Agenda

Minnetonka City Council

Regular Meeting, Monday, March 23, 2015

6:30 P.M.
Council Chambers

1. Call to Order
2. Pledge of Allegiance
3. Roll Call: Wiersum-Bergstedt-Wagner-Ellingson-Allendorf-Acomb-Schneider
4. Approval of Agenda
5. Approval of Minutes: February 9, 2015 regular meeting
6. Special Matters:
   A. Proclamation declaring April as Safe Digging Month
7. Reports from City Manager & Council Members
8. Citizens Wishing to Discuss Matters not on the Agenda
9. Bids and Purchases:
   A. Items related to the property at 2510 Oakland Road
      1) Amendment of the 2015-2019 Capital Improvement Program
      2) Resolution reimbursing certain expenditures from proceeds of the
         bonds to be issued by the city
         Recommendation: Amend the 2015-2019 Capital Improvement Program and
         adopt the resolution (5 Votes)
10. Consent Agenda - Items Requiring a Majority Vote:
    A. Order for tobacco license violation for Lucky’s Station LLC
    B. Resolution amending Council Policy 2.5 regarding tax exempt financing
    C. Items related to Council Policy 11.6 – Use of the Burwell Property
10D. Labor agreement between the city of Minnetonka and the International Union
    of Operating Engineers Local 49 – Public Service Workers

10E. Items related to the granting of a cable communications franchise

11. Consent Agenda - Items Requiring Five Votes: None

12. Introduction of Ordinances:
    A. Ordinance removing area from the wetland overlay district
        Recommendation: Introduce the ordinance and refer to the planning
        commission (4 Votes)

13. Public Hearings:
    A. Items concerning At Home Apartments at 5709 Rowland Road
        Recommendation: Hold the public hearing and adopt the ordinances and
        resolutions approving the proposal (5 Votes)

14. Other Business:
    A. Concept plan review for Kraemer's Hardware redevelopment at 14730
        Excelsior Boulevard, 5431, and 5439 Williston Road
        Recommendation: Discuss concept plan with the applicant. No formal action
        required.
    B. 2015 Assessment Report
        Recommendation: Receive the 2015 Assessment Report

15. Appointments and Reappointments: None

16. Adjournment
Minutes
Minnetonka City Council
Regular Meeting, Monday, February 9, 2015

1. Call to Order

Schneider 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 Dick Allendorf, Patty Acomb, Brad Wiersum, Tim Bergstedt, Bob Ellingson, and Terry Schneider were present. Tony Wagner was excused.

4. Approval of Agenda

Wiersum moved, Bergstedt seconded a motion to accept the agenda with addenda to items 14D and 15. All voted “yes.” Motion carried.

5. Approval of Minutes: January 5, 2015 regular meeting

Acomb moved, Allendorf seconded a motion to approve the January 5, 2015 regular meeting minutes. All voted “yes.” Motion carried.

6. Special Matters:

A. Recognition of Laurie McKendry

Schneider read the recognition and presented McKendry with a plaque.

7. Reports from City Manager & Council Members

Barone reported on the schedule for upcoming council meetings.

Schneider reported that he appointed Brian Kirk, Kevin Hanson, and Shirajoy Abry to the Southwest Light Rail Citizens Advisory Committee. He gave an update from the last Southwest Light Rail Corridor Management Committee meeting.

8. Citizens Wishing to Discuss Matters not on the Agenda

No one appeared.

9. Bids and Purchases: None
10. Consent Agenda - Items Requiring a Majority Vote:

A. Resolution prioritizing a bridge replacement program

Allendorf moved, Acomb seconded a motion to adopt Resolution No. 2015-011 prioritizing bridge replacement in Minnetonka, and requesting financial assistance from MnDOT. All voted “yes.” Motion carried.

B. Agreement with Intermediate School District #287 for police liaison services for 2015

Allendorf moved, Acomb seconded a motion to approve the agreement. All voted “yes.” Motion carried.

C. Items regarding snow and ice control

Allendorf moved, Acomb seconded a motion to adopt the following:

1) Ordinance No. 2015-02 amending sections 1130.05 and 1130.10 of the Minnetonka Code, regarding snow removal restrictions

2) Resolution No. 2015-012 adopting council policy 11.17 regarding snow and ice control of streets, trails and sidewalks

All voted “yes.” Motion carried.

11. Consent Agenda - Items requiring Five Votes: None

12. Introduction of Ordinances:

A. Ordinance rezoning portions of properties generally located at the southeast corner of the County Road 101/Excelsior Boulevard intersection from R-1 to R-1A

City Planner Loren Gordon and Community Development Director Julie Wischnack gave the staff report.

Allendorf said the two step process wasn’t as straightforward as he would like. He asked if the zoning change was approved, if that meant the council had pre-approved the application that was submitted. Under what circumstances would the developer be able to understand a denial of a development even though the rezoning had been approved? Gordon said the two step process was deliberately adopted so that a plat and a rezoning didn’t occur all at once. The two step process allows the city to evaluate the context for a development without having a development proposal that needed to be acted upon. The plat would have to meet all the conditions of the code during the second phase. It would be possible
to approve a rezoning but if the plat didn’t meet all the code it could be denied. Allendorf noted the staff report included a very specific drawing. He asked if the applicant submitted an application that was identical to the drawing, would the council be required to approve it. Gordon said if the plat met all the codes, it would have to be approved. Allendorf said he wanted to avoid a situation where the applicant thought something was approved with the zoning change only later to have it denied during the second part of the process.

Wiersum said he had a similar concern. If the council was presented with an R1 proposal that needed no variances, it would have to be approved. The item before the council was a concept tied to a zoning ordinance. If the ordinance was approved and a developer submitted an application identical to the drawing being shown, it would be the same situation as an R1 with no variances that has to be approved.

Schneider said developing the RIA zoning district was a challenging process. He was reluctant to have a two-step process because of the bureaucratic process it creates. What was being done with this item was to identify the area as one that qualifies for smaller lots. Another process option would be to have the developer come to the council to determine if the area qualified for smaller lots and then come back later with a proposal and request to approve the rezoning along with the proposal.

Barone said because this was the first use of the R1A process it might be useful to an after review how the process worked once the process was complete.

Schneider said the biggest unknown at this point was what the proposed homes would actually look like. One thing he wanted the planning commission to discuss was the applicant wasn’t required to show formal house plans as part of the platting. This happened later as part of the building permit process. He encouraged the developer to provide the information earlier.

Acomb asked what would happen if the rezoning were approved and the development did not get built. If another developer proposed something that met the code would the council be obligated to approve it? Gordon said if the rezoning were approved and a plat filed, then the plat and the standards would be in place for another developer to follow. Other things like a development agreement might complicate the process for another developer. City Attorney Corrine Heine said there was a provision in the R1A ordinance that requires the plat to be filed by December 31 of the year following the approval. If it is not filed by that date the ordinance allows the council to rezone the property.
Wiersum moved, Acomb seconded a motion to introduce the rezoning ordinance and refer it to the planning commission. All voted “yes.” Motion carried.

13. Public Hearings:

A. Resolution vacating portions of public right-of-way adjacent to 18521 and 18540 Beaverwood Road

Gordon gave the staff report.

Schneider asked if the highlighted cul-de-sac was now part of the dedicated right of way. Gordon confirmed that was correct.

Wiersum said the staff report indicated there was an exchange of easements for the vacation and the recommendation was to do this at no cost to the applicants. He asked if this was correct. Gordon said that was his understanding.

Schneider opened the public hearing at 7:08 p.m. No one spoke. He closed the public hearing at 7:08 p.m.

Acomb moved, Allendorf seconded a motion to adopt Resolution No. 2015-013 vacating the right-of-way. All voted “yes.” Motion carried.

14. Other Business:

A. Items concerning Villas at Groveland at 17113 Minnetonka Boulevard

Gordon gave the staff report.

