wetland delineation, subdivision and combination, title examination, and closing.
- Sale is contingent on the subdivision of the sale property from the larger tract owned by the city, and the combination of the sale property with the property at 1013 Ford Road. The purchase agreement expressly reserves the city’s discretion regarding subdivision approval.
- The buyer must grant a conservation easement to the city over the delineated wetland and wetland buffer area.

Recommendation

Introduce the ordinance and approve the purchase agreement.

Submitted through:  
Geralyn Barone, City Manager  
Merrill King, Finance Director  
Will Manchester, P.E., Public Works Director

Originated by:  
Corrine Heine, City Attorney
Figure 2 - Existing Conditions (2016 MnGeo Photo)

1013 Ford Road (KES 2017-163)
Minnetonka, Minnesota

Note: Boundaries indicated on this figure are approximate and do not constitute an official survey product.
PURCHASE AGREEMENT

This Purchase Agreement is made as of ___________________, 2019 by and between CITY OF MINNETONKA, a Minnesota municipal corporation (“Seller”) and FORD ROAD, LLC, a limited liability company under the laws of Minnesota (“Buyer”).

Recitals

A. Seller has an ownership interest in certain real property located near the intersection of Ford Road and Wayzata Boulevard in the City of Minnetonka, County of Hennepin, State of Minnesota, legally described as follows:

That part of Tract B described below:

Tract B: That part of the Southeast Quarter of the Northeast Quarter of Section 1, Township 117 North, Range 22 West, Hennepin County, Minnesota, described as follows: Commencing at a point on the west line of said Southeast Quarter of the Northeast Quarter, distant 438 feet northerly of the southwest corner of said Southeast Quarter of the Northeast Quarter; thence easterly parallel with the south line of said Southeast Quarter of the Northeast Quarter, a distance of 188 feet to a point hereinafter known as “Point A”; thence continuing easterly along said parallel line to its intersection with a line hereinafter known as “Line X”: (said Line X is a line drawn northerly from a point on the south side of said Southeast Quarter of the Northeast Quarter, distant 330 feet easterly of the southwest corner of said Southeast Quarter of the Northeast Quarter, to a point on the center line of Old Highway No. 12 (formerly Superior Boulevard), distant 328.7 feet easterly of the west line of said Southeast Quarter of the Northeast Quarter, as measured along said center line); thence westerly parallel with the south line of said Southeast Quarter of the Northeast Quarter a distance of 140 feet to the point of beginning of Tract B to be described; thence southerly parallel with said “Line X” a distance of 100 feet; thence easterly parallel with said south line a distance of 140 feet to an intersection with said “Line X”; thence northerly along said “Line X” a distance of 494.12 feet to the center line of said Old Highway No. 12; thence westerly along said center line a distance of 140.47 feet to an intersection with a line drawn northerly parallel with the west line of said Southeast Quarter of the Northeast Quarter from said “Point A”; thence southerly along the last described parallel line a distance of 388.49 feet to said “Point A”; thence easterly parallel with the south line of said Southeast Quarter of the Northeast Quarter a distance of 1.11 feet to the point beginning; excepting therefrom the right of way of Trunk Highway No. 12 as located and established prior to January 1, 1985;

which lies southerly of Line 1 described below:

Line 1. Commencing at Right of Way Boundary Corner B21 as shown Minnesota Department of Transportation Right of Wat Plat No. 27-23 as the same is on file and of record in the office of the County Recorder in and for said County; thence
on an azimuth of 00 degrees 32 minutes 18 seconds along the boundary of said plat for 337.99 feet to Right of Way Boundary Corner B22; thence continuing on last described course for 182.34 feet to the point of beginning of Line 1 to be described; thence on an azimuth of 268 degrees 18 minutes 45 seconds for 309.67 feet; thence on an azimuth of 270 degrees 13 minutes 18 seconds for 60.03 feet and there terminating.

(the “City Property”). The City Property is excess right of way

B. Buyer is the owner of certain real property located at 1013 Ford Road, in the City of Minnetonka, County of Hennepin, State of Minnesota, legally described as follows:

That part of the following described premises lying West of a line drawn parallel to the East line of said premises and from a point 140 feet West of the East line thereof, said distance being measured along the North line thereof: The North 100 feet of the South 438 feet of that part of the Southeast ¼ of Northeast ¼ lying West of a line running from a point in the South line of said Southeast ¼ of Northeast ¼, Section 1, Township 117 North Range 22, West of the Fifth Principal Meridian, distant 330 feet East from the Southwest corner thereof to a point in the center line of Wayzata Boulevard, distant 328.7 feet Easterly measured along said center line from its intersection with the Westerly line of said Southeast ¼ of Northeast ¼, according to United States Government Survey thereof.

(the “Ford Road LLC Property”). The Ford Road LLC Property abuts the City Property.

C. The City Property is vacant, unimproved land.

D. Buyer desires to purchase a portion of the City Property, approximately 14,000 square feet in size and legally described as follows:

The South 100 feet of the East 140 feet of the above-described City Property.

(the “Sale Property”). The legal description of the Sale Property will be revised as provided in paragraph 3b of this Purchase Agreement. The portion of the Sale Property that will not be sold to Buyer is referred to in this Purchase Agreement as the Remainder Property.

Agreement

1. **Offer/Acceptance.** In consideration of the mutual agreements contained in this Purchase Agreement, Buyer offers to purchase and Seller agrees to sell fee simple title to the Sale Property, according to the terms of this Purchase Agreement.

2. **Purchase Price.** The total purchase price for the Sale Property is $68,000.00. The Buyer agrees to pay the Purchase Price at Closing by wire delivery of funds through the Federal Reserve System to an account designated in writing by Seller.

3. **Contingencies:**

a. **ORDINANCE ADOPTION.** The sale of the Sale Property must be approved by ordinance, according to the terms of Seller’s city charter. Seller has until Closing to satisfy this contingency. This contingency may not be waived.
b. **SUBDIVISION APPROVAL AND SURVEY.** The conveyance contemplated by this Purchase Agreement requires a subdivision of the City Property, which requires a survey.

(1) **Survey.** The Buyer agrees to obtain a survey of the Sale Property at Buyer’s sole expense. The Buyer must arrange for City staff to be present at the time the survey is performed, and City staff must approve the locations of the corner stakes before the survey is performed. The surveyor must install monuments at appropriate locations to designate the boundaries of the Sale Property; however, if for any reason the sale contemplated by this Purchase Agreement does not close, the City will remove the monuments. The survey must identify the legal description of the Sale Property, depict the delineated wetland and wetland buffer boundaries, and identify a legal description for the wetland and wetland buffer area (which will be used for purposes of the conservation easement required by paragraph 6.a.(3) of this Purchase Agreement).

(2) **Buyer agrees to obtain City approval of the subdivision of the City Property and the combination of the Sale Property with the Ford Road LLC Property.** Buyer is solely responsible for the costs of obtaining the subdivision and combination approval. Buyer understands that the subdivision approval may be subject to certain conditions, such as the requirement to combine the Sale Property with the Ford Road LLC Property and the requirement to grant drainage and utility easements to the City adjacent to lot lines. Buyer agrees to comply with all required conditions of the subdivision approval.

(3) The requirements of this paragraph 3.b. are for the benefit of the City and may not be waived. This condition must be satisfied no later than December 31, 2019. Nothing in this Purchase Agreement shall be deemed to waive the City’s right to exercise ordinary and lawful discretion as a regulatory authority, with respect to the required subdivision and combination application.

Nothing in this Purchase Agreement limits the Seller’s city council from exercising its lawful discretion as a regulatory authority, with respect to the required land use approvals.

c. **DUE DILIGENCE.** This Purchase Agreement is contingent upon Buyer’s satisfaction with the results of its investigations as provided at section 4 below. This contingency is solely for Buyer’s benefit and may be waived only by Buyer’s written notice of waiver.

d. **MARKETABILITY OF TITLE.** This Purchase Agreement is contingent upon Buyer’s determination, prior to Closing, that the condition of title to the sale Property is satisfactory to Buyer, in accordance with paragraph 5 of this Purchase Agreement. This provision is for the Benefit of Buyer and may be waived by Buyer, at Buyer’s sole discretion.

4. **Due Diligence.**

a. **DUE DILIGENCE PERIOD.** Buyer shall have until August 31, 2019 (the “Due Diligence Period”) to examine the Sale Property and to conduct soil tests, environmental surveys and environmental assessments, and conduct all other investigations of the Sale Property as Buyer deems necessary to determine whether the environmental and geotechnical condition of the Sale Property is physically and fiscally feasible. During the Due Diligence Period, Buyer shall have the right to enter the Sale Property at reasonable times and upon at least 24 hours’ notice to Seller, for the purpose of exercising its rights under this section. Provided that Buyer gives written notice on or before expiration of the Due Diligence Period, this Purchase Agreement will terminate on the date that Buyer gives written notice to Seller that the Buyer’s investigations have disclosed
environmental or geotechnical conditions that make the proposed development of the Sale Property infeasible. If Buyer fails to give such notice before expiration of the Due Diligence Period, then this Purchase Agreement shall continue in full force and effect in accordance with, and subject to, all its terms and conditions, and the contingency at section 3c of this Purchase Agreement shall be deemed waived. Buyer agrees to pay all costs and expenses of its investigation and agrees to indemnify, defend and hold Seller harmless from all costs, expenses and liabilities, including mechanics’ liens, relating to Buyer’s investigation activities on the Sale Property. Buyer will promptly deliver to Seller true and correct copies of all environmental or soil test reports after Buyer’s receipt of same. Buyer agrees to promptly restore any resulting damage to the Sale Property to the condition that existed prior to the damage.

b. If the Purchase Agreement is terminated as provided in section 4a above, Buyer will bear all costs of Buyer’s investigation.

5. **Title Examination.**

a. **TITLE EXAMINATION.** Buyer is responsible for obtaining a title insurance commitment for an owner’s policy of title insurance for the Sale Property, including copies of all encumbrances listed therein (the “Commitment). Buyer agrees to take title subject to the following:

   1. The conservation easement required by paragraph 6.a(3) below.
   2. Easements and conditions, if any, required as a condition of subdivision approval.
   3. Easements and encumbrances of record, if any that do not interfere with Buyer's intended use of the Sale Property.

Buyer must notify the City in writing of Buyer's objections to the marketability of title. City shall have ten (10) days to indicate whether the City will undertake to cure one or more of Buyer's objections to title, but City is under no obligation to cure such objections.

b. **CANCELLATION.** If title is not marketable, and City opts not to cure Buyer’s objections to title, Buyer may terminate this Purchase Agreement upon notice to the City. If Buyer terminates this Purchase Agreement, the parties must execute a cancellation of this Purchase Agreement.

6. **Closing and Possession.** The closing of the purchase and sale contemplated by this Purchase Agreement (the “Closing”) must occur within 30 days after all contingencies are waived or satisfied (the “Closing Date”), but not later than December 31, 2019. Seller must deliver possession of the Sale Property to Buyer on the Closing Date.

a. **SELLER’S CLOSING DOCUMENTS.** On the Closing Date, Seller must execute and/or deliver to Buyer the following documents, all of which must be in form reasonably satisfactory to Buyer’s title company:

   1. Quit Claim Deed conveying Seller’s interest in the Sale Property to Buyer.
   2. Affidavit of Seller, indicating that on the Closing Date there are no outstanding, unsatisfied judgments, tax liens or bankruptcies against or involving either Seller or the Sale Property, and that, except for activities undertaken by Buyer pursuant to this Agreement, there has been no skill, labor or material furnished to the Sale Property at Seller’s request for which payment has not been made or for which
mechanics’ liens could be filed, and that there are no other unrecorded interests in the Sale Property.

(3) Buyer must grant a conservation easement to City, in the form attached as Exhibit A, over the area of the delineated wetland and the wetland buffer area associated with that wetland.

(4) A non-foreign affidavit executed by Seller, containing such information as required by IRC Section 1445(b)(2) and its regulations.

(5) All other documents reasonably determined by Buyer’s title company to be necessary to transfer the fee interest in the Sale Property to Buyer in the manner required by this Purchase Agreement.

b. **BUYER’S CLOSING DOCUMENTS.** On the Closing Date, Buyer must execute and/or deliver to Seller the following:

   (1) Purchase Price, subject to adjustments as provided in this Purchase Agreement, by wire transfer of U.S. Federal Funds.

   (2) Such other documents as may reasonably be required by title.

7. **Prorations, Adjustments and Allocation of Costs.** The prorations and adjustments described in this section 7 will be made between Buyer and Seller at Closing:

   a. **TAXES.** Seller represents that the Sale Property is tax exempt. Buyer is responsible for real estate taxes due and payable in the years following Closing.

   b. **ASSESSMENTS.** Seller represents that there are no levied or pending special assessments against the Sale Property. Buyer will assume the obligation to pay installments of special assessments that become pending after Closing.

   c. **TITLE AND CLOSING FEES.** Buyer is responsible for all costs necessary to effectuate the closing, including, without limitation, the costs of the Commitment, all premiums required for the issuance of the owner’s policy, the fee charged by Title, document preparation cost for closing documents, certificates of real estate value, Seller’s affidavit, well disclosure certificate, recording costs, and state deed taxes.

   d. **ATTORNEY FEES.** Each party will pay its own attorney fees in connection with this transaction.

8. **Seller’s Disclosures.** Seller makes the following disclosures:

   a. **WELL DISCLOSURE.** Seller represents that Seller does not know of any well on the Sale Property.

   b. **SEPTIC SYSTEM DISCLOSURE.** Seller does not know of any individual sewage septic system located on the Sale Property.

9. **Environmental Condition.** Buyer is purchasing the Sale Property in an “AS IS” and “WHERE IS” condition. Buyer acknowledges and agrees that Seller has not made, and is not making, any representation, statement, warranty, covenant or promise to Buyer about the Sale Property, including its physical aspects and condition, the condition of the soil on the Sale
Property, the presence or absence of toxic wastes, hazardous materials, pollutants of any type, oil or petroleum products, asbestos or PCBs, the feasibility, the desirability, suitability, fitness or adaptability of any part of the Sale Property for any particular use, the availability of water, sewer, natural gas, or other utilities, the assessments, fees or charges that may be assessed by any district, taxing authority, or governmental or quasi-governmental entities, or the value of the Sale Property. On behalf of itself, its successors and assigns, Buyer releases and holds the Seller harmless against any claims related to the environmental condition of the Sale Property or the presence of pollutants, contaminants or hazardous substances thereon, or any alleged violations of federal or state environmental laws and regulations, including but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Minnesota Environmental Rights Act.

10. **No Broker Involved.** The Seller and Buyer warrant to each other that there is no broker involved in this transaction with whom it has negotiated or to whom it has agreed to pay a broker commission. Each party agrees to indemnify the other for all claims for brokers’ commissions or finder’s fees in connection with negotiations for the purchase of the Sale Property arising out of any alleged agreement, commitment or negotiation by that party.

11. **Entire Agreement; Amendments.** This Purchase Agreement constitutes the entire agreement between the parties and no other agreement prior to, or contemporaneously with, this Purchase Agreement is effective except as expressly stated in this document. Any amendment will not be effective unless it is in writing and executed by all parties or their respective successors or assigns.