Allendorf asked for information about the parking for guests. Gordon said the parking would be at the front of the property as well as on the street.

Schneider said he has heard from people his age who are looking for new single level living in the city.

Ellingson said a sign on the property indicated the price would start at $750,000. One of the reasons the city was looking to go to smaller lots was to reduce the size and cost of the homes. He questioned how this development fit into that approach. Schneider noted the zoning for this development was R3. The homes would have an upper level room and a full basement. The floor area ratio was not governing the total amount of square footage which was usually related to the price.
Acomb said one of the reasons the project was approved was because it was targeting a diversity of housing stock the city felt was important—moderately priced housing. Although she thought the number of units was better than before, her concern was the price was not meeting the diversity that was targeted when the development was originally approved.

Wiersum said he liked the design better than the previous design. He was disappointed that the pricing appeared to be significantly higher than what was previously proposed. The council had discussed different areas in the city where new mid-range housing, in the $400,000 to $500,000 range, would attract new residents to the city. He understood that the previous project did not happen for whatever reason and now a new proposal was before the council. He would like the price to be lower but this was not something the city could dictate. He agreed that the single level living market was significant in the city. He thought this was a credible proposal on an important piece of property.

Schneider said as a proposal goes through the process each council member looks at certain elements that are important to them. Getting modestly priced housing on a tight site that had an office use and could have had much more density wasn’t a real priority for him. Rather he was looking for something that fit into the neighborhood. This property didn’t have the restrictions that the city was trying to put on R1A properties. He thought the proposal achieved diversity of housing even though it may not achieve the price point that was desired. He said the price point may be difficult to achieve. A 2,500 square foot home that was done really nice could cost $750,000.

Allendorf moved, Wiersum seconded a motion to adopt:
1) Ordinance No. 2015-03 amending the master development plan
2) Resolution No. 2015-014 approving preliminary and final plat

Allendorf, Wiersum, Bergstedt, Ellingson, and Schneider voted “yes.” Acomb voted “no.” Motion carried.

B. Appeal of the planning commission’s denial of a front yard setback variance at 1503 Linner Road

Gordon gave the staff report.

Rob Shainess, an attorney representing the builder and the owner, said his client was not seeking a variance for permission to build a house that would be bigger than could otherwise be built on the property. He said this was where the planning commission looked at some of the wrong issues. There was no dispute that a 10,000 square foot home could be built on the property. The issue was where on the property the house should be built.
There were several reasons the house should be built closer to the street but most of all to benefit the neighbor to the east. There were only two homes abutting the cul-de-sac section of the street. One of the homes is being torn down. All the other homes are so setback from the street that they cannot be seen from the street. When discussing neighborhood character it was important to keep in mind there was not a uniform character of homes in a nice neat row on the street. He said the practical difficulties that would support a variance related to topography and the location of the other home. The proximity of the neighbor at 1509 Linner Road was a problem because the home was built not conforming to the current setback requirement. Typically there had to be a 40 foot setback for lots behind lots. In this situation the home was 16.4 feet from the lot line. This would present issues of privacy and shadows with a very tall home built in close proximity. This would occur if the variance was not approved. He said at the planning commission hearing the neighbor spoke in favor of the variance.

Shainess said the topography issue was the downhill sloping lot. If the house was built where proposed, the grades were modest. There was a more aggressive slope toward the back of the lot. This meant substantially more fill would be required. This would result in a much steeper grade in terms of water drainage. The water would drain down toward the neighbor and create a less than ideal situation for the neighbor. The practical difficulty was caused by where the neighbor’s home was built. He said this was not something his client had any control over. His client would build the house where it could be built but it made more sense to build the house a little bit closer to the street. He said another thing to note was the sight line from the street would be considerably improved. Only a tiny bit of the garage needed a variance and all of it would be further back from the road than the existing garage. The net effect would be approval of a home that was overall further back from the street than what currently exists. He said another thing to keep in mind was the setback requirement was measured not from the road but from the right of way. There was an unusually wide right of way, 25 feet, in this location. This would be in addition to the 35 foot setback. No portion of the house would be closer than 40 feet from the street.

Shainess said on the other side of Linner Road there were properties where the right of way only extended seven feet from the road. This meant other homes in the area were 42 feet from the road which was similar to what his client was asking to do. He didn’t agree with staff that the McMansion policy applied in this situation. A variance was not being sought to build a larger home than otherwise could be built. A 10,000 square foot house would be built on the lot no matter if the variance request was approved or denied. The question was where was the best place for the house to be built on the lot.
Ellingson noted the drawings showed a four car garage. He asked if a three car garage could be built instead so the garage would not be as close to the road. Shainess said in theory that was probably true, but that was not what would be built. The applicant wanted a four car garage. Ellingson said he was just looking for a compromise. Shainess said he appreciated that but this was a situation where the applicant could build the proposed house as a matter of right. The only question was where the house should be built.

Wiersum said he didn’t find the argument made to be at all persuasive. The applicant wants a variance and a variance would trigger the McMansion policy. The only two options would be to move the house further back on the lot or get a variance, triggering the McMansion policy, and building a smaller house. He said the reason he did not find the argument compelling was the applicant wasn’t willing to compromise but had said he would build the 10,000 foot house no matter what. Wiersum said strong arming did not work with him.

Schneider said one issue being weighed relating to the wider boulevard in the way the lots were platted. He said he did not consider this a hardship because there was a buildable lot beyond that. The council had to use the standard criteria for approving a variance. To qualify for a variance practical difficulties were required to be involved. The grades could be dealt without any difficulty. Being closer to the neighboring home was an inconvenience but was not a practical difficulty. He said the variance did not meet the city’s typical standards. If a variance was approved because it might make sense, it would set a precedent for other developments.

Allendorf asked if a variance would be needed if the garage was a three car garage rather than a four car garage. Gordon said staff looked at the idea. It appeared part of two stalls would need to be reduced. It might be possible to replace portions of the stalls elsewhere. Schneider said realistically if one stall was removed the building could be shifted back ten feet and a variance would not be needed. Allendorf said this seemed to be a practical solution if the neighbor wanted to be a good neighbor.

Ellingson said the attorney made a good point that the two houses would be too close together if the proposed house was moved back 15 feet. When the council was discussing the North Memorial Medical Clinic, one of the neighbors indicated his house was built on a lot behind a lot and his front yard was his neighbor’s back yard and it looked terrible. Ellingson said it was a legitimate point that the two homes shouldn’t be too close together. Yet if a three car garage were built, a variance would not be needed. It was important for the applicant to convince the council a
variance should be approved and it was not persuasive that they were unwilling to change the proposal even if valid points were made.

Wiersum moved, Allendorf seconded a motion to adopt Resolution No. 2015-015 upholding the planning commission’s denial of the request. All voted “yes.” Motion carried.

Alain Thiry, 1423 Linner Road, the neighbor to the east, said he supported the request for the variance because it would look better than what currently existed.

Allendorf asked what the process would be if the applicant agreed to build a three car garage. Gordon said staff would work with the applicant and it would be an administrative process.

C. Agreements related to the Green Line Extension (Southwest LRT)

Wischnack gave the staff report.

Schneider said the approach was to do retaining wall work and grading work where a station could go but not do the subgrade and all the other things to make the area station ready. The cost would be much less. The timeframe for the council to approve either project was 2016. Wischnack said staff was preparing in the CIP to see where the projects might fit in. She said the 17th Avenue project was likely something the council would want to proceed with but the infill station was more up in the air due to the final costs not being known.

Acomb asked because the council did not have to vote on the infill station until 2016 if it could change its decision later. Wischnack said the project could not be done after the design was approved. Acomb asked what would happen if the council approved the area to be station ready. Wischnack said the estimated cost would be in the $15 million neighborhood as opposed to $2 million for what was being recommended. She noted there were future opportunities for grants and staff was taking this into consideration.

Allendorf asked how it would work if the line was up and running and the council decided it wanted the Smetana station to be built. Would the line have to shut down during construction? Wischnack said that was one of the reasons staff’s estimate and the project office’s estimate were quite a ways a part in the dollar amount. The difference was the Met Council wanted to put in direct fixation tracks. This meant the tracks would already be aligned for a station to be put in. The tracks would be in concrete. This differed from ballasted design which would make it viable for a station to be built on either side of the tracks and not have to shut down the line.
She said the easiest way to describe the difference was to picture railroad tracks that were on top of the road as opposed to being inset. Tracks that are inset usually have more foundation and cement around the area.

Allendorf said the council was being asked to approve $115,000 for a design to something that may or may not happen. The people who requested the stop would not forget the request for the stop nor that the design was had been completed. He wanted each council member and future council members to think about what the dollar amount was that they’d be comfortable spending on the new station. If approved the $115,000 would be gone. If in 2016 it was determined the station would cost $2 million to build, or $20 million, or $50 million, what was the amount people would say to themselves the cost didn’t make sense? The counter argument would be the city had already spent $115,000 for the design. Was this to be looked at as a sunk cost? He said the issue was being kicked down the road rather than making a decision about the appropriate dollar amount to build the station.

Schneider said the difficulty was the future station could not be bid in with the current project. The logistics of getting the new station authorized would depend on a lot of factors. Funding might come from the federal government or the state and county and it likely would not be the city’s obligation to do the whole thing. If the feds were to approve an additional station it would be because the ridership was high, the speeds were fine and another station could be supported. This meant there would be more people than just the city making the decision that the station made sense. A future council would decide the proper portion of the cost the city would pay. It wasn’t even being considered that the city would pay the entire cost. What was being considered was what it would take to get to the point where things had risen to the state where an additional station made sense and there was funding sources available to make that happen. This would likely be ten or more years before this would happen. He said approving $115,000 now could mean the cost would be much cheaper to build the station in the future. Allendorf said his point was that the city should decide what amount it would be willing to pay and if the cost was over that amount then the benefit would not be worth the cost.

Wiersum said he appreciated Allendorf’s point. The question was what the $115,000 was really for. For him it was an investment in keeping options more open than they would be without approving the cost. He agreed it was a sunk cost. One of the things he feared was incrementally getting to a decision that may not have been made if the whole picture was looked at during the time the decision was made. He said if approved, the $115,000 should never be looked at as a reason to feel obligated to build the station. The $115,000 was to keep options open and whoever makes the decision down the road will have to make a good decision.
Schneider said it was like option money on a piece of property. A potential project was being bought and the option money was good for 10 to 20 years.

Allendorf agreed it was a good idea if the money spent now saved a lot of money in the future. However he didn’t want somebody to feel obligated to approve building a station because money had already been spent.

Bergstedt said he was glad Allendorf raised the issue. Part of him wanted to be a fiscal hawk and vote against approving the $115,000 so he could tell people how he voted to save a lot of money. He said so much more would be known in a few years as to the success of the line. A group of city residents brought the request forward. He hated to think that a future council would decide because $115,000 had been spent in the past, the station had to be approved. He thought it would be shortsighted to not spend the $115,000 to keep the option open.

Wischnack noted this was the first of many agreements that would be brought to the council.

Lisa Moe, with StuartCo, asked the council to approve the agreement. She said it had been repeatedly demonstrated that the potential station met all locally requested capital investment criteria, met the overall goal of the 16 mile track promoting future transit oriented development, and improved overall connectivity in the Smetana Road area.

Acomb moved, Ellingson seconded a motion to approve the agreements and amend the CIP. All voted “yes.” Motion carried.

D. Professional Services Agreement for the Shady Oak Station Area Development Strategy

Wischnack gave the staff report.

Allendorf asked if the agreement was between three parties. Wischnack said the contract was between the cities of Minnetonka and Hopkins and the consultant. There was also an agreement with the Met Council. Allendorf asked why the agreement’s termination provision was only between Hopkins and the consultant. Wischnack said Hopkins was responsible for the financial payment.

Wiersum moved, Bergstedt seconded a motion to approve the agreement. All voted “yes.” Motion carried.

15. Appointments and Reappointments:
Schneider moved, Wiersum seconded a motion to approve the appointment of Kevin Maas to the economic development advisory commission, to serve a two-year term, effective February 10, 2015 and expiring on January 31, 2017. All voted “yes.” Motion carried.

16. Adjournment

Bergstedt moved, Wiersum seconded a motion to adjourn the meeting at 8:18 p.m. All voted “yes.” Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk
WHEREAS, Each year, Minnesota’s underground utility infrastructure is jeopardized by unintentional damage by those who fail to call 811 to have underground lines located prior to digging. Undesired consequences such as service interruption, damage to the environment and personal injury and even death are the potential results; and

WHEREAS, Gopher State One Call promotes 811, the national Call-Before-You-Dig number, which provides professional excavators and homeowners a simple number to reach Gopher State One Call to request utility line locations at the intended dig site; and

WHEREAS, Through education of safe digging practices, professional excavators and homeowners can save time and money keeping Minnesota safe and connected by making a simple call to 811 in advance of any digging project; waiting the required amount of time; respecting the marked lines by maintaining visual definition throughout the course of the excavation; and finally, digging with care around the marks; and

WHEREAS, Gopher State One Call serves the citizens of Minnesota at no cost to taxpayers spreads the message that safe digging is a shared responsibility and “To know what’s below; Call 811 before you dig”.

NOW THEREFORE BE IT RESOLVED that the Minnetonka City Council hereby proclaims the month of April as “Safe Digging Month” in the city of Minnetonka, and encourage excavators and homeowners throughout Minnesota to always call 811 before digging. Safe digging is no accident.

Terry Schneider, Mayor

March 23 2015
City Council Agenda Item #9A  
Meeting of March 23, 2015

Brief Description: Items related to the property at 2510 Oakland Road:

1) Amendment of the 2015-2019 Capital Improvement Program
2) Resolution reimbursing certain expenditures from proceeds of the bonds to be issued by the city

Recommended Action: 1) Amend the 2015-2019 Capital Improvement Program
2) Adopt the resolution

Background

In 2001, Minnetonka voters approved a $15 million referendum to fund parks renewal and open space preservation. A resident task force was formed to establish open space criteria and identify properties for potential preservation. On February 23, 2004 the city council approved a purchase agreement and a conservation agreement to acquire two of those identified parcels located at 2510 Oakland Road.

The parcels, totaling 30 acres, were owned by Ann Cullen Smith and have both a high ecological value and a diversity of habitat. The agreement with Ms. Smith and her representatives included establishing a conservation easement over the property in perpetuity held by the Minnesota Land Trust. The purchase agreement negotiated an acquisition price of $2.6 million ($100,000 earnest money will be applied as partial pre-payment) to be paid to Ms. Smith’s estate or heirs upon her death. Sadly, at the age of 106 Ms. Smith passed away on January 25, 2015. Staff has been in contact with her estate representatives and will be implementing the remaining steps of the acquisition.

Summary

A closing with the estate representatives has been scheduled and staff recommends the council adopt the attached resolution to issue the remaining general obligation park and open space bonds for $2,510,000 to acquire the parcels. As part of a financial strategy staff requests the council amend the 2015-2019 Capital Improvement Program (CIP) to utilize the special assessment construction fund to temporarily cash flow the transaction. Staff expects to issue the park and open space bonds later this year in conjunction with a previously scheduled issuance of water and sewer revenue bonds for capital improvements to the utility system in the principal amount of $5,655,700. By issuing both sets of bonds concurrently the city will substantially save administrative and issuance costs for the transaction. The temporary use of the special assessment fund will act as an internal loan, paid back once bonds are issued.
Additionally, staff is requesting the council amend the 2015-2019 CIP for the Parks and Trails Improvement Fund in the amount of $25,000 for expenses related to managing the open space conversion. Staff plans to salvage for reuse any appropriate material in the home, test for and abate any hazardous material, seal wells on the property and remove the structure. As part of the acquisition, staff will discuss the potential of scheduling a dedication ceremony when members of Ms. Smith’s family that live out of state travel back to the area for her memorial service.