12. **No Assignment.** Buyer may not assign its rights and interest under this Purchase Agreement.

13. **Notice.** Any communication that may or must be given by one party to the other will be deemed to have been given on the date it is deposited in the United States mail, registered or certified, postage pre-paid, and addressed as follows:

   a. If to Seller: City Manager
      City of Minnetonka
      14600 Minnetonka Boulevard
      Minnetonka, MN 55345

   b. If to Buyer: Cathy van der Schans
      FORD ROAD LLC
      2015 Arbor Lane
      Mound, MN 55364

Either party may change this location by giving written notice to the other party specifying the new location.

15. **Specific Performance.** This Purchase Agreement may be specifically enforced by any party, and the prevailing party may recover reasonable costs and attorney’s fees.

16. **No Merger.** The terms and conditions of this Purchase Agreement shall not merge in the deed to be provided at Closing but shall survive Closing.
17. **Governing Law.** This Purchase Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota, without giving effect to any choice of law or conflict provision or rule that would cause the laws of any other jurisdiction to be applied.

18. **Counterparts.** This Purchase Agreement may be executed in counterparts with the same effect as if both parties hereto had executed the same document, and all such counterparts taken together shall constitute one and the same instrument.

[Signature Page Follows]
The Seller agrees to the terms of this Purchase Agreement.

SELLER:

CITY OF MINNETONKA

By ________________________________
Its Mayor

By ________________________________
Its City Manager

The Buyer agrees to the terms of this Purchase Agreement.

BUYER:

FORD ROAD, LLC

By: ________________________________

______________________________
Its ________________________________
Conservation Easement

THIS EASEMENT is given on ____________, 2019, by Ford Road, LLC, a limited liability company under the laws of Minnesota (“Grantor”), for the benefit of the City of Minnetonka, a Minnesota municipal corporation (“the City”).

A. Grantor is the owner of certain real property located in the City of Minnetonka, County of Hennepin, State of Minnesota, legally described on attached Exhibit A (the “Property”). Grantor acquired title to the Property from the City of Minnetonka.

B. As a condition of its sale of the Property to Grantor, the City required the owner of the property to grant a conservation easement (“Easement”) over a portion of the Property, legally described on attached Exhibit B (the “Easement Property”) and depicted on attached Exhibit C.

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is acknowledged, Grantor hereby grants and conveys unto the City a conservation easement over, under and across the Easement Property. The terms of this Easement are as follows:
1. Except as permitted by this paragraph, no action of any kind may be undertaken to change or disturb the landscaping, open spaces, wetlands, and vegetation existing as of this date. No structures may be built, no grading may be done, no improvements of any kind may be made, and no earthen material may be removed from or placed on the Easement Property. The Easement Property must remain in all respects undisturbed, except that Grantor may clear any debris including dead vegetation from the Easement Property, may remove invasive non-native vegetation such as European buckthorn and plants designated as noxious weeds under state law, and may engage in other environmental management practices approved by the City.

2. The City may enter upon the Easement Property for the purposes of inspection and enforcement of this Easement and may take whatever actions are reasonably necessary to restore the Easement Property to its undisturbed nature. The City may assess the reasonable costs of this restoration against the Property, and Grantor waives all rights to contest those costs. Further, the City may enforce the terms of this Easement by any proceeding in law or in equity to restrain violation, to compel compliance, or to recover damages, including attorneys’ fees and costs of the enforcement actions. Grantor is not liable for the actions of any third party, other than its employees, agents or contractors, which may violate the terms of this Easement, unless Grantor, its employees, agents or contractors had actual knowledge of the violation and failed to take reasonable action to stop the violation.

3. Failure to enforce any provision of this Easement upon a violation of it cannot be deemed a waiver of the right to do so as to that or any subsequent violation.

4. Invalidation of any of the terms of this Easement will in no way affect any of the other terms, which will remain in full force and effect.

5. This Easement does not convey a right to the public use of the Easement Property nor does it convey any right of possession in the Easement Property to the public or the City. Access by the City to the Easement Property is limited to access necessary for purposes of inspection and enforcement as specified in paragraph 2 above. The City is not entitled to share in any award or other compensation given in connection with a condemnation or negotiated acquisition of all or any part of the Easement Property by any authority having the power of eminent domain. The City hereby waives any right it may have to such an award or compensation.
6. Acceptance of this Easement by the City and the recording of this document constitutes the City’s consent to be bound by its terms.

7. This Easement runs with the Easement Property and is binding on the Grantor, its successors and assigns, and inures to the benefit of the City, its successors and assigns.

IN WITNESS WHEREOF, the Grantor has executed this instrument on the date first written above.

FORD ROAD, LLC

BY: ________________________________

Its Manager
STATE OF MINNESOTA  
)  
) SS  
COUNTY OF HENNEPIN  
)  

The foregoing instrument was acknowledged before me this _____ day of ________________, 2019 by _________________, the manager of Ford Road, LLC, a limited liability company under the laws of Minnesota, on behalf of the limited liability company.

__________________________________
Notary Public

DRAFTED BY:

City of Minnetonka
Legal Department (CAH)
14600 Minnetonka Blvd.
Minnetonka, MN 55345
(952) 939-8200
Exhibit A

Legal Description Property

[insert legal description as determined by survey]
Exhibit B

Legal Description of Easement

[insert legal description as determined by survey]
Exhibit C

Depiction of Easement
The City of Minnetonka Ordains:

Section 1. Findings and Purpose.

1.01 The city of Minnetonka owns real property legally described on the attached Exhibit A (the “City Property”).

1.02 Ford Road, LLC desires to purchase a portion of the City Property, comprising approximately 14,000 square feet of land, and combine the acquired land with the property at 3515 Park Valley Road. The legal description of the property to be sold is attached as Exhibit B (the “Sale Property”).

1.03 The city staff has negotiated a purchase agreement with Ford Road, LLC.

1.04 The city council finds it is in the public interest to sell the Sale Property to Ford Road, LLC, in accordance with the negotiated purchase agreement.

Section 2. Authorization.

2.01 The city council approves the sale of the Sale Property in accordance with the purchase agreement.

Section 3. This ordinance is effective 30 days after publication.

Adopted by the city council of the City of Minnetonka, Minnesota, on

Brad Wiersum, Mayor
Ordinance No. 2019-

Attest:

Becky Koosman, City Clerk

Action on this Ordinance:

Date of introduction:
Date of adoption:
Motion for adoption:
Seconded by:
Voted in favor of:
Voted against:
Abstained:
Absent:
Ordinance adopted.

Date of publication:

I certify that the foregoing is a true and correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota, at a meeting held on

Becky Koosman, City Clerk
EXHIBIT A

That part of Tract B described below:

Tract B: That part of the Southeast Quarter of the Northeast Quarter of Section 1, Township 117 North, Range 22 West, Hennepin County, Minnesota, described as follows: Commencing at a point on the west line of said Southeast Quarter of the Northeast Quarter, distant 438 feet northerly of the southwest corner of said Southeast Quarter of the Northeast Quarter; thence easterly parallel with the south line of said Southeast Quarter of the Northeast Quarter, a distance of 188 feet to a point hereinafter known as “Point A”; thence continuing easterly along said parallel line to its intersection with a line hereinafter known as “Line X”: (said Line X is a line drawn northerly from a point on the south side of said Southeast Quarter of the Northeast Quarter, distant 330 feet easterly of the southwest corner of said Southeast Quarter of the Northeast Quarter, to a point on the center line of Old Highway No. 12 (formerly Superior Boulevard), distant 328.7 feet easterly of the west line of said Southeast Quarter of the Northeast Quarter, as measured along said center line); thence westerly parallel with the south line of said Southeast Quarter of the Northeast Quarter a distance of 140 feet to the point of beginning of Tract B to be described; thence southerly parallel with said “Line X” a distance of 100 feet; thence easterly parallel with said south line a distance of 140 feet to an intersection with said “Line X”; thence northerly along said “Line X” a distance of 494.12 feet to the center line of said Old Highway No. 12; thence westerly along said center line a distance of 140.47 feet to an intersection with a line drawn northerly parallel with the west line of said Southeast Quarter of the Northeast Quarter from said “Point A”; thence southerly along the last described parallel line a distance of 388.49 feet to said “Point A”; thence easterly parallel with the south line of said Southeast Quarter of the Northeast Quarter a distance of 1.11 feet to the point beginning; excepting therefrom the right of way of Trunk Highway No. 12 as located and established prior to January 1, 1985;

which lies southerly of Line 1 described below:

Line 1. Commencing at Right of Way Boundary Corner B21 as shown Minnesota Department of Transportation Right of Wat Plat No. 27-23 as the same is on file and of record in the office of the County Recorder in and for said County; thence on an azimuth of 00 degrees 32 minutes 18 seconds along the boundary of said plat for 337.99 feet to Right of Way Boundary Corner B22; thence continuing on last described course for 182.34 feet to the point of beginning of Line 1 to be described; thence on an azimuth of 268 degrees 18 minutes 45 seconds for 309.67 feet; thence on an azimuth of 270 degrees 13 minutes 18 seconds for 60.03 feet and there terminating.
EXHIBIT B

The South 100 feet of the East 140 feet of the above-described City Property.

NOTE: The legal description in the deed of conveyance may be revised according to a final survey, as required by the purchase agreement.
City Council Agenda Item #13A  
Meeting of July 22, 2019

**Brief Description**  
On-sale wine and on-sale 3.2 percent malt beverage liquor licenses for My Burger Operations, LLC., 10997 Red Circle Dr

**Recommendation**  
Continue the public hearing from June 24 and grant the licenses

**Background**

The city has received applications from My Burger Operations, LLC. dba My Burger, for on-sale wine and on-sale 3.2 percent malt beverage liquor licenses, for use at the restaurant at 10997 Red Circle Dr.

**Business Ownership**

My Burger Operations, LLC. is 100% owned by Caryl Abdo (CMA Trust dated May 1, 2007). Her son, John Abdo, is the President and Treasurer of the company, and her other son, Paul Abdo, is the Vice President and Secretary. John Abdo will also serve as the general manager of the restaurant. He meets the metro-area residency requirements of the city’s liquor ordinance.

**Business Operation Description**

The restaurant is open daily from 11:00 a.m. – 10:00 p.m. The establishment opened in March 2019. It is a fast-casual sit-down restaurant for approximately 65 people indoor and 15 outdoor, with 10 employees on staff for a single shift.

Customers take their food out of the restaurant to eat on the patio tables. However, staff would not serve the outdoor tables. No liquor is allowed to be consumed outside of the restaurant. In the past, staff has not considered these types of informal seating areas as “conditionally permitted outdoor seating area/patios.” If the applicant desires a more formalized seating area, a conditional use permit is required.

All employees of My Burger are trained in handling and serving alcohol, utilizing materials from ACS (Alcohol Compliance Services). Employees are trained to card patrons with a valid ID who appear to be under the age of 35. My Burger currently operates six other locations, three with liquor licenses. Based on those stores, they project their food to alcohol ratio to be 95/5 % split with food as the majority of sales.

**Application Information**

Application information and license fees have been submitted. The police department’s investigative report is complete and will be forwarded to the council prior to the continued public hearing. Staff has no concerns with the applicants.

**Neighborhood Feedback**

The city has not received any comments from residents regarding the proposed liquor license.

**Recommendation**

Staff recommends the city council continue the public hearing from June 24, 2019, and grant the licenses.
Submitted through:
   Geralyn Barone, City Manager
   Julie Wischnack, AICP, Community Development Director

Originated by:
   Fiona Golden, Community Development Coordinator
Location Map

Project: My Burger
Address: 10997 Red Circle Drive
My Burger is a family-owned and operated, fast-casual restaurant featuring fresh food with a simple approach—no fuss, no fluff—just quality. There are currently 5 locations in Minnesota and a food truck. Our menu is simple, with a focus on freshness, quality and homemade appeal. Our local customer base is growing; we strive to be a neighborhood burger joint for all who live, work, and enjoy recreation near our restaurant.

- We will staff roughly 30-40 employees total, with around 10 working for a single shift at any given time.
- All employees of My Burger will comply with our company policy of being trained in the handling and serving of alcohol. Any employee who will serve is trained to card patrons with a valid ID who appear under the age of 35 in the judgement of the employee. We do not intend to utilize electronic ID devices at this time, but may consider utilizing such at a future point. New employees must complete a training with their manager utilizing materials from ACS (Alcohol Compliance Services) and sign a form agreeing they understand their professional knowledge and expertise on carding is both critical and irreplaceable to My Burger as a company. We will have rewards set for those employees who can pass a compliance check or for catching underage attempts to purchase alcohol. A failure by an employee will require a retraining of the employee in our process. A second failure or first, willful violation of selling to an underage person will result in immediate termination.
- My Burger currently operates 3 other locations with liquor license. Based on those stores we project to sell food to alcohol around a 95/5% split leaning towards food.
- My Burger will operate 11am-10pm daily. There will be no live entertainment, dancing, or amplified music.
- A copy of our menu is attached.
- My Burger prides itself on not only the quality of the food, but also the presentation of our store and premises. Daily cleaning and the required maintenance to keep our store looking brand new will happen. Many of our older stores still have their brand new appearance.
- With a lack of live or amplified entertainment at My Burger, we expect noise concerns to be nominal. Regardless, employees and management/supervisory level staff of My Burger will regularly monitor noise emanating beyond the interior premises and produced by guests in our outdoor area to ensure guests are not becoming boisterous and respectfully depart from the premises.
THE EATS

Original

- ketchup • mustard • fried onions • sweet pickles
- on a brown buttered bun + fries
- MyBurger
- double

https://myburgerusa.com/#fundraising
California

lettuce • tomatoes • mayo on a brown buttered bun + fries
- single
- double

Kinda Fancy

all on a brown buttered bun + fries
- classic bacon cheese
- cajun bacon cheese
- mushroom & swiss
- bacon bleu cheese
- burger of the month (market price)

Just As Good

all on a brown buttered bun + fries
- Veggie burger
- Fish burger
- Turkey burger
- Grilled chicken burger
- Crispy chicken burger
- Kid’s burger
- Kid’s grilled cheese

Cheeses

- american
- swiss
- cheddar
- pepperjack
- bleu cheese

**Spiff It Up**

- cajun spices
- jerk spices
- teriyaki sauce
- bbq sauce
- mushrooms
- fried egg
- nitrate-free bacon

**Malts & Shakes**

- Chocolate
- Vanilla
- Strawberry
- Salted Carmel
- Cookies & Cream

**Top It Off**

- ketchup
- mustard
- sweet pickles
- fried onions
- lettuce
- tomatoes
• mayo
• dill pickles
• raw onions
• jalapeños

Drinks

• fountain drinks
• bottled soft drinks
• bottled juice/water

Beer & Wine

Stop in to see our sweet rotating tap and wine list.
(Not available at Skyway Location)

DOWNLOAD NUTRITIONAL INFORMATION

BOM
BURGER OF THE MONTH

Every month we release a new supes delicious Burger of the Month. Become our newest friend on Facebook or signup for our newsletter to be the first to know.
City Council Agenda Item #13B  
Meeting of July 22, 2019

Brief Description: Off-sale liquor license for Target Corporation, 4848 Co Rd 101

Recommendation: Continue the public hearing from May 6, 2019, and grant the license

Background

The city has received an application from Target Corporation for an off-sale intoxicating liquor license for use at the SuperTarget store at 4848 Co Rd 101. SuperTarget opened in 2001 and currently holds a 3.2% malt beverage liquor license. The application also includes information that Target would be purchasing an existing liquor store, Strong Liquor, located at 11048 Cedar Lake Road.