Recommendation

Amend the 2015-2019 Capital Improvement Program to utilize the Special Assessment Construction Fund as an internal loan, amend the Park and Trail Improvement fund in the amount of $25,000 for costs associated with the open space conversion of 2510 Oakland road and adopt the attached resolution declaring the official intent of the City of Minnetonka to reimburse certain expenditures from proceeds of bonds to be issued by the city.

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

Originated by:
   Perry Vetter, Assistant City Manager
Resolution No. 2015-

Declaring the official intent of the city of Minnetonka to reimburse certain expenditures from the proceeds of bonds to be issued by the city

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

Section 1. Background.

1.01. The Internal Revenue Service has issued Treas. Reg. § 1.150-2 (the “Reimbursement Regulations”) providing that proceeds of tax-exempt bonds used to reimburse prior expenditures will not be deemed spent unless certain requirements are met; and

1.02. The city of Minnetonka (the “city”) expects to incur certain expenditures that may be financed temporarily from sources other than bonds, and reimbursed from the proceeds of a tax-exempt bond;

1.03. The city has determined to make this declaration of official intent (“Declaration”) to reimburse certain costs from proceeds of bonds in accordance with the Reimbursement Regulations.

Section 2. Council Action.

2.01. The city proposes to acquire property and/or other interests in real property for parks and open space as part of the city’s parks renewal and open space preservation program (the “Parks Project”). The city further proposes to make improvements to the city’s water and sanitary sewer systems (the “Utility Project”).

2.02. The city reasonably expects to reimburse the expenditures made for certain costs of the Parks Project from the proceeds of bonds in an estimated maximum principal amount of $2,510,000. The city reasonably expects to reimburse the expenditures made for certain costs of the Utility Project from the proceeds of bonds in an estimated maximum principal amount of $5,655,700. All reimbursed expenditures will be capital expenditures, costs of issuance of the bonds, or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Reimbursement Regulations.

2.03. This Declaration has been made not later than 60 days after payment of any original expenditure to be subject to a reimbursement allocation with respect to the proceeds of bonds, except for the following expenditures:
(a) costs of issuance of bonds;
(b) costs in an amount not in excess of $100,000 or 5 percent of the proceeds of an issue; or
(c) “preliminary expenditures” up to an amount not in excess of 20 percent of the aggregate issue price of the issue or issues that finance or are reasonably expected by the city to finance the project for which the
preliminary expenditures were incurred. The term “preliminary expenditures” includes architectural, engineering, surveying, bond issuance, and similar costs that are incurred prior to commencement of acquisition, construction or rehabilitation of a project, other than land acquisition, site preparation, and similar costs incident to commencement of construction.

2.04. This Declaration is an expression of the reasonable expectations of the city based on the facts and circumstances known to the city as of the date hereof. The anticipated original expenditures for the Project and the principal amount of the bonds described in paragraph 2 are consistent with the city’s budgetary and financial circumstances. No sources other than proceeds of bonds to be issued by the city are, or are reasonably expected to be, reserved, allocated on a long-term basis, or otherwise set aside pursuant to the city’s budget or financial policies to pay such Project expenditures.

2.05. This Declaration is intended to constitute a declaration of official intent for purposes of the Reimbursement Regulations.

Adopted by the City Council of the city of Minnetonka, Minnesota, on March 23, 2015.

__________________________
Terry Schneider, Mayor

Attest:

__________________________
David E. Maeda, 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 March 23, 2015.

David E. Maeda, City Clerk
City Council Agenda Item #9B  
Meeting of February 23, 2004

Brief Description: Items related to the property at 2510 Oakland Road:

1) Authorization of purchase agreement with Ann Cullen Smith to purchase the property at 2510 Oakland Road
2) Authorization of an agreement with the Minnesota Land Trust regarding a conservation easement

Recommended Action: 1) Approve the purchase agreement subject to approval of the final form by the city attorney
2) Approve the conservation easement agreement subject to approval of the final form by the city attorney

Background

In 2001, Minnetonka voters approved a $15 million referendum to fund parks renewal and open space preservation. The open space preservation task force established criteria to determine properties appropriate for preservation, and the city council and park board established prioritization and preservation alternatives for each of those properties.

Two of the parcels identified for preservation are located at 2510 Oakland Road and owned by Ann Cullen Smith. Ms. Smith attended most of the open space task force meetings, and over the past several years has shown extreme interest in preserving her property. This is the only property classified as urgent in the open space inventory and is truly the crown jewel of land to be preserved by the city.

The property meets all of the preservation criteria established by council policy. It has high ecological value, with oak savannas, wetlands and diversity of habitat, is part of a larger wetland system, is large in size (30 acres), and provides linkage to Meadow Park, one of the city’s largest parks. The land is visible from I-494 and Oakland Road.

Staff has negotiated a purchase agreement with Ms. Smith and her representatives. Additionally, Ms. Smith is granting a conservation easement to the Minnesota Land Trust (MLT) to preserve and protect this open space in perpetuity. An agreement between the city and the land trust is necessary as part of this transaction.

As part of the negotiation process, an independent appraisal of the property value was conducted. The sale price is approximately half of the appraised value.

Purchase Agreement Terms

The purchase agreement calls for the following:
$100,000 earnest money to be paid by the city to Ms. Smith in exchange for the exclusive right to purchase the land.

A purchase price of $2.6 million (includes earnest money) to be paid to Ms. Smith's estate or heirs within 60 days of her death.

Naming the property "Cullen Nature Preserve" or a similar name that includes a reference to the Cullen family.

Granting of a conservation easement to the Minnesota Land Trust.

Conservation Easement Terms

The conservation easement with the MLT (attached as Exhibit A to the purchase agreement) identifies conservation values, which justify protection of the property. The terms of the easement are specifically intended to provide a significant public benefit by:

- Preserving the open and natural character of the property for scenic enjoyment by the general public from I-494, Oakland Road and Stone Road.
- Protecting a relatively natural habitat for wildlife and plants.
- Providing an opportunity for the public to experience and enjoy the out-of-doors in a relatively undisturbed and natural setting.

Land use restrictions are outlined in the easement, which prohibit industrial and commercial activity, agricultural use and residential development. Paths and pedestrian trails for passive and recreational uses will be allowed. Bicycles and motorized recreational vehicles will be prohibited, however. The property can be used as a nature center, but no other active use. The easement allows vegetation management with reasonable conditions.

MLT Agreement

The agreement between the city and the MLT provides for the city's notification to the MLT upon the owner's death and outlines required conditions before the MLT accepts the easement. Ms. Smith has indicated she may decide to convey the conservation easement to the MLT in the near future. Taking this into consideration, staff is requesting that council approve this agreement and the purchase agreement subject to approval of their final form by the city attorney.

Recommendation

Based upon the recommended approvals, Ms. Smith will be invited to a council meeting this spring so she can be recognized for her willingness to sell the property to the city for a substantially reduced price compared to the appraised value and for allowing the city to share in her legacy of open space preservation.
The city council is requested to authorize the purchase agreement with Ann Cullen Smith to purchase the property at 2510 Oakland Road and authorize an agreement with the Minnesota Land Trust regarding a conservation easement, both subject to approval of the final form by the city attorney.

Submitted through:
    John Gunyou, City Manager

Originated by:
    Geralyn R. Barone
    Assistant City Manager/
    Director of Administrative Services
LOCATION MAP

Parcel Group # 10

Location: 1011722310001
1011722310002
(2510, 2620 Oakland Road)

This map is for illustrative purposes only.
CONTOUR MAP

Parcel Group # 10

Location: 1011722310001
1011722310002
(2510, 2620 Oakland Road)

City of minnetonka

This map is for illustrative purposes only.
PURCHASE AGREEMENT

This Purchase Agreement made __________, ______, by and between Ann Cullen Smith ("Seller"), and City Of Minnetonka, a Minnesota Municipal Corporation ("Buyer").

1. **Earnest Money.** In consideration of the mutual agreements contained in this Agreement and the sum of $100,000.00 ("Earnest Money") paid by the Buyer to the Seller, the receipt of which is acknowledged, the Seller grants unto the Buyer the exclusive right to purchase fee simple title to a tract or parcel of land ("Subject Property") situated in the County of Hennepin, State of Minnesota, legally described as follows:

**Parcel 1,** consisting of two tracts of land described as follows:

**TRACT A:** That portion of the following described tract of land, namely:

Commencing at a point in the West line of the East One-half (E1/2) of the West One-half (W1/2) of Section Ten (10), Township One hundred seventeen (117), Range Twenty-two (22), according to the United States Government survey thereof, which is 50.5 feet North of the Southwest corner of the Southeast Quarter (SE1/4) of the Northwest Quarter (NW1/4) of said Section Ten (10); thence East at right angles 1312.8 feet more or less to the East line of the East One-half (E1/2) of the West One-half (W1/2) of said Section Ten (10); thence South along said East line 798.85 feet; thence West 1309.15 feet, more or less, to a point in the west line of the East One-half (E1/2) of the West One-half (W1/2) of said Section Ten (10) distant 800 feet South of the point of beginning; thence North along said West line of the East one-half (E1/2) of the West One-half (W1/2) of said Section Ten (10) 800 feet to the point of beginning; (said tract being designated hereinafter for convenience as "Tract G-H"); lying West of the center line of the public highway as now laid out and traveled across "Tract G-H" prior to November 8, 1935, and formerly known as County Road No. 74; now vacated, subject to the public easement in said County Road No. 74. Oakland Road as now laid out and established by that certain NOTICE OF DEDICATION OF OAKLAND ROAD AS A PUBLIC STREET IN THE VILLAGE OF MINNETONKA filed in the office of the County Recorder in and for the County of Hennepin, State of Minnesota in Book 1045 Mc, page 64, as Document Number 3614108.
TRACT B: That part of the East One-half (E1/2) of the Southwest one-quarter (SW1/4) of Section Ten (10), Township One hundred seventeen (117), Range Twenty-two (22), described as follows:

Beginning at a point in the West line of the East one-half (E1/2) of the Southwest one-quarter (SW1/4) of said Section Ten (10), distant 749.5 feet South of the Northwest corner of said tract; thence South along the West line of the East one-half (E1/2) of the Southwest Quarter (SW1/4) a distance of 250 feet; thence at a right angle East to the center line of County Road Number 74; now vacated; thence Northerly along the center of said vacated County Road 250 feet more or less to a point in a line drawn Easterly from the point of beginning, and at a right angle to the West line of the East one-half (E1/2) of the Southwest one-quarter (SW1/4) of said Section Ten (10); thence Westerly to the point of beginning, subject to Public Easement in said County Road Oakland Road as now laid out and established by that certain NOTICE OF DEDICATION OF OAKLAND ROAD AS A PUBLIC STREET IN THE VILLAGE OF MINNETONKA filed in the office of the County Recorder in and for the County of Hennepin, State of Minnesota in Book 1045 Mc, page 64, as Document Number 3614108; all according to the United States Government Survey thereof; also,

That part of the East one-half (E1/2) of the Southwest one-quarter (SW1/4) of Section Ten (10), Township One hundred seventeen (117), Range Twenty-two (22), lying Easterly of the center line of County Road Number 74 now vacated and between the extension of the Northerly and the Southerly side lines of the tract of land hereinbefore described, subject to the public easement in County Road Number 74 Oakland Road as now laid out and established by that certain NOTICE OF DEDICATION OF OAKLAND ROAD AS A PUBLIC STREET IN THE VILLAGE OF MINNETONKA filed in the office of the County Recorder in and for the County of Hennepin, State of Minnesota in Book 1045 Mc, page 64, as Document Number 3614108.

Parcel 2, consisting of one tract of land described as follows:

All that part of the East one-half (E1/2) of the West one-half (W1/2) of Section Ten (10), Township One hundred seventeen (117), Range Twenty-two (22), according to the United States Government survey thereof, lying Easterly of the center line of County Road Number 74 now vacated, and between the extension of the Northerly and the Southerly side lines of TRACT A, hereinafter described, subject to the public easement in Oakland Road as now laid out and established by that certain NOTICE OF DEDICATION OF OAKLAND ROAD AS A PUBLIC STREET IN THE VILLAGE OF MINNETONKA filed in the office of the County Recorder in and for the County of Hennepin, State of Minnesota in Book 1045 Mc, page 64, as Document Number 3614108.

2. **Purchase Price.** The purchase price for the subject property will be $2,600,000, payable by check on the Closing Date. The Earnest Money will be applied as a partial pre-payment of the purchase price.

3. **Title Issues:**
a. MARKETABILITY OF TITLE. The Seller must, within 15 days of the date of this Purchase Agreement, deliver to the Buyer a registered property abstract, an abstract of title certified to date, or a commitment for title insurance. The Buyer will have 20 days for the examination thereof, and to deliver any written objections to title regarding Parcel 1 to the Seller. Seller will not encumber the Subject Property between the date of this Purchase Agreement and the Closing Date. After receiving the notice referenced in paragraph 4 below, the Buyer will again have 20 days to examine the status of title for Parcel 1 and to deliver any written objections to the Seller. Any objections must relate only to matters occurring after the date of the first examination of title by Buyer.

If title to Parcel 1 is found by the Buyer at either time to be unmarketable, and cannot be made marketable by the Seller within 120 days after notice of a defect, then, at the option of the Buyer, this Agreement will be null and void and the Earnest Money will be refunded to the Buyer. Alternatively, the Buyer may clear title to the extent required and charge the cost of clearing to the Seller.

b. DEED DELIVERED AT CLOSING. Seller agrees to give good and marketable title to Parcel 1 of the Subject Property in fee-simple, together with all improvements, hereditaments and appurtenances thereunto belonging and all of the right, title and interest of the Seller in and to any streets or alleys adjoining or abutting thereon, and to convey the same by warranty deed joined in by all individuals known collectively as Seller herein, and in form acceptable to counsel for Buyer. Seller agrees to give title to Parcel 2 by quit claim deed in a form acceptable to counsel for Buyer. Buyer will be responsible for paying the cost of recording the deed; Seller will pay the state deed tax.

c. EXCEPTIONS TO MARKETABLE TITLE. Seller will convey marketable title to the Parcel 1 of the Subject Property to the Buyer subject only to the following exceptions:

1) Building and Zoning laws, ordinances, State and federal regulations.

2) Reservation of minerals or mineral rights to the State of Minnesota.

3) Utility and drainage easements.

4) Conservation easement in favor of the Minnesota Land Trust or similar qualified organization, which will be granted by Seller, in substantially the same form as attached Exhibit A.