Target requested a full off-sale liquor license in 2015 (Aug. 17) and in 2017 (May 23). The council considered the applications and essentially denied both requests (the second vote was tabled indefinitely).

Business Ownership

Target Corporation is a publicly held company. No police background check will be performed as the corporation has already been approved for its current 3.2% liquor license.

Business Operations

The proposed hours of operation for the liquor store will be Monday to Friday, 9 a.m. to 10 p.m., and Saturday, 8 a.m. to 10 p.m. Liquor sales on Sunday would be between the hours of 11 a.m., and 6 p.m. Target has not had a violation of selling alcohol to minors at the Minnetonka location since the original license was issued in 2002. Statewide, Target has not had any violations since 2008. Target does not participate in the Minnetonka Best Practices Program but does have its own in-house program focusing on preventing underage sales. Also, Target’s point of sale (POS) system has three verification processes in place to determine if the transaction is appropriate.

City Council Policy 6.1

The city council has established a policy that will consider the following criteria before issuing liquor licenses:

Off-Sale Licenses. Off-sale establishments provide intoxicating liquor that will be consumed in environments that are not monitored. An increase in the number of those outlets increases the access to liquor, contributes to public safety concerns, and detracts from the desired image of the city. Accordingly, the city council determines that the 12 off-sale intoxicating liquor licenses existing as of March 22, 2010, are generally adequate to serve the city. However, the council reserves the right not to issue any license even if the number falls below 12. Despite this maximum number, the council will
consider, but not necessarily approve, additional off-sale intoxicating liquor licenses only if the council finds in its sole discretion that the business:

a. offers a distinctive specialty service, or
b. is a complementary part of a business that would add positively to the experience of living and working in the city, or
c. is part of a village center that is not currently served

Currently, the council has approved 12 off-sale liquor licenses. Ten of those licenses are stand-alone liquor stores, and two are for 3.2% malt beverage licenses (Target on Co Rd 101 and Glenn’s 1-stop on Minnetonka Blvd). There are two additional off-sale licenses issued to breweries - Unmapped Brewing LLC in October 2016 and Boom Island Brewery in March of 2019 (under construction, due to open August 2019). Typically, the council has not included 3.2% and breweries in the number of establishments as it relates to the policy.

### Stand Alone Liquor Stores

<table>
<thead>
<tr>
<th>Store Name</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Glen Lake Wine &amp; Spirits</td>
<td>14704 Excelsior Blvd</td>
</tr>
<tr>
<td>Haskell’s</td>
<td>12900 Wayzata Blvd</td>
</tr>
<tr>
<td>Lunds &amp; Byerly’s Wines &amp; Spirits</td>
<td>13081 Ridgedale Dr</td>
</tr>
<tr>
<td>MGM Wine &amp; Spirits</td>
<td>4795 Co Rd 101</td>
</tr>
<tr>
<td>Strong Liquor and Wine</td>
<td>11048 Cedar Lake Rd</td>
</tr>
<tr>
<td>Sundial Wine &amp; Spirits</td>
<td>5757 Sanibel Dr</td>
</tr>
<tr>
<td>The Wine Shop</td>
<td>17521 Minnetonka Blvd</td>
</tr>
<tr>
<td>Tonka Bottle Shop</td>
<td>17616 Minnetonka Blvd</td>
</tr>
<tr>
<td>Total Wine &amp; More</td>
<td>14200 Wayzata Blvd</td>
</tr>
<tr>
<td>Trader Joe’s #714</td>
<td>11220 Wayzata Blvd</td>
</tr>
</tbody>
</table>

### Liquor License Discussion and Decisions

Significant liquor actions or discussions by the city council have been included for further background.

The city of Minnetonka established a liquor policy in 1984, which has evolved over the years. In 2002, there was a discussion during the review of the Cost Plus liquor store (now Trader Joe’s). The concern was about the number of liquor stores, which at the time was nine stores, and the new store’s effects on existing businesses.

In 2003, the city considered a liquor license along Highway 7 for Barrel Wine and Spirits. There was a discussion about the number of stores and proximity to schools, churches, or other youth-oriented facilities. That discussion resulted in amendments to the city’s policy which provides criteria by which to evaluate the issuance of liquor licenses.

In 2006, during the review of the Wine Shop store’s application, the council again discussed the number and proximity to other stores. This was the most extensive discussion continuing over a series of six meetings. In the end, the city council found that it was appropriate to issue the license.
In 2009, discussion occurred regarding location density of stores during the review of Trader Joe’s and Big Top Liquor. At the time of these reviews, the council did not choose to limit the number of stores within the community.

In 2010, the city council received a request for a warehouse-type liquor store, and some councilmembers expressed concerns over the number of stores in the community (12 at the time). After several discussions, the city council did amend the original policy to state:

> Off-sale establishments provide intoxicating liquor that will be consumed in environments that are not monitored. An increase in the number of those outlets increases the access to liquor, contributes to public safety concerns, and detracts from the desired image of the city. Accordingly, the city council determines that the 12 off-sale intoxicating liquor licenses existing as of March 22, 2010, are generally adequate to serve the city. However, the council reserves the right not to issue any license even if the number falls below 12. Despite this maximum number, the council will consider, but not necessarily approve, additional off-sale intoxicating liquor licenses only if the council finds in its sole discretion that the business:

a. offers a distinctive specialty service, or
b. is a complementary part of a new business, that would add positively to the experience of living and working in the city, or

In 2015, after receiving two additional applications for liquor stores, Total Wine and Target, the city council requested information to discuss at a study session (July 1, 2015) about a number of establishments, enforcement, citations, other city regulation, size of stores, and more policy options. (Note: click on the highlighted, underlined links to see more detail.) In summary, there were some minor changes made to the policy. The full policy is attached:

> Off-sale establishments provide intoxicating liquor that will be consumed in environments that are not monitored. An increase in the number of those outlets increases the access to liquor, contributes to public safety concerns, and detracts from the desired image of the city. Accordingly, the city council determines that the 12 off-sale intoxicating liquor licenses existing as of March 22, 2010, are generally adequate to serve the city. However, the council reserves the right not to issue any license even if the number falls below 12. Despite this maximum number, the council will consider, but not necessarily approve, additional off-sale intoxicating liquor licenses only if the council finds in its sole discretion that the business:

a. offers a distinctive specialty service, or
b. is a complementary part of a business that would add positively to the experience of living and working in the city, or
c. is part of a village center that is not currently served

After the study session occurred in July, Target’s request was reviewed. On August 17, 2015, the city council voted 2-4, which resulted in a failed motion (city ordinance requires 5 votes for a liquor license).

In 2016, the city council received the original request for a license from Total Wine for a site near Whole Foods. The application was denied 4-3 at a regular city council meeting held on
Sept. 12. (4 votes were in favor, resulting in a failed motion). Based on that denial, the applicant challenged the decision in court.

In 2017, Total Wine again requested a license along Wayzata Boulevard, now their current site. The applicant had also purchased the former Big Top Liquor Store in the Ridgehaven Square area and indicated they would close that store if the license were issued for the new store. They stayed the appeal of the denial until after the council made its decision on the second application. On May 1, the vote to approve this application was 5-2. The lawsuit was dismissed.

At the May 22, 2017 meeting, the city council voted 6-1 to indefinitely table the request from Target for a liquor license, until the applicant asked for it to be considered again.

**Neighborhood Feedback**

The city has received written comments from residents. (See attached)

**Recommendation**

Application information and license fees have been submitted from Target Corporation for an off-sale intoxicating liquor license, for use at the SuperTarget store, at 4848 Co Rd 101. Staff recommends that the city council continue the public hearing from May 6, 2019, and grant the license.

Submitted through:  
Geralyn Barone, City Manager

Originated by:  
Fiona Golden, Community Development Coordinator  
Julie Wischnack, AICP, Community Development Director
Location Map

Project: Target Liquor License
Address: 4848 Co Rd 101

Subject Property
Liquor Store Locations in Greater Area
Policy Number 6.1
Standards and Criteria for the Issuance of Liquor Licenses

Purpose of Policy: This policy establishes standards and criteria that the city council will apply in its consideration of on and off-sale liquor licenses. Further, this policy describes city council expectations for establishments holding liquor licenses within the city.

Introduction
This policy applies to all establishments having on or off-sale liquor licenses in the city of Minnetonka.

Standards
It is expected that all establishments holding liquor licenses will be operated in accordance with the following standards:

- **Type of Establishment**
  The proposed liquor license should be considered in terms of the type of establishment being proposed and the propriety of having the establishment at the proposed location. On-sale liquor licenses will only be issued to establishments whose primary business is the sale of food. Consistent with this objective, city ordinance requires that at least 50% of the gross sales receipts of the establishment be from the sale of food.

- **Cooperation and Liaison with the City**
  Liquor license holders are encouraged to interact and work in cooperation with the city staff regarding any problems, concerns, or questions relating to the operation of their establishments. Liquor license holders are also encouraged to participate in any public health or safety programs that are offered by the city.

- **Material Alterations of Establishments**
  As required by ordinance, liquor license holders must report any internal changes to the establishment that materially enlarges, expands, reconfigures, or alters the site of the area connected with the consumption of liquor or the type of service offered by the establishment. Such changes must be reported to the community development director for review by the city council prior to beginning any alterations and before building permits can be issued.

  Material alterations include changes such as creation of a sit down bar or lounge area, expansion in size of the bar or lounge area, addition of a dance floor or entertainment area, or any other changes that alter the site or services offered in an establishment. This provision is not meant to include decorative or housekeeping improvements, or minor remodeling that does not affect the type of service offered by the establishment.

- **Conditioning Authority**
  The city council or staff may, upon the issuance or renewal of a liquor license,
impose reasonable conditions upon the license to promote the provisions of this policy.

Criteria
The city council will consider the following criteria prior to issuing liquor licenses:

- **Off-Sale Licenses**
  Off-sale establishments provide intoxicating liquor that will be consumed in environments that are not monitored. An increase in the number of those outlets increases the access to liquor, contributes to public safety concerns, and detracts from the desired image of the city. Accordingly, the city council determines that the 12 off-sale intoxicating liquor licenses existing as of March 22, 2010 are generally adequate to serve the city. However, the council reserves the right not to issue any license even if the number falls below 12. Despite this maximum number, the council will consider, but not necessarily approve, additional off sale intoxicating liquor licenses only if the council finds in its sole discretion that the business:
  a. offers a distinctive specialty service, or
  b. is a complementary part of a business that would add positively to the experience of living and working in the city; or
  c. is part of a village center that is not currently served.

- **Land-Use/Zoning**
The proposed liquor license must be consistent with the Guide Plan and zoned appropriately. It is expected that liquor establishments will be located in existing and planned commercial areas of the city. The liquor license application will be considered in conjunction with the site plan review.

- **Traffic**
The proposed liquor license will be considered in terms of traffic generated by the establishment and the effect of such traffic on the surrounding street system. It is expected that liquor establishments will be located in areas able to accommodate the additional traffic generated by the liquor operation. The cost of an additional traffic analysis that might be required because of unusual circumstances with the location of the establishment will be paid by the applicant. This cost is not considered a part of the investigation or license fee.

- **Parking**
The proposed liquor license will be considered in terms of the amount of parking needed for the establishment. It is expected that adequate on-site parking will be provided to accommodate all customers and employees. To determine whether adequate parking exists, the council will use the zoning ordinance as a guideline, and may consider other factors such as: the nature of the establishment, the type of development in which it will occur, the amenities (dance floor, entertainment, etc.) which will be offered by the establishment, and any other matter which might affect the parking requirements.
• **Proximity to Schools, Churches, Youth Oriented Facilities, etc.**
  The proposed liquor license should be considered in terms of proximity of the establishment to schools, churches, and youth related and other public facilities. It is expected that liquor establishments will be located in areas that minimize the impact on such facilities.

City staff will submit a written report examining each of these criteria to accompany an on or off-sale liquor license application at the time of consideration by the city council.

Adopted by Resolution No. 84-7533
Council Meeting of July 23, 1984

Amended by Resolution No. 2003-077
Council Meeting of August 25, 2003

Amended by Resolution No. 2010-030
Council Meeting of March 22, 2010

Amended by Resolution No. 2015-055
Council Meeting of July 13, 2015
13. Public Hearings:

A. Temporary on-sale liquor license for Adath Jeshurun Congregation, 10500 Hillside Lane W

City Manager Geralyn Barone gave the staff report.

Calvert commented the applicant had an adequate plan in place to prevent the sale of alcohol to minors and explained she supported the proposed event.

Wiersum opened the public hearing. No one spoke. Wiersum closed the public hearing.

Wiersum reported the requested event would be held on Thursday, May 30 at the Adath Jeshurun Congregation at 10500 Hillside Lane West.

Calvert moved, Schack seconded a motion to hold the public hearing and grant the license. All voted “yes.” Motion carried.

B. Off-sale liquor license for Target Corporation, 4848 Co Rd 101

Community Development Director Julie Wischnack gave the staff report.

Happe asked if staff could provide further information regarding the lawsuit that occurred in 2016. City Attorney Heine summarized the lawsuit from 2016, noting the license for Total Wine & Spirits was denied by the city. She reviewed the reasons for the denial which had to do with traffic concerns and the number of licenses in the city. However, she noted that when Total Wine & Spirits submitted a new application for a different location, the council approved a license and the lawsuit was dismissed.

Happe questioned what was the basis of the original lawsuit. City Attorney Heine explained Total Wine & Spirits believed the city’s actions were arbitrary and capricious.

Carter inquired why there was a focus on the number of stand alone liquor stores versus the total square footage. Wischnack commented the square footage had been analyzed by staff. She explained the volume of sales information had not been reviewed by staff as this information was not easily available.

Schack asked if there had been discussion about concentration and where liquor stores were located. Wischnack reported the key in the policy was
to address location concentration and geography. She explained the council had a choice in this matter, which differed from land use requests.

Calvert questioned how the council has viewed the activity of Target or Total Wine & Spirits purchasing a small mom and pop establishment.

Bergstedt commented in the last five years the council has reviewed the Target and Total Wine & Spirits applications. He explained in the history of Minnetonka, prior to Total Wine, a small liquor store was never purchased. He reported that Big Top was looking to get out of the business. He indicated the Mayor had encouraged Total Wine to find another location and to purchase a liquor license, as there was concern about the total number of liquor licenses in the city. He stated he did not believe this had set a precedence and it was his understanding no one was forcing Big Top to sell. Barone clarified for the record, Total Wine purchased a business and not a liquor license.

Wiersum commented the issue with the denial of the Total Wine & Spirits liquor license request was the fact the council believed the city had enough liquor stores and was being adequately served. He reported Total Wine & Spirits then came back to the council and suggested purchasing Big Top. City Attorney Heine clarified that described how first class cities (Minneapolis and St. Paul) were restricted in the number of liquor licenses it can issue to 1 per 5,000 in population. She reported no other class of cities had this restriction. She advised if Minnetonka were to follow the first class requirement, it would mean the city would be limited to 10 liquor licenses.

Carter requested further information regarding the proximity to schools for the city's current liquor stores. Wischnack reported a 2015 map showed the proximity of all schools to liquor establishments. She noted she would pass this map along to the council.

Wiersum noted the Mayor asked staff for a map that included liquor stores in neighboring communities. He requested this information be passed along to the council in the next staff report.

Wiersum opened the public hearing.

Dana Schlacker, District Senior Director for Target Corporation, stated he oversaw nine stores in the west metro. He discussed his plans to add a wine and spirits store to the Minnetonka Target. He reported his research shows Target customers want a convenient one stop shop as time is valuable. He indicated Target was working to meet their guests expectations by offering the sale of adult beverages. He commented on
the future of Strong Liquor in Minnetonka. He explained he had been before the council previously and discussed Target's successful history of selling adult beverages in the State of Minnesota. He requested the council support the approval of the requested off-sale liquor license.

Calvert asked why Target had selected this location for a wine and spirits shop. Jonathan Redberg, Target Corporation representative, reported State law allows Target to hold only one liquor license in a city. He explained it made more sense for Target to have a wine and spirits shop within the Super Target on 101, as it was a full service store with groceries.

Carter explained the Minnetonka High School was within walking distance of this Target location, along with the Minnetonka Middle School. She expressed concern with how a liquor store at this Target could adversely impact the community. Mr. Redberg reported Target takes the sale of alcohol very seriously and has a strong positive record. He explained all individuals trying to purchase alcohol must provide an ID. He indicated he had reached out to members of the Minnetonka School Board and the principal to address any concerns they may have. He noted the principal and school board have offered their support.

Calvert questioned how old individuals had to be to work in the wine and spirits area. Mr. Redberg stated per state statute employees had to be 18 years of age.

Happe reported he was a shareholder in Target Corporation and asked if this was a potential conflict of interest. City Attorney Heine read the portion of city code regarding conflicts of interest. She reported she would have a conversation with Happe prior to the next council meeting to see if there was a conflict of interest.

Carter moved, Schack seconded a motion to open the public hearing and continue to June 24, 2019. Schack, Carter, Bergstedt, Ellingson, Calvert and Wiersum voted “yes”. Happe abstained. Motion carried.

14. Other Business:

A. Items concerning the demolition and construction of a new automobile dealership pat 15906 Wayzata Blvd.

This item was pulled from the agenda by the applicant.
Neighborhood Comments
From: Michael D. Klemm  
To: Brad Wiersum <bwiersum@eminnetonka.com>; Deborah Calvert <dcalvert@eminnetonka.com>; Susan Carter <scarter@eminnetonka.com>; Bob Ellingson <bellingson@eminnetonka.com>; Rebecca Schack <rschack@eminnetonka.com>; Mike Happe <mhappe@eminnetonka.com>; Tim Bergstedt <tbergstedt@eminnetonka.com>; Geralyn Barone <gbarone@eminnetonka.com>; Julie Wischnack <jwischnack@eminnetonka.com>; Fiona Golden <fgolden@eminnetonka.com>  
Subject: Letter in support of Target’s application for liquor license

Dear Mayor, Council Members and City Staff: My firm represents FernRiver Enterprises L.L.C. Please find attached a letter in support of Target’s application for a liquor license at its Minnetonka store on Highway 101.

Thank you for your attention to this matter.

Michael D. Klemm  
Attorney at Law  
MSBA Certified Real Property Law Specialist

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FERN RIVER ENTERPRISES, LLC  
12720 Riverview Road  
Eden Prairie, MN 55347  

May 31, 2019

City of Minnetonka  
Mayor and City Council Members  
14600 Minnetonka Boulevard  
Minnetonka, MN 55345

Dear Mayor and City Council Members:

My name is Stephen Smitley and my company, Fern River Enterprises, LLC, holds the liquor license for Strong Liquor, located at 11048 Cedar Lake Road in Minnetonka. I want to take this opportunity to let the Council know I support Target’s application for a liquor license at its Minnetonka store on Highway 101.

I have worked hard to establish my liquor business, but I am currently working on a graduate degree and want to start a new enterprise more in line with what I am studying. As a result, I want to sell my liquor business. Target has provided that opportunity and I am willing to pursue the sale. I support the new liquor store they propose.

Thank you for the opportunity to comment.

Very truly yours,

Fern River Enterprises, LLC

By: Stephen Smitley
May 6, 2019

Mayor Brad Wiersum  
Council Member Deb Calvert  
Council Member Susan Carter  
Council Member Bob Ellingson  
Council Member Rebecca Schack  
Council Member Mike Happe  
Council Member Tim Bergstedt

Mayor and Council Members,

I’m writing today to express support for Target’s application for an off-sale liquor license near their Target store at Highways 7 and 101 in Minnetonka.

The TwinWest Chamber of Commerce represents 700 businesses that employ 55,000 people in the west metro, including Minnetonka. As a business organization, it is our mission to support the growth of commerce in the region and ensure that our region is competitive. Convenient access to desired goods and services also ensure the attraction and retention of residents to the city of Minnetonka and workers to the region.

Target is a Minnesota-based, experienced retailer who understands how to create a vibrant, healthy retail marketplace that provides benefit to not only the neighborhood, but the neighboring businesses as well.

I encourage your unanimous support of Target’s application and continued presence as a corporate resident in the city of Minnetonka. Thank you for your consideration.

Sincerely,

Deb McMillan  
VP, Public Policy, TwinWest Chamber of Commerce

Cc: Geralyn Barone, Minnetonka City Manager
Hello Fiona,
I see Target has applied for a liquor license at 7-Hi. I have concerns about it for several reasons. First how close it is to the High School; second another big chain in the area definitely hurts the smaller stores. I already get "...but I can get it at Total for...". Target being so much closer will definitely hurt my business, I can't imagine what it will do to MGM across the street. Can this area sustainably support another large store?

Terri-Lynn Bevins
Tonka Bottle Shop LLC
17616 Minnetonka Blvd.
Wayzata, MN 55391
To Whom It May Concern:

As a hospital physician who is seeing the devastating effects of alcohol on individual lives, families, work and society every day and as a father of two Minnetonka school children (aged 10 and 13) I am appalled by the plan to even consider a liquor store with a location exactly within one mile on a straight line between Minnetonka Middle School East and Minnetonka High School. If no setbacks or zoning restrictions regarding proximity of a liquor store to a school exist within our city, then I suggest creating them or simply honoring our kids' health and safety as our highest value.

I do not know if the timeframe of the proposal and hearings falls into the summer vacation period intentionally or not, but unless you deny this proposal outright, I would at least suggest positioning further hearings and decisions until the fall, when school resumes and school staff, students and their parents can be made aware of those plans and become part of the process.

I am forwarding this comment to staff at MME, Minnetonka High School and Minnetonka School District at the highest level.

Sincerely,

Tomas Murdych, MD
16940 Grays Bay Blvd
Wayzata, MN 55391
From: Brad Wiersum <bwiersum@eminnetonka.com>
Sent: Sunday, July 14, 2019 7:54 PM
To: Andy Roberts
Cc: Geralyn Barone <gbarone@eminnetonka.com>
Subject: Re: target

Dear Mr. Roberts:

Thanks very much for your note about the Target liquor application. While Target Corporation has requested a liquor license in the past, they do have the right to ask again. I appreciate knowing your perspective on the issue.
Sincerely,

Brad Wiersum
Mayor
City of Minnetonka

On Jul 10, 2019, at 11:28 PM, Andy Roberts wrote:

Mayor Wiersum

I'm writing to you about the concern I have about the rumors about Super Target in Minnetonka possibly getting a liquor license. There is already enough places with liquor licenses in Minnetonka including the liquor store next to Cub Foods. Target was turned down already for a liquor license a few years ago and they should be turned down again and tell them that's final. Target said some time ago that not all their stores would sell liquor and the Minnetonka store should be one of those that doesn't have one. The other concern is because its not far from the High School. Please say no to them.

Thanks
Andy
Brief Description
Resolution approving the preliminary plat of CONIFER HEIGHTS, 6-lot subdivision of existing properties at 5615 Conifer Trail and 5616 Mahoney Ave

Recommendation
Adopt the resolution approving the preliminary plat

Background
The roughly 1.4-acre development site is comprised of two properties – 5615 Conifer Trail and 5616 Mahoney Ave. Capital Development, LLC, is proposing to remove existing structures from the site and divide the combined property into six residential lots. Five of the new lots would be accessed via a newly constructed extension of Conifer Trail. The remaining lot would be accessed via Mahoney Ave.

Planning Commission Review and Recommendation
The planning commission considered the proposal on July 11, 2019. Staff recommended approval noting that the proposal would meet all standards of the subdivision and tree protection ordinances. The staff report and meeting minutes are attached.

At the meeting, a public hearing was opened to take comments. Several area residents addressed the commission with questions and concerns:

- Drainage. Residents noted that there are on-going drainage issues related to an existing basin located southwest of the site. Staff indicated that the proposal: (1) would need to meet the city’s stormwater management rules; and (2) may present an opportunity to outlet the landlocked basin, thereby improving an existing condition.

- Construction. Residents expressed concerns related to access to their homes during construction and the timeliness of the site build-out. Staff pointed out that a construction management plan would be required as a condition of approval. While the city has some control over the timeline of public infrastructure construction, it cannot dictate how soon lots must be sold and homes constructed.

- Landscaping. Residents requested input on tree mitigation and new plantings. City staff encourages the developer to work with adjacent neighbors on this issue. However, because landscaping is not a requirement between residential properties, the city cannot require that this occur.

The planning commission asked questions similar to those of those giving public testimony. On a 6-0 vote, the commission recommended the city council approve the preliminary plat.

Staff Recommendation
Staff recommends the city council adopt the resolution approve the preliminary plat of CONIFER HEIGHTS.
Submitted through
  Geralyn Barone, City Manager
  Julie Wischnack, AICP, Community Development Director
  Loren Gordon, AICP, City Planner

Originated by:
  Susan Thomas, AICP, Assistant City Planner
Brief Description  
Resolution approving the preliminary plat of CONIFER HEIGHTS, 6-lot subdivision of existing properties at 5615 Conifer Trail and 5616 Mahoney Ave

Recommendation  
Recommend the city council adopt the resolution approving the preliminary plat

Background

The subject site is comprised of two properties – 5615 Conifer Trail and 5616 Mahoney Ave – and is located east of County Road 101.

In 1984, the city reviewed the subdivision to the north of the subject site, PINERIDGE. At the time, the city envisioned a potential looped connection of Conifer Trail through the subject site back to County Road 101. The PINERIDGE developer worked with the city to allow access for future development.

The city ultimately approved the PINERIDGE subdivision with right-of-way platted to the southern property line. The approval included a temporary cul-de-sac at the terminus of Conifer Trail to allow reasonable access to PINERIDGE until future development occurred. Stormwater, from the six PINERIDGE properties, was directed into a temporary retention pond at the end of the temporary cul-de-sac with the intent that the stormwater would eventually be incorporated into the subject site’s stormwater plan or city utility services.

Since the looped connection concept was developed, Minnetonka Public Schools, ISD #276 purchased the western property and constructed a district service center. A looped connection is no longer possible.

Based on aerial photography, it does not appear the stormwater basin required by the 1984 approvals was constructed.
Proposal Summary

The following information is intended to summarize the proposal submitted by Capital Development, LLC. Additional information associated with the proposal can be found in the “Supporting Information” section of this report.

- **Existing Site Conditions.** The subject site is approximately 4.4 acres in size. The highest point of the property is in the northwest corner of the site and the property slopes downward towards the Manage 1 wetland in the southwest corner of the site and to Mahoney Ave to the east. The site is not a woodland preservation area but has 12 high-priority trees and 115 significant trees.

- **Proposed Lots.** As proposed, the existing structures would be removed, and six new single-family homes would be constructed. All of the lots would meet minimum lot standards and would range in size from 22,495 square feet to 36,065 square feet. Five of the new homes would have access to a newly constructed cul-de-sac extension of Conifer Trail. The remaining lot would have access via Mahoney Ave.

- **Site impacts.** The temporary cul-de-sac of Conifer Trail would be removed to construct an extension of the cul-de-sac into the site. Grading would then occur to allow for the construction of the new homes and driveways.

  Utilities. Sanitary sewer utilities would be extended from Mahoney Ave into the site. Water and stormwater utilities would be extended from Conifer Trial into the site. Stormwater would be collected and conveyed to a proposed stormwater basin in the southeast corner of the site.

  Trees. The proposed grading would result in the removal of, or substantial impact, to 33-percent of the site’s high priority trees. The trees onsite are generally of the box elder, elm, poplar, cherry, ash, and oak varieties.

Primary Questions and Analysis

A land use proposal is comprised of many details. In evaluating a proposal, staff first reviews these details and then aggregates them into a few primary questions or issues. The following outlines both the primary questions associated with CONIFER HEIGHTS and staff’s findings:

- **Are the proposed lots reasonable?**

  Yes. The proposed lots would meet all minimum size and dimensional standards as outlined in city code. The submitted plans indicate that a stormwater facility would be on an outlot. Following a discussion with city staff, the developer has since decided to incorporate the outlot into Lot 6.

<table>
<thead>
<tr>
<th>Lot</th>
<th>AREA</th>
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<td>Total</td>
<td>Buildable *</td>
<td>ROW</td>
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<td>1</td>
<td>22,000 sf</td>
<td>3,500 sf</td>
<td>80 ft, but 65 ft at cul-de-sac bulb</td>
<td>110 ft</td>
<td>125 ft</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>27,690 sf</td>
<td>24,220 sf</td>
<td>159 ft</td>
<td>116 f</td>
<td>215 ft</td>
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</tbody>
</table>
Subject: CONIFER HEIGHTS, 5615 Conifer Trail and 5616 Mahoney Ave

2 32,361 sf 22,400 sf 68 ft 114 ft 215 ft
3 33,255 sf 14,885 sf 80 ft 162 ft 125 ft
4 24,318 sf 16,390 sf 75.5 ft 114 ft 163 ft
5 22,493 sf 17,565 sf 131 ft 126 ft 178 ft
6** 36,063 sf 13,585 sf 200 ft 200 ft 179 ft

* Area rounded to nearest 5 ft
** includes the outlot which would be incorporated into the lot

- Does the proposal align with the city’s development concept?

Yes. The intent of the conceptual connection developed during the review of the PINERIDGE subdivision was to provide for orderly and thoughtful redevelopment of the subject site. The plan indicated that a looped connection would extend from County Road 101 from the north, through the subject site, and loop back west back to County Road 101. Since the development of the concept, the Minnetonka School District purchased and developed the property to the west. This, coupled with the topography on the west side of the subject site, would make a looped connection unlikely at this time. As such, the extension of the cul-de-sac would meet the intent of the concept and would result in less site impact than the original concept.

- Are the proposed site impacts acceptable?