4. Closing Date. Seller’s estate or heirs must give notice of Seller’s death to the Buyer within 30 days after Seller dies. The closing of the sale of Subject Property will take place on or before 30 days after the Seller’s estate or heirs gives notice to the Buyer of Seller’s death, or at such earlier or later date as may be mutually agreed upon by the Seller and Buyer. The Buyer will not unreasonably deny a request from Seller for additional time to dispose of the personal property on the Subject Property.
5. **Other Terms of Sale.**

a. The Seller agrees to free Parcel 1 of the Subject Property from all liens, leases, encumbrances and charges of any kind to the date of closing, except for those items noted in paragraph 3(c) above. Buyer will not take possession of the Subject Property subject to any leases.

b. Property taxes will be pro-rated to the date of closing.

c. All pending and levied special assessments will be the responsibility of the Seller.

d. Buyer will be responsible for the appropriate abandonment of any wells on the site.

e. Buyer will pay all costs that the Minnesota Land Trust or similar qualified organization requires in order to assume its obligations under the conservation easement.

f. Buyer will pay all costs of recording the necessary documents.

6. **Broker’s Fees.** The parties represent that they have not retained a real estate broker to represent them in the sale and purchase of the Subject Property. Each party agrees to indemnify the other for any and all claims for brokers commissions or finder’s fees in connection with negotiations for the sale or purchase of the Subject Property arising out of any alleged agreement, commitment or negotiation by the indemnifying party.

7. **Possession and Insurance.** Seller will continue in possession of the Subject Property until the Closing Date, will maintain it in its present condition, and will not undertake, authorize, or allow any substantial change to the Subject Property without the Buyer’s express written consent. Risk of loss from casualty or any liability incurred by or as a result of the use or contact with the Subject Property will be the Seller’s until delivery of possession to the Buyer as herein provided.

8. **Entire Agreement; Amendments.** This Purchase Agreement constitutes the entire agreement between the parties and no other agreement prior to this Purchase Agreement or contemporaneous herewith will be effective except as expressly set forth or incorporated herein. Any purported amendment will not be effective unless it is set forth in writing and executed by both parties or their respective successors or assigns.

9. **Binding Effect; Assignment.** This Purchase Agreement is binding upon and inures to the benefit of the parties and their respective heirs, executors, administrators, successors and assigns. All references to Seller in this Agreement that are relevant after Seller dies mean Seller’s estate or her heirs. Neither Seller nor Buyer may assign its rights and interest hereunder without notice to, and approval by the other. All representations and warranties made in this agreement are intended to survive closing and will not be merged in the deed.
10. **Notice.** All written notices permitted or required by this Agreement to be given to the parties must identify this Agreement by date and description and will be binding and deemed sufficiently served upon the parties when sent by first class mail of the United States Postal Service, pre-paid, certified, return receipt requested to Seller and Buyer at the following addresses:

a. If to Seller:  
William J. Cullen  
858 Nine Mile Cove North  
Hopkins, Minnesota 55343

b. If to Buyer:  
City Manager  
City of Minnetonka  
14600 Minnetonka Boulevard  
Minnetonka, MN 55345

Either party may change this location by giving written notice to the other party specifying the new location.

11. **Specific Performance.** This Purchase Agreement may be specifically enforced by either party.

12. **Special Provisions.**

a. If Seller fails to comply with any requirement in this Agreement, Buyer may, at its sole discretion, be released from its obligation to purchase upon written notice to Seller of such election, and all monies paid Seller must be refunded to Buyer. However, Buyer may, at its sole discretion, elect to waive any requirement not met by Seller and proceed with the purchase or otherwise enforce Buyer's rights to purchase.

b. Buyer agrees to name the Subject Property the Cullen Nature Preserve or a similar name that includes a reference to the Cullen family. This provision will survive the closing of the transaction and will be included as a covenant in the deed.

    IN WITNESS WHEREOF, the parties have executed this agreement, the day and year first printed above.
ANN CULLEN SMITH

CITY OF MINNETONKA

By: ________________________________
   Its Mayor

And: ________________________________
   Its City Manager
STATE OF MINNESOTA

COUNTY OF HENNEPIN

The foregoing instrument was acknowledged before me on January 28, 2004, by Ann Cullen Smith, a single person.

Notary Public

STATE OF MINNESOTA

COUNTY OF HENNEPIN

The foregoing instrument was acknowledged before me on ______________________, by Karen Anderson, Mayor, and John Gunyou, City Manager, on behalf of the City of Minnetonka.

Notary Public

This instrument drafted by:

Minnetonka City Attorney
14600 Minnetonka Boulevard
Minnetonka MN 55345
952-939-8200
CONSERVATION EASEMENT

This is a CONSERVATION EASEMENT granted by Ann Cullen Smith, single, fee owner, (the “Owner”) to the Minnesota Land Trust, a non-profit corporation organized and existing under the laws of the State of Minnesota (the “Trust”).

RECITALS:

A. OWNER. The Owner is the current owner of approximately 30 acres of real property located in Hennepin County, Minnesota. That real property is more fully described below as the “Protected Property.”

B. PROTECTED PROPERTY. The Protected Property is that real property legally described in Exhibit A and depicted on the “Property Map” in Exhibit B. Both exhibits are attached to this Easement and incorporated by this reference.

The Protected Property is currently used for a single residence and open space. Existing improvements on the Protected Property include a residential dwelling and detached storage building.

C. MINNESOTA LAND TRUST. The Minnesota Land Trust is a non-profit corporation organized and operated exclusively for charitable and educational purposes, including the preservation and protection of land in its natural, scenic or other open space condition. The Trust is a public charity as defined in Sections 501(c)(3) and 509(a) of the Internal Revenue Code and an organization qualified to hold conservation easements under Minnesota law and Section 170(h) of the Internal Revenue Code and related regulations.

D. CONSERVATION VALUES. The Protected Property has the following natural, scenic and open space qualities of significant importance:

• The open and natural features of the Protected Property provide outstanding scenic views prominently visible to the public from Interstate 494, Oakland Road and Stone Road.
• The Protected Property contains wetlands and mature forest providing habitat for a variety of plants and animals.

• The undeveloped and relatively undisturbed natural areas provide important open space that adds to the natural character of the City of Minnetonka as advocated by the City.

• Use of the Protected Property as a publicly accessible natural and scenic park provides important opportunities for nature observation, study and reflection.

Collectively, these natural, scenic and open space qualities of the Protected Property comprise its "Conservation Values."

These Conservation Values have not been and are not likely to be adversely affected to any substantial extent by the continued use of the Protected Property as described above or as authorized below or by the use, maintenance or construction of those structures and improvements that presently exist on the Protected Property or that are authorized below.

E. CONSERVATION POLICY. Preservation of the Protected Property will further those governmental policies established by the following:

• City of Minnetonka Parks, Open Space, and Trails plan ("POST Plan").

• Minnetonka City Council Policy on Open Space Preservation.

• The Parks and Open Space referendum adopted by the voters of the City of Minnetonka on September 11, 2001.

• Minnesota Statutes Chapter 84C which recognizes the importance of private conservation efforts by authorizing conservation easements for the protection of natural, scenic, or open space values of real property, assuring its availability for agriculture, forest, recreational, or open space use, protecting natural resources, and maintaining or enhancing air or water quality.

F. CONSERVATION INTENT. The Owner and the Trust are committed to protecting and preserving the Conservation Values of the Protected Property in perpetuity. Accordingly, it is their intent to create and implement a conservation easement that is binding upon the current Owner and all future owners of the Protected Property and that conveys to the Trust the right to protect and preserve the Conservation Values of the Protected Property for the benefit of this generation and generations to come.

CONVEYANCE OF CONSERVATION EASEMENT:
Pursuant to the laws of the State of Minnesota and in particular Minnesota Statutes Chapter 84C and in consideration of the facts recited above and the mutual covenants contained herein and as an absolute and unconditional gift, the Owner hereby conveys and warrants to the Trust and its successors and assigns a perpetual conservation easement over the Protected Property. This conservation easement consists of the following rights, terms and restrictions (the “Easement”):

1. **CONSERVATION PURPOSE.** The purpose of this Easement is to preserve and protect in perpetuity the Conservation Values of the Protected Property identified above by confining the development, management and use of the Protected Property to activities that are consistent with the preservation of these Conservation Values, by prohibiting activities that significantly impair or interfere with these Conservation Values, and by providing for remedies in the event of any violation of this Easement.