Yes. The proposed subdivision has been reviewed to ensure conformance with the city’s tree protection ordinance, which regulates tree removal and mitigation. Woodland preservation areas (WPA) have the highest level of protection during the subdivision of a property. During subdivision, no more than 25-percent of the WPA and 35-percent of the property’s high priority trees may be removed or impacted by the development. There are no WPAs on the site. However, there are 12 high priority trees and 115 significant trees. The subdivision would comply with the city’s tree protection ordinance.

<table>
<thead>
<tr>
<th>Trees</th>
<th>Existing</th>
<th>Number Removed</th>
<th>Percent Removed</th>
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<tbody>
<tr>
<td>High-priority</td>
<td>12</td>
<td>4</td>
<td>33%</td>
</tr>
<tr>
<td>Significant</td>
<td>115</td>
<td>86</td>
<td>75%</td>
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Staff Recommendation

Recommend the city council adopt the resolution approve the preliminary plat of CONIFER HEIGHTS.

Originator: Ashley Cauley, Senior Planner
Through: Loren Gordon, AICP, City Planner
### Supporting Information

<table>
<thead>
<tr>
<th><strong>Project No.</strong></th>
<th>19016.19a</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Property</strong></td>
<td>5615 Conifer Trail and 5616 Mahoney Ave</td>
</tr>
<tr>
<td><strong>Applicant</strong></td>
<td>Capital Development, LLC</td>
</tr>
<tr>
<td><strong>Surrounding Land Uses</strong></td>
<td>Properties to the north, east and south are improved with single family homes, zoned R-1, and guided for low-density residential. Property to the west is the district service center, zoned R-1, guided low density and institutional.</td>
</tr>
<tr>
<td><strong>Planning</strong></td>
<td>Guide Plan designation: Low density residential Zoning: R-1</td>
</tr>
<tr>
<td><strong>Wetland</strong></td>
<td>There is a wetland complex with associated floodplain in the southwest corner of the site. The submitted plans indicate that the proposed homes would comply with required setbacks. Staff will evaluate final building permit plans to ensure conformance.</td>
</tr>
<tr>
<td><strong>Grading and Stormwater</strong></td>
<td>In order to evaluate the impacts of the anticipated grading, the city requires that all subdivision applications illustrate general home footprints and associated grading plans for each of the homes must occur in substantial conformance with the final grading plan. The general grading plan indicates that grading would occur to build new homes and driveways. Grading associated with the stormwater basin in the southeast corner of the site would also occur. Staff is continuing to evaluate the PINERIDGE approvals, and the proposed CONIFER HEIGHTS plan to determine if all of the conditions are met.</td>
</tr>
<tr>
<td><strong>Outlot</strong></td>
<td>The plans indicate the stormwater basin would be located on an outlot south of Lot 6. Staff has indicated to the developer that the city no longer prefers outlots be part of subdivisions. The developer has indicated that the outlot could be incorporated into Lot 6. This has been included as a condition of approval.</td>
</tr>
<tr>
<td><strong>PINERIDGE cul-de-sac</strong></td>
<td>The temporary cul-de-sac at the terminus of Conifer Trail would be removed in order to extend the cul-de-sac. The temporary easement associated with the existing terminus would also terminate. As a condition of approval, the developer must work with the adjacent property owners to restore yards and driveways to be consistent with the city’s driveway ordinance.</td>
</tr>
<tr>
<td><strong>Natural Resources</strong></td>
<td>Best management practices must be followed during the course of site preparation and construction activities. This would include installation and maintenance of a temporary rock driveway, erosion...</td>
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</table>
control, and tree protection fencing. As a condition of approval, the applicant must submit a construction management plan detailing these management practices.

Approval

The planning commission makes a recommendation to the city council, which has the final authority to approve or deny the request.

Pyramid of Discretion

Motion Options

The planning commission has the following options:

1. Concur with staff’s recommendation. In this case, a motion should be made recommending the city council approve the proposal based on the findings outlined in the staff-drafted resolution.

2. Disagree with staff’s recommendation. In this case, a motion should be made recommending the city council deny the proposal. The motion should include findings for denial.

3. Table the request. In this case, a motion should be made to table the item. The motion should include a statement as to why the request is being tabled with direction to staff, the applicant, or both.

Neighborhood Comments

The city sent notices to 23 area property owners and received no comments.

Deadline for Decision

Sept. 17, 2019
Location Map

Project: Conifer Heights
Address: 5615 Conifer Tr & 5616 Mahoney Ave

This map is for illustrative purposes only.
March 23, 2019

City of Minnetonka, MN
14600 Minnetonka Boulevard
Minnetonka, MN 55345

RE: Preliminary Plat Approval – Conifer Heights

To Whom It May Concern:

We are pleased to submit this application for Preliminary Plat Approval for the proposed Conifer Heights Subdivision, a 6-lot single family residential development, located at 5615 Conifer Trail and 5616 Mahoney Ave.

Enclosed is the project narrative, civil plans, and stormwater management plan. The application fee and signed application has been provided under separate transmittal.

We are excited to bring this project to Minnetonka and look forward to working with you to make it a success. If you have any questions about this package, please call Jack Ammerman at 763-252-6897.

Sincerely,

Wenck Associates, Inc.

[Signature]

Jack Ammerman
Project Manager
Civil Engineer

c: project narrative, civil drawings

CC: Fred Stelter
Conifer Heights – Project Narrative

Background

The proposed Conifer Heights subdivision is a 6-lot single family development located at 5615 Conifer Trail and 5616 Mahoney Ave Minnetonka, MN. The proposed development will replat the two parcels to provide for a new public roadway extension, six new single-family lots, a public stormwater management basin, and new sanitary, water, and storm utilities. The existing parcels contain two single-family homes that will be demolished for the development.

Site

The existing condition of the site is mostly vacant woodland with two single-family homes on each parcel. The existing homes, garages, and appurtenances will be demolished to allow for Conifer Trail to be extended into the site with a new cul-de-sac. A 14,000 sf outlot in the southeast corner of the development will be dedicated to the City for use as a stormwater management area.

The site is approximately 4.67 acres and zoned R-1, Low Density Residential. The proposed development fits within the required parameters of the R-1 district and is consistent with the existing zoning and land use for the area. The proposed parcels meet the requirements of the R-1 District per the tables below.

<table>
<thead>
<tr>
<th>SITE ANALYSIS TABLE</th>
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<tbody>
<tr>
<td>5616 MAHONEY AVE &amp;</td>
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<tr>
<td>5615 CONIFER TR</td>
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<tr>
<td>MINNETONKA, MN 55345</td>
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</tbody>
</table>

| EXISTING ZONING | R-1, LOW DENSITY RESIDENTIAL |
| PROPOSED USE | RESIDENTIAL HOUSING |
| SETBACK SUMMARY | BUILDING |
| FRONT / STREET ROW | 35' |
| SIDE | 10' |
| SIDE | SUM OF SIDE SETBACKS ≥ 30' |
| REAR | 40' OR 20% OF LOT DEPTH |
| LOT AREA MINIMUM | 22,000 |
| LOT WIDTH MINIMUM | 110 AT SETBACK |
| LOT DEPTH MINIMUM | 120' |
| MAX BUILDABLE AREA | 3,500 SF |
| MAX HEIGHT | 35' |
| MAX. DRIVEWAY WIDTH | TWO-CAR GARAGE | THREE-CAR GARAGE |
| | 20' | 30' |
The proposed development disturbs approximately 3.25 acres and proposes to install approximately 1.0 acres of new impervious area at ultimate build out, which includes the building footprints and public street.

**Access and Parking**

Site access is provided via extending Conifer Trail south into the development with a new cul-de-sac. Roughly 15,700 SF of public right of way will be dedicated to the City for this extension.

Lots one through five will be provided frontage off of the extended Conifer Trail, while lot six will have frontage along Mahoney Avenue. Each lot will have a private driveway and garage for residential vehicles parking.

**Landscape and Tree Preservation**

The proposed landscape plan addresses the City of Minnetonka requirements for overstory tree plantings. A tree survey was conducted for the site and has been provided with the submittal documents.

A tree preservation plan has been created showing the existing trees on the property, High Priority Trees, and Significant Trees per City Code. The plan has been included within the submittal documents to show that the proposed development impacts 4 High Priority trees, which is 35% of those on site.

**Grading and Drainage**

Proposed site grades are generally between 1.5% and 4.5% within the street and driveways. Landscape grades vary but do not exceed 3:1. All runoff from impervious driveways and street will be collected via storm sewer and conveyed to the proposed stormwater treatment system in the southeast corner of the site.

**Wetland**

A wetland is located in the southwest corner of the development and was delineated by Wenck Associates on 10/2/2018. The required 25’ buffer and 10’ buffer setback has been incorporated
into the development plans. MnRAMs for the wetland and the WCA approval have been included in the submittal for review.

**Stormwater Treatment**

The City of Minnetonka requires stormwater treatment to be provided for all new development. The existing site typical falls from west to east, with runoff discharging into the southwest wetland and sheet flowing overland to Mahoney Avenue. The proposed development will collect impervious runoff and direct stormwater to a new infiltration basin in the southeast. This basin is sized to meet rate control for the development and provide infiltration per City requirements for the 1.1” water quality volume. A P8 model run was conducted that shows the proposed infiltration basin provides 60% TP and 90% TSS removal per City requirements. A forebay and sumped manholes are provided for pretreatment. The basin discharges further west to an existing wetland on the east side of Mahoney Avenue.

**Utilities**

The proposed development will provide a new public 8” sanitary sewer main from the extended Conifer Trail that ties into the existing sanitary sewer within Mahoney Avenue. A new 6” watermain loop will run parallel to the sanitary sewer, connecting the existing watermain within Conifer Trail and Mahoney Ave. Each new lot will have residential services pulled from the new utility mains.
PRELIMINARY CIVIL CONSTRUCTION PLANS
FOR
CONIFER HEIGHTS RESIDENTIAL
MAY 2019

CITY OF MINNETONKA
HENNEPIN COUNTY, MINNESOTA

OWNER
CAPITAL DEVELOPMENT LLC
14505 43RD AVE N
PLYMOUTH, MN 55446
(P) - 612-325-7414
CONTACT: FRED STELTER

ENGINEER
WENCK ASSOCIATES, INC.
1800 PIONEER CREEK CENTER
MAPLE PLAIN, MN 55359
(P) - 763-479-5126
CONTACT: JARED WARD, P.E.

SEASON INDEX

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VICINITY MAP
NOT TO SCALE
Preliminary Plat of Conifer Heights

LEGAL DESCRIPTION OF PROPERTY TO BE PLATTED:

Parcel B:
The South 100 feet of the South 200 feet of the East half of the South half of the Southwest Quarter of the Southeast Quarter of the Northeast Quarter of Section 31, Township 117, Range 22, Hennepin County, Minnesota.

AND EXCEPT:
The South 100 feet of the South 200 feet of the East half of the South half of the Southeast Quarter of the Northeast Quarter of Section 31, Township 117, Range 22.

PRESENT ADDRESSES:

Parcell A:
5615 Conifer Trail
Minnetonka, MN 55345

Parcell B:
5616 Mahoney Ave.
Minnetonka, MN 55345

PARCEL A:
The South 100 feet of the South 200 feet of the West Half of the East Half of the North Half of the Northwest Quarter of the Southeast Quarter of the Northeast Quarter of Section 31, Township 117, Range 22, Hennepin County, Minnesota.

AREAS:

CURRENT LOT AREAS (INCLUDING RIGHTS OF WAY):

LOT 1, BLOCK 1 = 27,690 S.F. OR 0.636 ACRES
LOT 2, BLOCK 1 = 32,361 S.F. OR 0.743 ACRES
LOT 3, BLOCK 1 = 33,255 S.F. OR 0.763 ACRES
LOT 4, BLOCK 1 = 24,318 S.F. OR 0.558 ACRES
LOT 5, BLOCK 1 = 22,493 S.F. OR 0.561 ACRES
LOT 6, BLOCK 1 = 22,038 S.F. OR 0.506 ACRES
OUTLOT A = 14,025 S.F. OR 0.322 ACRES
R.O.W. = 15,716 S.F. OR 0.361 ACRES

PROPERTY IS ZONED R-1, LOW DENSITY RESIDENTIAL ACCORDING TO CITY OFFICIAL ZONING MAP.

TAXPAYER / PROPERTY OWNER:

Parcell A:
CAPITAL DEVELOPMENT LLC
14505 43RD AVE N
PLYMOUTH MN 55446

Parcell B:
CAPITAL DEVELOPMENT LLC
14505 43RD AVE N
PLYMOUTH MN 55446

DATE OF PRELIMINARY PLAT:

MAY 8, 2019

MAY 8, 2019

PRELIMINARY PLAT OF CONIFER HEIGHTS

LOT

LOT 1, BLOCK 1
LOT 2, BLOCK 1
LOT 3, BLOCK 1
LOT 4, BLOCK 1
LOT 5, BLOCK 1
LOT 6, BLOCK 1
OUTLOT A
R.O.W.

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CAPITAL DEVELOPMENT LLC
14505 43RD AVE N
PLYMOUTH MN 55446

DATE OF PRELIMINARY PLAT:

MAY 8, 2019

MAY 8, 2019
TREE PRESERVATION PLAN

PROPERTY LINE
EASEMENT LINE
REMOVED TREE WITH NO MITIGATION REQUIRED
REMOVED TREE WITH MITIGATION REQUIRED
PRESERVED TREE
HIGH PROPERTY TREE WITH CRZ SHOWN
SIGNIFICANT TREE WITH CRZ SHOWN

CRZ: CRITICAL ROOT ZONE.
CRZ IS CALCULATED AS 1.5 TIMES THE DBH OF EACH TREE. IF MORE THAN 30% OF THE CRZ IS IMPACTED DURING CONSTRUCTION, THE TREE IS CONSIDERED REMOVED. IF TREE IS AN ASH, ELDER, SILVER MAPLE, OR BOX ELDER, CRZ IS 1.0 TIMES THE DBH.

HIGH PROPERTY TREE: A TREE THAT IS NOT IN A WOODLAND PRESERVATION AREA BUT IS STILL IMPORTANT TO THE SITE AND THE NEIGHBORHOOD CHARACTER, THAT IS STRUCTURALLY SOUND AND HEALTHY, AND THAT MEETS AT LEAST ONE OF THE FOLLOWING STANDARDS:
A. A DECIDUOUS TREE THAT IS AT LEAST 15 INCHES DBH, EXCEPT ASH, BOX ELDER, ELDER SPECIES, POPULAR SPECIES, SILVER MAPLE, BLACK LOCUST, ELDER SPECIES, ELM SPECIES, WILLOW, SILVER MAPLE, AND MORAVIA.
B. A CONIFEROUS TREE THAT IS AT LEAST 20 FEET IN HEIGHT...

SIGNIFICANT TREE: A TREE THAT IS STRUCTURALLY SOUND AND HEALTHY AND THAT MEETS AT LEAST ONE OF THE FOLLOWING STANDARDS:
A. A DECIDUOUS TREE AT LEAST EIGHT INCHES DBH OR A CONIFEROUS TREE AT LEAST 15 FEET IN HEIGHT.

ONLY 35% OF HIGH PROPERTY TREES MAY BE IMPACTED. THERE ARE 12 HIGH PROPERTY TREES ON SITE, SO UP TO 4 MAY BE IMPACTED. THE CURRENT TREE PRESERVATION PLAN CALLS OUT FOR 4 HIGH PROPERTY TREES TO BE REMOVED.

*TREE REMOVAL ZONE INCLUDES BASIC TREE REMOVAL ZONE AND THE WIDTH OF REQUIRED EASEMENTS FOR PUBLIC AND PRIVATE STREETS AND UTILITIES FOR ALL TREE TYPES. FOR SIGNIFICANT TREES ONLY, THE TREE REMOVAL ZONE ALSO INCLUDES AREAS REQUIRED FOR SURFACE WATER PONDS.
Installing a stormwater basin to manage stormwater runoff in the development area.
Good morning Jeanine –
I will respond to as many of the questions as I can but some of your questions are better suited for the developer. I’ve included their contact information at the end of the email for your reference.

- **Fencing**: This would be a question better suited for the developer. The city would not require the fencing to be removed nor require that it should remain onsite.
- **Access**: When the PINERIDGE was developed in 1984, creating the properties on Conifer Trail, the city envisioned that Conifer Trail would be extended to allow development of the 5615 Conifer Trail and 5616 Mahoney Avenue properties. City staff worked with the developer to plat right of way to the property line, required a temporary cul-de-sac for Conifer Trail with an easement that would terminate at such a time that the roadway was extended to the property to the south. Access from Mahoney Avenue would likely result in additional disturbance as a result of existing topography and access to utilities to the north.
- **Conifer Trail disturbance**: The existing cul-de-sac bulb of Conifer Trail is a temporary cul-de-sac and would be removed in order to construct the extension and install utilities. I hope that the plans below better articulate the anticipated disturbance. The developer will need to notify and coordinate with any impacted property owner if there is a brief closure required. However, usually they are short as the city wouldn’t allow the developer to completely close access to your property for an extended period of time. You could contact the developer to better understand closures and impacts to your specific property.
• **Staking.** If both preliminary and final plat are approved, the extension would be staked prior to construction. However, if you would like to have it staked prior, I’d make the request to the developer. Please note that the current proposal only includes preliminary plat. Final plat approval would be required prior to any site work.

• **Contact information:**
  Fred Stelter
I live at 5524 Conifer Trail, and I have several questions regarding the Conifer Heights project for which the hearing is coming up on this Thursday July 11th.

1) Lot 1 drawing on C-201 shows plans for the wire fencing outlining the property is planned to be removed. What is the reason for removal of this fencing? This borders on our property, and we are wondering why this fencing is slated to be removed?

2) Has there been any consideration in the proposal for this development to come off of Mahoney rather than Conifer Trail? This proposal will essentially double the traffic going onto Hwy 101 off and onto Conifer Trail, which might be better served coming off a less busy street than Hwy 101. This will have an impact on our entire neighborhood.

3) What are the plans for disruption on the current existing cul de sac with respect to extending sewer lines and water mains? Will this require the street to be dug up and inaccessible for any periods of time?

4) Is it possible to have the proposed street extension marked so we are able to see the impact to the cul de sac and curbing?

Thank you
Jeanine Socha
5524 Conifer Trail
Minnetonka
Thanks Ashley. Is there a deadline for official comments? I may depending upon the following question/observation. Also I plan to attend the meeting Thursday eve so if just the same to make a statement there, I can.

I understand from your report that the Tree Preservation Plan conforms with the ordinance. My question is if there can be some required mitigation (replacement) of trees removed in the shaded area which I hope you can see from the 2nd snip below.

In the first snip you see the very high % of trees that will be removed in the construction. The nature of our street currently is that it has a very wooded feel, looking in all directions including to the south. With the removal of essentially all of the vegetation, including trees big and small, from the north side of the lot adjacent to the street, the center of the lot as well as the proposed siting and orientation of the 2 northernmost home sites, instead we're going to look south at the sides of new houses and an open field/roadway.

Of course the trees will have to be removed for the construction. However I would like to see the developer required to place new trees--ideally conifers, but could be deciduous too--and/or other high-profile landscaped vegetation in the shaded areas below. It will actually be nice if they get rid of all the buckthorn, but then replace it with a mix of conifers and other vegetation to avoid our houses at the end (Dayhoffs, Baums, Sochas) from essentially being incorporated into a new multi-acre open yard with 4 of the 6 new homes. Note this is not in some hope that I wish that the new homes not be visible at all from my front yard. Instead it's that the new homes have adequate trees and other vegetation around them so that it doesn't lose the wooded feel and sightlines. I don't want to gamble on the new homeowners sharing this sentiment vs. the developer landscaping and replacing trees now.

If this is the substance of an official comment, then yes please note it as such.

Thanks again for your responsiveness.
Powers did not think 24 inches would change the character of the neighborhood. He likes the proposal better than the one that would meet ordinance requirements. The design is smart. He favored approving the variance. He liked that the applicant met with all of the neighbors and all of them approved the proposal.

Hanson and Knight concurred with Powers. Knight noted that the house is angled from the street and suggested that the addition be turned and setback further if possible.

Sewall did not think the proposal would change the character of the neighborhood. He acknowledged that the application is a design difficulty, not a practical difficulty.

Chair Kirk thought it would be natural for the garage to be located on the side of the house. Bad rooflines do become problematic. He supports the proposal.

Powers stated that meeting the setback requirement would create practical difficulties with living in the house and aligning the roofline. The angle of the street decreases the front yard setback on the side of the house. The proposal would not change the character of the neighborhood.

Chair Kirk stated that the property is unique because its front yard setback currently does not meet ordinance requirements. There is a two-foot difference between an expansion permit and a variance. Only a small portion of the proposed garage would extend into the setback because of the angles of the street and house.

**Powers moved, second by Hanson, to adopt a resolution approving a variance request to construct a garage addition onto the west side of the existing house.**

**Knight, Luke, Powers, Sewall, Hanson, and Kirk voted yes. Henry was absent. Motion carried.**

Chair Kirk stated that an appeal of the planning commission’s decision must be made in writing to the planning division within 10 days.

**B. Resolution approving Conifer Heights, a six-lot subdivision at 5615 Conifer Trail and Mahoney Ave.**

Chair Kirk introduced the proposal and called for the staff report.

Cauley reported. She recommended approval of the application based on the findings and subject to the conditions listed in the staff report.

Sewall asked if the outlot would be incorporated into Lot Six. Cauley answered affirmatively. An easement would prevent the area from being filled or built on. A stormwater maintenance agreement would outline the responsibilities of the property owner and the city.
Luke was concerned with Lot 3 being located so close to the floodplain. Cauley explained that the building permit process would confirm that all separation requirements would be met.

Chair Kirk confirmed with staff that there would be sufficient buildable area.

Jack Ammerman, Wenck Associates, civil design engineer and project manager representing the applicant, stated that he appreciated their time and staff represented the project thoroughly and accurately. He was available for questions.

The public hearing was opened.

Joseph Socha, 5524 Conifer Trail, stated that:

- He would like some items addressed in the development contract including construction traffic. Conifer Trail should be repaved at the end of construction if it would be damaged.
- He asked how long construction would take.
- He stated that some magnificent trees would be removed and replaced with smaller trees. He would like to keep as many trees as possible.
- He wants to make sure that there would be a security deposit that would cover fixing the street.
- His house needs 24-hour, 7-days-a-week access for nurses to care for a family member. That is a very real concern.
- The cul-de-sac encroaches on both properties currently. He was concerned that the new street would be on his lot line or over his lot line. Most of the street has a buffer on both sides to the property lines. He would like the buffers continued into the proposed cul-de-sac.
- He would like an agreement to require trees removed from the outlot to be replaced.

David Biesboer, 5620 Mahoney Ave., stated that:

- The area is hilly and a lot of water runs through his property.
- The soil is sandy and moves easily. He was concerned with sheet runoff from Conifer Ave.
- He would like the holding pond located somewhere else, but understood if it would be necessary.
- He does not want one milliliter of runoff to travel down the hill onto his property.
- He would like to work with the developer and engineer to make sure there would not be a problem.

Fred Landin, 5640 Mahoney Ave., stated that:
• He was concerned with the wetland being protected during construction.
• The pond right now is full. It has overflowed twice. It flooded his neighbor's property at one point. He was concerned that it would overflow again.
• He wanted to make sure no additional water would flow into the pond.

Young Cho, 5520 Conifer Trail, stated that:
• He asked if a review of the builder would be performed.

Kurt Baum, 5529 Conifer Trail, stated that:
• He was concerned with construction traffic causing a safety hazard for children in the street.
• He would like the buckthorn removed.
• He did not know how Conifer Trail was created.

No additional testimony was submitted and the hearing was closed.

Cauley explained that:
• The street easement located where Conifer Trail is now paved existed before the street easement was utilized.
• She pointed out the paved portion of Conifer Trail, right of way and temporary bulb of the cul-de-sac which would be used for construction traffic. She explained that the bulb would be removed and the location of the proposed street.
• There would be green space between the paved portion of the street and the right of way. The green space would continue along the street. That is an ordinance requirement.
• The developer would be required to provide a financial guarantee that could be used to complete the project if the developer would not do so.

Loren explained that engineering staff would document the condition of the street to be compared with an inspection completed at the end of the construction project to hold the developer accountable to repair any damage.

Cauley stated that:
• Engineering staff would review proper runoff mitigation prevention for the proposed plan and during the building permit review process for each residence.
• Grading would be done in a way to protect as many trees as possible. Specific fencing may be required to protect a tree’s root zone.
The applicant’s tree preservation plan needs to add four trees.

Once a property would be homesteaded for two years, then the property owner could remove trees like any other property.

In response to Chair Kirk’s question, Yetka explained tree definitions and mitigation requirements.

Chair Kirk encouraged the developer to plant trees that would become high-priority trees that may not be as fast growing, but become quality trees in the future.

Cauley explained that city staff looks at each land use application. Builders and contractors are required to be licensed and meet state requirements.

Cauley explained that the developer would be required to notify adjacent property owners of a road closure. A road closure would not be allowed for an extended period of time that would prevent access to a residence. The city would work with the property owner and developer to make sure that there would be access to the residence. When County Road 101 was reconstructed, the site lines were found to be reasonable. If residents witness construction vehicles making traffic violations on Conifer Trail, then they should contact the police department and the developer.

Chair Kirk thought the access off of Conifer Trail made more sense than Mahoney Ave. because of the steeper grade on Mahoney Ave. Cauley agreed.

Sewall asked staff to discuss the holding ponds and runoff. Yetka explained some of the water mitigation requirements that would be required. No new drainage would be routed to the wetland. The pond would take the runoff from the impervious surface and purify it before it would travel down the storm sewer. Engineering staff would inspect the site to make sure it would function as intended.

In response to Power’s question, Cauley explained that the construction management plan would include the contact information for the site supervisor. It would be provided on the city’s website: eminnetonka.com.

Knight asked if the pond between the development and the school currently has a controlled overflow. Cauley explained that it does not now, but the possibility of adding an overflow control is being explored. Loren clarified that there is no engineered solution yet, but the possibility is being researched.

Hanson applauded the neighbors for understanding the proposal and voicing valid concerns. He encouraged residents to work with the developer. He likes where the proposal is headed. The proposal retains the lot size. The developer has been conservative with the number of lots and respectful of the neighborhood.

Chair Kirk was concerned with the amount of tree loss. He would like more trees saved. He hoped that the grading plan would be the worst-case scenario. It would make sense
to do most of the heavy lifting at one time to get the pad ready. He appreciated the half-acre lot sizes. There are not many areas this size left in the city.

Sewall thought significant trees may need more protection when a site is made up of 75 percent significant trees. He appreciated getting the heavy construction done as soon as possible. The proposal meets all ordinance requirements.

Powers agreed with commissioners. He noted that the neighbors would go through a period of disruption. He encouraged neighbors to pay attention and inform the developer of what is happening. He supports the proposal. It would fit Minnetonka in 2019.

**Hanson moved, second by Luke, to recommend that the city council adopt the resolution approving the preliminary plat of Conifer Heights with changes provided in the change memo dated July 11, 2019.**

**Knight, Luke, Powers, Sewall, Hanson, and Kirk voted yes. Henry was absent. Motion carried.**

Chair Kirk stated that this item is scheduled to be reviewed by the city council July 22, 2019.

C. Items concerning The Kinsel at Glen Lake.

Chair Kirk introduced the proposal and called for the staff report.

Thomas reported. She recommended approval of the application based on the findings and subject to the conditions listed in the staff report.

In response to Powers’ question, Thomas explained that the traffic study determined that the intersection would not warrant sufficient conditions to require a traffic light for 10 years. There is a priority list that the county would place the intersection on once it would meet the conditions necessary to prompt installation of a traffic light.

Sewall asked about sidewalks. He saw lots of pedestrians in the area. Thomas explained that sidewalks would surround the entire site and be located along Stewart Lane and Excelsior Blvd.

Hanson supports planning for the anticipated traffic 10 years in the future. Thomas stated that city staff agrees, but that is not a possibility since Hennepin County has the authority for this intersection and has denied requests to make changes. Commissioners may find that the use would be too intense for the site.

Powers did not see a compelling need that the proposal would fill. Wischnack provided that the vacancy rates for apartments in Minnetonka is very low. A 5-percent vacancy rate is considered unhealthy. Minnetonka’s apartment vacancy rate is 2.6 percent.
Resolution No. 2019-
Resolution approving the preliminary plat of CONIFER HEIGHTS, a six-lot subdivision, at 5615 Conifer Trail and 5616 Mahoney Ave

Be it resolved by the City Council of the City of Minnetonka, Minnesota, as follows:

Section 1. Background.

1.01 Capital Development, LLC has requested preliminary plat approval for CONIFER HEIGHTS. (Project 19016.19a).

1.02 The site is located at 5615 Conifer Trail and 5616 Mahoney Ave.

It is legally described as follows:

Parcel B:

The south 100 feet of the North 200 feet of the west half of the east half of the north half of the Northwest quarter of the southeast quarter of the northeast quarter of Section 31, Township 117, Range 22, Hennepin County, Minnesota.

Parcel C:

The north half of the northwest quarter of the southeast quarter of the northeast quarter of Section 31, Township 117 North, Range 22 West of the 5th principal meridian, except the north 126.8 feet of the east quarter thereof.

AND EXCEPT:

The south 100 feet of the north 200 feet of the west half of the east half of the north half of the northwest quarter of the southeast quarter of the northeast quarter of Section 31, Township 117, Range 22.

1.03 On July 11, 2019, the planning commission held a hearing on the proposed plat. The applicant was provided the opportunity to present information to the commission. The commission considered all of the comments received, and the staff report, which is incorporated by reference into this resolution. The
commission recommended that the city council grant preliminary plat approval.

Section 2. General Standards.

2.01 City Code §400.030 outlines general design requirements for residential subdivisions. These standards are incorporated by reference into this resolution.

Section 3. Findings.