   The terms of this Easement are specifically intended to provide a significant public benefit by:

   - Preserving the open and natural character of the Protected Property for scenic enjoyment by the general public from Interstate 494, Oakland Road, and Stone Road.

   - Protecting a relatively natural habitat for wildlife and plants.

   - Providing an opportunity for the public to experience and enjoy the out-of-doors in a relatively undisturbed and natural setting.

2. **LAND USE RESTRICTIONS.** Any activity on or use of the Protected Property that is inconsistent with the purposes of this Easement is prohibited.

   Except as specifically permitted in paragraph 3 below and without limiting the general prohibition above, restrictions imposed upon the Protected Property expressly include the following:

   2.1. **Industrial and Commercial Activity.** No industrial or commercial use of the Protected Property is allowed.

   2.2. **Agricultural Use.** No agricultural use of the Protected Property is allowed. This includes tilling, plowing, commercial cultivation of row crops, livestock grazing or production, haying or feedlots.

   2.3. **Residential Development.** No residential use or development of the Protected Property is allowed except as specifically permitted in paragraph 3 below.

   2.4. **Right of Way.** No right of way shall be granted across the Protected Property in conjunction with any industrial or commercial use or residential development of other land not protected by this Easement, except for the reasonable widening of adjacent Oakland Road.
2.5. **Mining.** No mining, drilling, exploring for or removing of any minerals from the Protected Property is allowed.

2.6. **Subdivision.** The Protected Property may not be divided, subdivided, or partitioned. The Protected Property may be conveyed only in its entirety as a single parcel, regardless of whether it consists of or was acquired as separate parcels or is treated as separate parcels for property tax or other purposes.

2.7. **Density.** No portion of the Protected Property may be used to satisfy land area requirements for other property not subject to this Easement for purposes of calculating building density, lot coverage or open space under otherwise applicable laws, regulations or ordinances controlling land use. No development rights that have been encumbered or extinguished by this Easement may be transferred to any other property.

2.8. **Structures and Improvements.** No temporary or permanent buildings, structures, roads or other improvements of any kind may be placed or constructed on the Protected Property except as specifically authorized in paragraph 3 or as set forth below:

a. **Utilities.** Utility systems and facilities may be installed, maintained, repaired, extended and replaced only to serve uses and activities specifically permitted by this Easement. This includes, without limitation, all systems and facilities necessary to provide power, fuel, water, waste disposal and communication. No communications towers, wind turbines, or similar structures may be installed.

Utility systems and facilities shall be installed or constructed with minimal grading and disturbance to vegetation. Following installation or construction, the surface shall be restored to a condition consistent with the conservation purposes of this Easement.

No toilet facilities may be constructed or installed outside of the structures described in paragraph 3.2 below.

b. **Signs.** No billboards or other signs may be placed or erected on the Protected Property except for small, unlighted signs for informational or interpretive purposes.

c. **Roads and Trails.** Existing roads may be maintained, improved and reasonably widened. Paths and pedestrian trails may be established on the Protected Property for passive recreational and educational uses. These paths and trails will not be paved, except where necessary to prevent erosion. Bicycles and motorized recreational vehicles are prohibited. A driveway and parking lot may be installed to serve the passive recreational and educational
uses allowed by paragraph 3.3 of this easement. A parking lot may not be located outside of the areas currently developed for structures and driveway. If a structure is removed, a parking area may be constructed within the footprint of the structure for general parking. If the structures remain, the parking on the Property must be limited to handicapped parking only. No other roads or other rights of way may be established or constructed on the Protected Property without the prior written approval of the Trust.

d. **Fences.** Existing fences may be maintained, improved, replaced or removed. Additional fences may be constructed and maintained, improved, replaced or removed to mark boundaries, to secure the Protected Property, or as needed in carrying out activities permitted by this Easement.

2.9. **Topography and Surface Alteration.** No alteration or change in the topography of the surface of the Protected Property is allowed. This includes no ditching, draining or filling and no excavation or removal of soil, sand, gravel, rock or other materials, except as incidental to activities or uses specifically permitted by this Easement.

2.10. **Vegetation Management.** No removal, cutting, pruning, trimming or mowing of any trees or other vegetation, living or dead, and no introduction of non-native species is allowed except as follows:

a. In conjunction with activities specifically permitted in paragraph 3 below.

b. As reasonably required to construct and maintain permitted buildings, structures, road and other improvements and provided that vegetation shall be restored following any construction to a condition consistent with the conservation purposes of this Easement.

c. Landscaping in areas immediately adjacent to permitted buildings.

d. As reasonably required to prevent or control insects, noxious weeds, invasive vegetation, disease, fire, personal injury or property damage. The use of herbicides and pesticides will be kept to a minimum and will be used only when the benefit to the natural resources is greater than the detriment.

e. To remove downed or dead timber. Removal of downed or dead timber will be kept to a minimum. Downed or dead timber that are a benefit to the natural resources or serve as wildlife habitat will be removed only when necessary.

2.11. **Water.** No alteration or manipulation of natural watercourses, lakes, shorelines, wetlands or other surface or subsurface bodies of water is allowed except to restore or enhance wildlife habitat or native biological communities or to improve or enhance the function and quality of existing wetlands.
No activities on or uses of the Protected Property that cause erosion or are detrimental to water quality or purity are allowed.

2.12. **Dumping.** No trash, non-compostable garbage, hazardous or toxic substances or unsightly material may be dumped or accumulated on the Protected Property. This does not prohibit burning or composting of excess brush or other plant material resulting from activities permitted by this Easement.

2.13. **Vehicles.** Except for Oakland Road and the parking lot and driveway permitted under paragraph 2.8(c) above, only motorized vehicles for permitted construction, maintenance, or enforcement may be operated on the Protected Property.

3. **RESERVED RIGHTS.** The Owner retains all rights associated with ownership and use of the Protected Property that are not expressly restricted or prohibited by this Easement. The Owner may not, however, exercise these rights in a manner that would adversely impact the Conservation Values of the Protected Property. Additionally, the Owner must give notice to the Trust before exercising any reserved right that might have an adverse impact on the Conservation Values associated with the Protected Property.

Without limiting the generality of the above, the following rights are expressly reserved and the Owner may use and allow others to use the Protected Property as follows:

3.1. **Right to Convey.** The Owner may sell, give, lease, bequeath, devise, mortgage or otherwise encumber or convey the Protected Property.

   a. Any conveyance or encumbrance of the Protected Property is subject to this Easement.

   b. The Owner will reference or insert the terms of this Easement in any deed or other document by which the Owner conveys title to the Protected Property.

   The Owner will notify the Trust of any conveyance within fifteen (15) days after closing and will provide the Trust with the name and address of the new owner and a copy of the deed transferring title.

   The enforceability or validity of this Easement will not be impaired or limited by any failure of the Owner to comply with this subparagraph.

3.2. **Forest and Animal Management:** The Owner may remove timber and other wood products and otherwise use land stewardship techniques to manage the vegetation on the Protected Property in accordance with the City of Minnetonka Natural Resources Management Plan, POST Plan, or another management plan approved by the Trust. The removal of any animals such as deer may only occur pursuant to a management plan approved by the Trust.
3.3. **Residential Use.** The Protected Property may be used for residential purposes by a caretaker or caretakers retained by the Owner as follows:

a. Existing structures. The existing residential dwelling and related accessory buildings and structures may be maintained, repaired, remodeled, improved, expanded and replaced in substantially their same location. Any expansion or replacement of an existing building or structure shall not substantially alter its character or function and shall not exceed its current total covered ground area or footprint by more than twenty-five percent.

b. Notice. The Owner will give the Trust notice as set out in paragraph 7.8 of this Easement before beginning construction permitted under this paragraph.