3.01 The proposed preliminary plat meets the design requirements as outlined in City Code §400.030.


4.01 The above-described preliminary plat is hereby approved, subject to the following conditions:

1. Final plat approval is required. A final plat will not be placed on a city council agenda until a complete final plat application is received. The following must be submitted for a final plat application to be considered complete:
   
a) A signed ALTA survey.
   
b) A final plat drawing that clearly illustrates the following:
      
1) A minimum 10-foot wide drainage and utility easements adjacent to the public right-of-way(s) and minimum 7-foot wide drainage and utility easements along all other lot lines.

2) Utility easements over existing or proposed public utilities, as determined by the city engineer.

3) Drainage and utility easements over wetlands, floodplains, and stormwater management facilities, as determined by the city engineer.

4) A minimum 20-foot right of way along Mahoney Ave.

5) The outlot incorporated into Lot 6.

   c) Documents for the city attorney’s review and approval. These documents must be prepared by an attorney knowledgeable in the area of real estate.
1) Title evidence that current within thirty days before the release of the final plat.

2) Conservation easements over the 25-foot wetland buffer and a drawing of the easements. The easement may allow removal of hazard, diseased, or invasive species.

3) Documents establishing a homeowners’ association. The association must be responsible for maintaining any common areas, common drives, required drainage ponding, and any other required drainage improvements approved by the City. Maintenance will include, but not be limited to, the periodic removal of sedimentation at the base of the pond and any adjacent drainage ditches, keeping a vegetative cover within the ditches and pond, and removing any blockage of the swale or culvert that may impede the drainage of the site, as approved with the building permits.

4) A Contract for Residential Development (or Developers Agreement) if the applicant or developer is constructing any public improvements. This agreement must guarantee that the developer will complete all public improvements and meet all city requirements.

5) Stormwater maintenance agreement in the city approved format.

d) Outstanding taxes must be paid in full.

2. Prior to final plat approval:

a) This resolution must be recorded with Hennepin County.

b) The documents outlined in section 4.01(1)(c) above must be approved by the city attorney.

3. Submit the following prior to the release of the final plat for recording:

a) Two sets of mylars for city signatures.

b) An electronic CAD file of the plat in microstation or DXF and PDF format.

c) Park dedication fee of $20,000.

4. Subject to staff approval, CONIFER HEIGHTS, must be developed and
maintained in substantial conformance with the following plans, except as modified by the conditions below:

- Site plan dated May 9, 2019.
- Preconstruction erosion and demolition plans dated May 9, 2019.
- Tree survey, mitigation and preservation plans dated May 9, 2019.
- Grading and erosion control plan dated May 9, 2019.
- Utility plan dated May 9, 2019.

5. A grading permit is required. Unless authorized by appropriate staff, no site work may begin until a complete grading permit application has been submitted, reviewed by staff, and approved.

a) The following must be submitted for the grading permit to be considered complete.

1) Evidence of filing the final plat at Hennepin County and copies of all recorded easements and documents as required in section 4.01(1)(a)(2) of this resolution.

2) An electronic PDF copy of all required plans and specifications.

3) Final site, grading, drainage, utility, landscape, tree mitigation plans, and a stormwater pollution prevention plan (SWPPP) for staff approval.

a. Final grading plan must:

- Be adjusted as much as possible to maintain tree loss and adequately preserve trees.
- Include B612 curb with curb cuts at proposed driveway locations.

b. Final stormwater management plan is required for the entire site’s impervious surface. The plan must demonstrate conformance with the following criteria:

- Rate: limit peak runoff flow rates to that of existing conditions from the 2-, 10-, and 100-year events at all point where stormwater leaves the site.
• Volume: provide for onsite retention of 1-inch of runoff from the site’s impervious surface.

• Quality: provide for runoff to be treated to at least 60-percent total phosphorus annual removal efficiency and 90-percent total suspended solid annual removal efficiency.

In addition:

• Locate the STMH 100 in curb line rather than in the roadway to connect to the existing storm sewer.

• Storm pipe sizing cannot decrease in size in the downstream direction. Maintain 24-inch.

• Bioretention basin must draw down in 48 hours. Maximum ponding depth is 18 inches.

c. Final utility plan must:

• Use the updated detail plates.

• Include profiles of utilities for review of grades and depth.

• Indicate that the water main pipe is DIP.

• Show service locations and locate the water services outside of the driveway.

• Illustration installation of an isolation valve outside of cul-de-sac for green space isolation.

• Illustration installation of a gate valve on the southern leg of Mahoney Ave connection.

• Indicated no water services may come from the side yard. Services must be located outside of the green space isolation valves.

• Illustrate unused water service pipe on Mahoney Avenue must be removed back to
the main, with the corporation stop turned off and a city-approved repair clamp to cover the corporation stop.

- Note wet tap the 6-inch main on Mahoney Avenue.

- Locate SSMH 2 to roadway in line with SSMH 1.

- Illustrate drop manhole structure to be outside drops.

d. Final landscaping and tree mitigation plans must meet minimum landscaping and mitigation requirements as outlined in the ordinance. However, at the sole discretion of natural resources staff, mitigation may be adjusted based on site conditions. In addition:

  - No more than four high priority trees can be removed.

  - Based on the submitted plans the mitigation requirements would be 19, two-inch trees.

4) Individual letters of credit or cash escrow for 125% of a bid cost or 150% of an estimated cost to construct streets and utility improvements, comply with grading permit, wetland restoration, tree mitigation requirements, and to restore the site. One itemized letter of credit is permissible if approved by staff. The city will not fully release the letters of credit or cash escrow until: (1) as-built drawings have been submitted; (2) a letter certifying that the streets and utilities have been completed according to the plans approved by the city has been submitted; (3) vegetated ground cover has been established; and (4) required landscaping or vegetation has survived one full growing season.

5) A construction management plan. The plan must be in a city-approved format and must outline minimum site management practices and penalties for non-compliance.

6) A copy of the approved MPCA NPDES permit.

7) A MDH permit for the proposed water main or documentation from the MDH that a permit is not required.
8) A MPCA sanitary sewer extension permit or documentation from the MPCA that a permit is not required.

9) Evidence of closure/capping of any existing wells, septic systems, and removal of any existing fuel oil tanks.

10) All required administration and engineering fees.

11) Evidence that an erosion control inspector has been hired to monitor the site through the course of construction. This inspector must provide weekly reports to natural resource staff in a format acceptable to the city. At its sole discretion, the city may accept escrow dollars, in an amount to be determined by natural resources staff, to contract with an erosion control inspector to monitor the site throughout the course of construction.

12) Cash escrow in an amount of $3000. This escrow must be accompanied by a document prepared by the city attorney and signed by the builder and property owner. Through this document, the builder and property owner will acknowledge:
   
   • The property will be brought into compliance within 48 hours of notification of a violation of the construction management plan, other conditions of approval, or city code standards; and
   
   • If compliance is not achieved, the city will use any or all of the escrow dollars to correct any erosion and/or grading problems.

b) Prior to issuance of the grading permit, a pre-construction meeting is required.

c) Prior to issuance of the grading permit, install a temporary rock driveway, erosion control, tree and wetland protection fencing and any other measures identified on the SWPPP for staff inspection. These items must be maintained throughout the course of construction.

d) Permits may be required from other outside agencies including, Hennepin County, the Riley-Purgatory-Bluff Creek Watershed District, and the MPCA. It is the applicant’s and/or property owner’s responsibility to obtain any necessary permits.

6. Prior to issuance of a building permit for the first new house within the
development, submit the following documents:

a) A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance.

b) A letter from the surveyor stating that all encroachments onto other properties, as noted on the survey, have been removed and the areas restored.

c) Proof of subdivision registration and transfer of NPDES permit.

7. Prior to issuance of a building permit for any of the lots within the development:

a) Submit the following items for staff review and approval:

1) A construction management plan. This plan must be in a city-approved format and outline minimum site management practices and penalties for non-compliance. If the builder is the same entity doing grading work on the site, the construction management plan submitted at the time of grading permit may fulfill this requirement.

2) Final grading and tree preservation plan for the lot. The plan must:

   a. Be in substantial conformance with the approved plans.

   b. Protect trees to remain on site as required by city staff.

   c. Show sewer and water services to minimize impact to any significant or high-priority trees. No trees may be removed for installation of services.

   d. Meet minimum mitigation requirements, as outlined in the ordinance. However, at the sole discretion of staff, mitigation may be decreased.

3) Cash escrow in an amount to be determined by city staff. This escrow must be accompanied by a document prepared by the city attorney and signed by the builder and property owner. Through this document, the builder and property owner will acknowledge:
• The property will be brought into compliance within 48 hours of notification of a violation of the construction management plan, other conditions of approval, or city code standards; and

• If compliance is not achieved, the city will use any or all of the escrow dollars to correct any erosion and/or grading problems.

If the builder is the same entity doing grading work on the site, the cash escrow submitted at the time of grading permit may fulfill this requirement.

b) Install a temporary rock driveway, erosion control, tree and wetland protection fencing and any other measures identified on the SWPPP for staff inspection. These items must be maintained throughout the course of construction.

c) Install heavy duty fencing, which may include chain-link fencing, at the conservation easement. This fencing must be maintained throughout the course of construction.

d) Submit all required hook-up fees.

8. All lots and structures within the development are subject to all R-1 zoning standards. In addition:

a) All structures must meet the required wetland setback.

b) All lots within the development must meet all minimum access requirements as outlined in Minnesota State Fire Code Section 503. These access requirements include road dimension, surface, and grade standards. If access requirements are not met, houses must be protected with a 13D automatic fire sprinkler system or an approved alternative system.

9. The city may require installation and maintenance of signs which delineate the edge of any required conservation easement. This signage is subject to the review and approval of city staff.

10. During construction, the streets must be kept free of debris and sediment.

11. The property owner is responsible for replacing any required landscaping that dies.
12. The city must approve the final plat within one year of the preliminary approval or receive a written application for a time extension, or the preliminary approval will be void.

Adopted by the City Council of the City of Minnetonka, Minnesota, on July 22, 2019.

Brad Wiersum, Mayor

Attest:

Becky Koosman, City Clerk

Action on this resolution:

Motion for adoption:  
Seconded by:  
Voted in favor of:  
Voted against:  
Abstained:  
Absent:  
Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a duly authorized meeting held on July 22, 2019.

Becky Koosman, City Clerk
Brief Description: Goose management plan

Recommended Action: Approve goose management plan

Background:

Since 1998, the city has performed goose removal as a result of an expanding goose population in the metro area and to provide clean public facilities. In the early years of the program, 300 to 700 geese were removed each year. Since 2012, the number of geese removed has ranged from 0 to 200 geese per year. Prior to 2016, the Minnesota Department of Natural Resources (DNR) would issue permits for goose removal directly to contractors hired by cities to complete the work. The DNR now requires cities to have a goose management plan approved by city council and the DNR in order for removal permits to be issued.

The attached goose management plan provides information about the Canada goose, the history of goose management in the metro area, health concerns, estimated goose population and population goals for Minnetonka and techniques that would be used to manage the goose population in Minnetonka. Historically, the city has provided goose removal for private property owners upon request, which makes Minnetonka unique from other cities that have completed goose management plans. This practice will continue as a part of the proposed plan; however, property owners will need to demonstrate they have taken some measures to try to prevent geese from accessing their properties from adjacent water bodies. If those measures are not successful, they can request the city to remove the geese. Minnetonka has a number of options for goose management, which include recording and tracking, habitat modifications, redistribution, egg removal and trap and remove.

The DNR has reviewed the plan and finds it acceptable. The city is required to accept public comment on the plan prior to approval. Request for comment on the plan was posted to the front page of the city’s website the week of July 8.

Recommendation:

Open the meeting to public comment and approve the goose management plan.

Submitted through:
  Geralyn Barone, City Manager
  Will Manchester, Director of Public Works

Originated by:
  Darin Ellingson, Street and Park Operations Manager
A CANADA GOOSE MANAGEMENT PLAN FOR THE CITY OF MINNETONKA
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1.0 Overview, Mission Goals & Objectives

The material to follow is written to provide an overview of the Canada goose species, information regarding State and Federal regulations, public health considerations, information on recognized management options and a staff recommendation for best tactic for population control within the city of Minnetonka.

The mission of the Minnetonka Public Works Department is to provide a variety of quality recreational experiences, services and lands that meet the needs of the residents of Minnetonka and the users of the city’s parks and open spaces.

The goal is to manage geese in a safe and responsible manner. This written management plan communicates the City’s role in geese management and allows for the City to be permitted by the Minnesota Department of Natural Resources to attempt to control the population of geese by the State.

The objective of this plan is to efficiently, effectively and appropriately control the local Canada goose populations that utilize the park and trail areas during the summer months so as to provide a safe and enjoyable environment and experiences for the public.

2.0 Species Information

The Canada goose is the most widespread and abundant North American goose, found in every state and Canadian province at some time during the year. In spring, the species breeds from Labrador, throughout the high Canadian arctic islands to Alaska, south to California, and eastward to Georgia. Wintering Canada geese are found from southeastern Alaska to Hawaii and northern Mexico eastward to Massachusetts and Florida (Bellrose, 1976). The Canada goose is one of the earliest spring migrants, first among Midwestern waterfowl to return to the breeding grounds.

Population surveys have provided results of the species exceeding 4 million individuals. At one time virtually extinct, the Canada goose was re-established over much of its former range by the US Fish and Wildlife Service (USFWS), state wildlife departments, and conservation clubs. The population, particularly in urbanized areas, has grown exponentially. The Minnesota wild Canada goose population went from zero in 1954 to more than 360,000 in 2004.

The Canada goose shows great variation in body size and regional differences in plumage, bill shape and call. One resident and three migrant Canada goose subspecies are found in Minnesota. These include Richardson’s goose, Canada goose and Todd’s Canada goose. The largest birds average 12 to 14 pounds, although some weigh up to 18 pounds.

Mowed lakeshores, parks & open space, and golf courses provide an abundance of brood-rearing habitat and food sources. Predator densities are low, hunting is limited and the bird is unaffected by most human activities. As such, the species has become supremely adapted to an urban environment. When Canada geese damage crops, golf courses, parks & open space; reduce water quality; or endanger human life on roads and airports, intensive management plans and programs are needed.

2.1 Nesting

Female geese build the nest and incubate the eggs without direct aid from the gander (the male). The gander guards the female from disturbance by other mature pairs and assists the female in protecting the eggs, and later, the goslings. Eggs are laid as soon as there is open water for mating and snow-free
nest sites. It is not unusual for the birds to continue nesting in spite of temperatures as low as zero degrees Fahrenheit and snowfalls up to 10 inches.

Pair bonding takes place in spring among young geese at 1 or 2 years of age. The pair typically remains steadfast until the death of one of the members. There are no known cases where a female has successfully nested after the death of her mate.

Nests are typically built on isolated sites separated from adjacent dry land by a moat of open water; this could include nesting islands, beaver lodges or sedge hummocks. Females often use the same site year after year or alternate between 2 nest sites in close proximity. Young females nesting for the first time attempt to nest close to the location where they were reared.

The female incubates from 97 to 98% of the day, taking only one or two brief recesses from incubation. Because she feeds so little, the female can lose up to 30% of her body weight during incubation and is within 4-10 days of starvation when the eggs hatch.

Canada goose nesting success normally ranges from 60 to 80%. On average, 4 goslings are hatched per successful nest. Nests can be lost to predators such as coyote, fox, skunk, raccoons, crows, ravens and large gulls. Nests can also be lost to flooding or desertion (usually due to interference by adjacent territorial pairs).

2.2 Brood-rearing

Once the young have hatched, the family abandons the nest site and travels overland, up to 5 miles in the Twin Cities Metropolitan Area (TCMA), to a suitable brood-rearing site. Most commonly, brood concentration sites have expanses of grass (such as bluegrass turf) where visibility is good, food is abundant and open water is in immediate proximity. Geese are social animals and flocks can easily exceed 100+ birds.

2.3 Molting

Five weeks after hatch, the breeding female loses her flight feathers and enters what is termed a molt period. The male molts 4 to 10 days later. Both remain flightless until the young can fly, which is approximately 9 to 10 weeks of age. Because of the energy and nutrients needed to replace the adults’ flight feathers and for the goslings to grow from fist-sized to nearly full-grown in less than 10 weeks, large quantities of food must be consumed during this period by each bird.

3.0 Public Demand for Clean Facilities

The Public Works department has documented instances when public complaints and criticism has been brought forward due to unclean beach, picnic areas, and athletic fields. Oftentimes the criticism comes at the beginning of the season prior to management efforts for geese. There is an expectation by the public for a desired experience of clean and safe facilities. Unsightly and pungent odors associated with geese droppings are conditions that reduce the ability for the public to enjoy the investments made in the parks and trail system.

3.1 General Public Health Concerns

Potential health risks posed by the abundant droppings of the Canada goose are a relatively untouched area of study as the urban goose concentrations are a relatively new phenomenon. Human pathogens, such as Giardia and Cryptosporidium have been found in goose droppings in New Jersey, although the
longevity of the pathogens in the droppings or the likelihood of human ingestion or inhalation was not studied. (New Jersey Wildlife Department)

A study conducted in London, England (Feare et al. 1999), where introduced Canada geese are also causing damage in urban parks & open space and at airports, showed that bacterial species such as E. coli and Salmonella remained viable in Canada goose droppings for at least a month after they were deposited. Because fecal material is readily transferred to human hands by the handling of sport game balls and other outdoor equipment typically used in park and open space settings, the authors concluded that pathogens present in waterfowl droppings constitute a potential health risk to humans using parkland for recreation activities.

Locally, high fecal coliform levels attributed to goose droppings have been identified in lakes in the Twin Cities Metropolitan Area. These findings have resulted in mandatory beach closures after analysis of water samples by the Minnesota Department of Health. Due to the fact that it is possible to contract disease from goose fecal matter, following are general recommendations for areas where these droppings may be present:

- Wash hands, clothes and sports equipment immediately after exposure
- Small children, pregnant women or immune-compromised individuals should avoid areas with high concentrations of droppings
- Small children who may put hands in their mouths should not be placed in contact with these areas.

### 3.2 Potential Damages Caused by Species

- Damage complaints due to Canada geese have been filed for damage to golf courses, lawns, gardens, decks, vehicles, ponds and lakes due to feeding habits, excretion of fecal matter and walking or flying into traffic. When human health or safety is endangered, intensive management plans and programs are often needed.

- Goose digestive systems are relatively inefficient and results in production of approximately 3 to 4 lbs. of droppings or fecal matter per day. The amount of droppings produced can reduce water quality in lakes and ponds adjoining brood-rearing and feeding areas. In 1994, Manny, Johnson, and Wetzel found that goose droppings were contributing up to 70% of the phosphorus entering a small Michigan lake. The goose serves as a transport vector, moving nutrients derived from upland grass into or near a wetland, pond or lake. The potential for impact depends on size of goose population, volume of water, time spent on the water body and water inflow and outflow.

- The Canada goose has adapted to both highly human altered and wilderness settings. Predation is low, hunting is limited in urban areas, and the species is largely unaffected by most human activities.

### 4.0 Species Regulations

The Canada goose is a migratory bird protected by Federal and State law. The Migratory Bird Treaty Act of 1918 prohibits the taking of migratory birds and their nests and eggs except during established hunting seasons or by USFWS permit. Activities covered by permits include capture and banding (Banding Permit), collection for scientific or educational purposes (Scientific Collecting Permit), removal
of eggs from wild nests and possession of captive birds by aviculturists (Special Purpose Permit), and the removal of birds, nests or eggs to protect people or property from damage (Depredation Permit).

Due to the rapid expansion of Canada geese and the concurrent increase in requests for depredation permits, the USFWS has implemented a policy allowing states broader authority to address goose damage under a 5-year Resident Canada Goose Permit. The precedence for issuing a depredation permit was upheld in federal court under Humane Society of the United States vs. USFWS. Currently this permit is being used in states such as Minnesota where an urban Canada goose management plan has been prepared.

Minnesota statutes also protect migratory birds. The Minnesota Department of Natural Resources (DNR) was established as the regulatory authority to review and issue permits to manage goose populations. The legality and humaneness of the procedures used in the Twin Cities were upheld in state court by People for the Ethical Treatment of Animals (PETA) vs. the DNR and the University of Minnesota. More information on State and Federal provisions and permits can be found online at the following websites.

U.S. Fish and Wildlife Service:
http://www.fws.gov/migratorybirds/issues/cangeese/finaleis.html

State of Minnesota:
http://www.dnr.state.mn.us
http://www.revisor.leg.state.mn.us/stats

Minnetonka Park Regulations Ordinance: Ordinance $1135.020 Item 1 states wild animals may not be killed, trapped, pursued, caught, or removed, except when necessary to protect the immediate safety of a person or domestic animal. This prohibition does not apply to a law enforcement officer, or other person authorized by the director, who is performing official duties.

5.0 Twin Cities Metropolitan Area (TCMA) Urban Goose Management Plan

In 1982 when it became clear that the Canada goose population was negatively impacting people and the environment, the DNR took the lead in developing an urban Canada goose management program as well as joining U of M and UMES cooperative research program. The DNR has established an Urban Goose Management Plan for the Twin Cities Metropolitan Area (TCMA). Much of this information is collected from the Goose Management Plan for the TCMA. The management plan for the TCMA includes information on:

- Canada goose history and biology
- Social goose carrying capacity within the TCMA
- Rationales for management technique recommendations
- The damage site management decision making process
- Policies for goose hunting and goose removal
- Requirements for goose removal contractors
- Population management

Central to the management plan is the acceptance of the fact that the biological carrying capacity (the level the goose population would reach if left alone) far exceeds the social carrying capacity (the number
of geese people will tolerate). The estimated biological carrying capacity has been estimated at 400,000 to 500,000 birds, with a social capacity at 25,000 in the summer.

The decision-making process for addressing damages via the Canada goose population was adapted in 1982 from the DNR’s urban deer control policy. This policy requires that where a hunting harvest cannot be used to manage a wildlife population, the local governmental unit (usually a city council or township board) must establish population goals, select control procedures, fund the operational phase and evaluate the program. Procedures must comply with State and Federal statutes and permit requirements. The DNR, USFWS, and the UMES provide technical input, and a contractor provides operational assistance and evaluation.

A goose hunting policy was adopted state-wide in Minnesota in 1994. Based on the distribution of open space, metropolitan area municipalities are classified by the potential for safe hunting. Priorities are set for removal of problem geese based on the potential for hunting harvest. Assistance in determining the potential for safe hunting is provided by DNR Area Wildlife Managers.

6.0 Minnetonka Canada Goose Management History

The city of Minnetonka has conducted goose management efforts on local populations of Canada Geese since 1998. During the late spring and early summer months, when adult geese pair and build nests, approximately 150-200 breeding pairs are typically present. In mid-summer, as many as 600 young and adult geese are found in these same areas, depending on reproductive success. Later in the summer, (late July through September) populations exceeding 800 individuals are observed in the area, due to birds flying into the vicinity from surrounding areas.

While the population of geese fluctuates year to year, by in large the geese population has been kept in check as result of the management efforts applied. Since 2012, the number of geese removed has ranged from 0 to 200 geese per year, with an average of approximately 60 per year.

7.0 Canada Goose Management Recommendations

Canada goose management goals for Minnetonka have historically been conducted by trap and removal practices of adult birds and goslings in the summer (before goslings take flight). Minnetonka would, however, like to keep several possible options available; including recording and tracking, habitat modifications, redistribution, egg removal, and trap and process. Management activities should be flexible and allow for the use of the best option available based upon the conditions present at the time of permitting and past management practices. Minnetonka would like to achieve a localized reduction in nesting and flightless geese, and has adopted the ongoing goal of no more than 75 breeding pairs within the City limits. The ongoing goal for reducing loafing on and near the Civic Center campus, Libb’s Lake Beach, and Lake Rose is to prevent all significant use of the open green space and hard surface areas utilized for recreational and public use purposes by Canada geese during the summer months (May through September).

7.1 Geographic Scope

The population reduction and concentrated use reduction goals are primarily focused on 3 distinct areas, but should also be considered in all areas within the City limits as conditions dictate.

The city has historically provided goose removal for private property owners on request where the presence of geese has caused property damage, water quality issues, or the inability to use their
property due to the aggressive nature of the geese. Under this management plan, goose removal would continue to be provided for private property owners upon meeting the following guidelines: 1) Demonstration of water quality, health, or safety issues and 2) demonstration of non-lethal techniques tried as a deterrent that have not been successful. Non-lethal techniques include habitat modification, temporary physical barriers, and/or permanent physical barriers as described below.

### 7.2 Management Techniques

The proposed techniques for Canada goose management at the City of Minnetonka are varied in type and geographic area. Meeting the goals as outlined will require the implementation of a broad set of techniques. Any one management technique used alone will likely be ineffective for any significant length of time, since tolerance and habituation will likely occur. As a result, we propose to use an integrated management approach, with a number of various techniques applied in varying ways, times and locations.

#### Recording/Tracking Management Activities for Future Adjustments/Improvements

All management activities will be documented on the Management Activity Tracking Form in Appendix A and submitted to the Area Wildlife Manager by September 10th of each year. Permitee must keep a copy of this on file to help facilitate future management activities that might need adjustments or improvements.

#### Habitat Modification

Various private properties and/or businesses regularly report goose damage and fecal deposits on or adjacent to their property. Minnetonka would like to be able to adjust management activities to address such verified complaints within the City limits on an as needed basis, as documented by the previous record and tracking activities. Options to consider for habitat modification will be tailored to meet the unique characteristics and concerns of the location(s); including increased height of vegetation, vegetation buffer distance, planting or promoting shrub or natural willow colonization, landscape plantings, ceasing to mow certain areas, or application of turf sprays. Any ideas to be considered would be discussed with appropriate DNR staff.

#### Temporary Physical Barriers

The use of temporary wire, electric, snow fence, or woven wire fencing that limits Canada goose access to ponds, public open spaces, stormwater treatment ponds, and other impaired waterbodies during the spring, summer, and/or fall season will be considered. Any fencing that is installed would need to be removed and re-established in a manner that prevents geese from entering the fenced off area from the water or from the adjacent upland area in a more permanent fashion. Temporary physical barriers may also be a requirement on water bodies adjacent to private properties requesting assistance with goose control.

#### Permanent Physical Barriers

The use of permanent woven wire fencing that limits Canada goose access to public open spaces, stormwater treatment ponds, and other impaired waterbodies during the spring, summer, and/or fall season may be considered. Fencing would be installed and established in a manner that prevents geese from entering the fenced off area from the water or from the adjacent upland area.
Routine inspection of the fence will be done on a monthly basis. Fencing could be used in conjunction with vegetation barriers, or the use of vegetation to obscure the fence. The area DNR Wildlife Office may be contacted for further information and assistance.

Redistribution Techniques

Preventing Canada geese from loafing on the beach, developed recreational and public spaces, and adjacent areas will be an ongoing activity during the summer months. A number of techniques are available to redistribute the geese to other areas. Additionally, the use of multiple techniques at varied times and with subtle shifts in methods may be used so that the geese do not become habituated to any one technique or get accustomed to a particular schedule of activity. All of the methods will have some degree of impact on the park visitor experience, and mitigating this disruption will be a priority. Some redistribution techniques require specific training, personal protective equipment and adherence to policies and procedures for their safe use. While some of these visitor impacts and safety considerations are mentioned alongside each technique, a thorough examination of these and other issues should be conducted prior to employing a particular redistribution technique.

Depending on the methods used, notification will be provided via location specific signage, direct mailings to adjacent properties, and/or a posting to the City website.

- **Human and mechanical disruption**
  - Disturbing loafing and feeding Canada geese by individuals on foot so geese can be moved from the area of concern to an adjacent area or off the property.

- **Predator decoys**
  - The use of 2D or 3D coyote/dog decoys on the athletic fields or open green space to discourage use by geese is a management option. Decoys that are placed intermittently and exhibit periodic motion due to wind gusts can be effective at deterring geese.

Excrement Removal

Sporadic removal of goose excrement from public open spaces may be necessary during the late spring and summer months. The primary goal is to effectively redistribute geese away from these areas, with the goal being a reduction of feces in these areas. However, it may be necessary to remove incidental goose feces from the athletic fields, trails, and/or open green space areas on an as-needed basis.

7.3 Population Reduction

Nesting Management

Annual nest search and treatment may be conducted in localized areas. The areas that would be searched and treated include suitable nesting habitat immediately adjacent to the civic center campus and Libb’s Lake beach. Nest searches and treatment protocol should follow methods prescribed by the required USFWS and MN-DNR permits. Permit conditions will be followed and reporting will be conducted on an annual basis. To facilitate future nest searches in large areas, GPS coordinates of all Canada goose nests should be obtained since nest site fidelity is strong and the same nest sites are likely to be used in subsequent years.

Trapping and removal (during flightless period)
Capture and removal of flightless, mixed age groups of geese during the summer flightless period is an effective way to reduce the localized population of geese during the peak beach and recreational use time (June-July). The use of contractors or trained staff (if permitted) to capture, remove and dispose of geese from the City of Minnetonka is a management option. Such removal would need to be detailed as part of a removal permit application through the DNR Fish & Wildlife Division, and goose removal and disposition would need to be conducted according to the permit conditions.

7.4 Public Information

Informing the public and park users about Canada goose management activities is an integral part of a successful goose management plan. Signage or posted notices may be developed for certain activities. Additionally, individual users will be notified of pending activities that might be considered alarming had they not received prior notice and explanation. All persons performing management activities should provide users with accurate and thorough information about our goose management objectives, and also inform users how the particular management activity being conducted fits into the larger Canada goose management plan.

7.5 Partner Relationships and Permit Requirements

Coordination with all appropriate entities, including (but not limited to) residents, local law enforcement, lake area association(s), the MPCA, and affected watershed districts will be conducted for population monitoring and permitting, and all goose management activities. Compliance with all DNR permitting requirements including annual reporting, and notification and involvement of the Area Wildlife Manager will be strictly adhered to.

8.0 Supportive Items & Information to this Document

Exhibit A is provided to illustrate habitat that is favorable to goose populations as well as known goose management sites. Information and material within this document has been collected from other sources, some of which came from approved management plans listed below.

- City of Eden Prairie Parks Department
- City of Coon Rapids
- Carver County