3.4. **Recreational and Educational Uses.** The structures identified in paragraph 3.3 may also be used for passive recreational and educational uses. A parking lot and related driveway may be erected in conjunction with those structures only if the residential dwelling exists. The Protected Property may also be used for hiking, cross-country skiing, educational camping, nature observation or study, and other similar low impact, passive recreational and educational programs or activities. Minor rustic structures such as tents, trail barriers, wooden benches, and informational kiosks may be placed on the Protected Property in conjunction with these activities. A few rustic-appearing picnic tables may be located on the developed areas of the property near the structures and parking. The Protected Property may not be used for more than minimal, passive recreational purposes.

3.5. **Habitat.** The Protected Property may be used to maintain, restore or enhance habitat for wildlife and native biological communities

4. **TRUST’S RIGHTS AND REMEDIES.** In order to accomplish the purposes of this Easement, the Trust has the following rights and remedies:

4.1. **Right to Enter.** The Trust has the right to enter the Protected Property at reasonable times and in a reasonable manner for the following purposes:

a. To inspect the Protected Property and to monitor compliance with the terms of this Easement.

b. To obtain evidence for use in seeking judicial or other enforcement of this Easement.

c. To survey or otherwise mark the boundaries of all or part of the Protected Property if necessary to determine whether there has been or may be a violation of this Easement. Any survey or boundary demarcation completed under this provision will be at the Owner’s expense.

d. To otherwise exercise its rights under this Easement.
4.2. **Right of Enforcement.** The Trust has the right to prevent or remedy violations of this Easement through appropriate judicial action brought against the Owner or other responsible party in any court of competent jurisdiction.

a. Notice. The Trust may not initiate judicial action until the Owner has been given notice of the violation, or threatened violation, of this Easement and a reasonable opportunity to correct the situation. This provision shall not apply if, in the sole discretion of the Trust, immediate judicial action is necessary to prevent or mitigate significant damage to the Protected Property or if reasonable, good faith efforts to notify the Owner are unsuccessful.

b. Remedies. Remedies available to the Trust in enforcing this Easement include the right to request temporary or permanent injunctive relief for any violation or threatened violation of this Easement, to require restoration of the Protected Property to its condition at the time of this conveyance or as otherwise necessitated by a violation of this Easement, to seek specific performance or declaratory relief and to recover damages resulting from a violation of this Easement or injury to any Conservation Values protected by this Easement.

These remedies are cumulative and are available without requiring the Trust to prove actual damage to the Conservation Values protected by this Easement. The Trust and the Owner also recognize that restoration, regardless of cost, may be the only adequate remedy for certain violations of this Easement.

The Trust is entitled to seek expedited relief, ex parte if necessary, and shall not be required to post any bond applicable to a petition for such relief.

c. Costs of Enforcement. The Owner shall be responsible for all reasonable costs incurred by the Trust in enforcing this Easement, including without limitation costs of suit, attorneys’ fees, and expenses related to restoration of the Protected Property. If, however, the Owner ultimately prevails in a judicial enforcement action, each party shall be responsible for its own costs and attorneys’ fees.

d. Discretionary Enforcement. Enforcement of the terms of this Easement is solely at the discretion of the Trust. The Trust does not waive or forfeit the right to take any action necessary to assure compliance with the terms of this Easement by any delay or prior failure of the Trust in discovering a violation or initiating enforcement proceedings.

e. Acts Beyond Owner’s Control. The Trust may not bring any action against the Owner for any change to the Protected Property resulting from causes beyond the Owner’s control, such as changes caused by fire, flood, storm, natural deterioration or the unauthorized acts of persons other than the Owner.
or the Owner’s agents, employees or contractors or resulting from reasonable actions taken in good faith under emergency conditions to prevent or mitigate damage resulting from such causes.

f. Right to Report. In addition to other remedies, the Trust has the right to report any environmental concerns or conditions or any actual or potential violations of any environmental laws to appropriate regulatory agencies.

4.3. Signs. The Trust has the right to place on the Protected Property signs that identify the land as protected by this Easement. The number and location of any signs are subject to the Owner’s approval and must comply with local ordinances.

4.4. Limitation on Rights. Nothing in this Easement gives the Trust the right or ability to exercise physical control over day-to-day operations on the Protected Property or to become involved in management decisions involving the use, handling or disposal of hazardous substances or to otherwise become an operator of the Protected Property within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act.

5. PUBLIC ACCESS. Nothing in this Easement gives the general public a right to enter upon or use the Protected Property where no such right existed prior to the conveyance of this Easement.

6. DOCUMENTATION. The current uses of the Protected Property, the state of any existing improvements, and the specific Conservation Values of the Protected Property that are briefly described in this Easement are more fully described in a property report on file at the office of the Trust. The Owner and the Trust acknowledge that this property report accurately represents the condition of the Protected Property at the time of this conveyance and may be used by the Trust in monitoring future uses of the Protected Property, in documenting compliance with the terms of this Easement and in any enforcement proceeding. This property report, however, is not intended to preclude the use of other information and evidence to establish the present condition of the Protected Property in the event of a future controversy.

7. GENERAL PROVISIONS.

7.1. Assignment. This Easement may be assigned or transferred by the Trust only to a conservation organization which is a qualified organization under Section 170(h) of the Internal Revenue Code and related regulations and which is authorized to hold conservation easements under Minnesota law. Any future holder of this Easement shall have all of the rights conveyed to the Trust by this Easement. As a condition of any assignment or transfer, the Trust shall require any future holder of this Easement to continue to carry out the conservation purposes of this Easement in perpetuity.
The Trust will notify the Owner of any assignment within fifteen (15) days of the assignment and will provide the Owner with the name and address of the new holder.

7.2. **Amendment.** Under appropriate circumstances, this Easement may be modified or amended. However, no amendment or modification will be allowed if, in the sole and exclusive judgment of the Trust, it (i) does not further the purposes of this Easement, (ii) will adversely impact the Conservation Values protected by this Easement, (iii) affects the perpetual duration of the Easement, or (iv) affects the validity of the Easement under Minnesota law or the status of the Trust under Sections 501(c)(3) and 170(h) of the Internal Revenue Code.

Any amendment or modification must be in writing and recorded in the same manner as this Easement.

7.3. **Extinguishment.** This Easement may be extinguished only through judicial proceedings and only under the following circumstances:

a. This Easement may be extinguished only (i) if unexpected change in the conditions of or surrounding the Protected Property makes the continued use of the Protected Property for the conservation purposes set out above impossible or impractical or (ii) pursuant to the proper exercise of the power of eminent domain.

b. The Owner recognizes that uses of the Protected Property prohibited by this Easement may, in the future, become more economically viable than those uses permitted by the Easement. The Owner also recognizes that neighboring properties may, in the future, be put entirely to uses not permitted on the Protected Property by this Easement.

The Owner and the Trust believe that such changes will increase the public benefit provided by this Easement. Therefore, such changes are not considered unexpected changes and shall not be deemed to be circumstances justifying the extinguishment of this Easement as otherwise set forth above.

7.4. **Proceeds.** If this Easement is extinguished or terminated in whole or in part, the Trust is entitled to a portion of any proceeds of a sale, exchange or involuntary conversion in an amount that is equal to the fair market value of this Easement at the time of the extinguishment but that is not less than an amount equal to the proportionate value that this Easement bears to the value of the Protected Property as a whole at the time of this conveyance. The Trust shall use its share of any proceeds in a manner consistent with the conservation purposes of this Easement.

7.5. **Warranties.** The Owner represents and warrants as follows:
a. The Owner is the sole owner of the Protected Property in fee simple and has the right and ability to convey this Easement to the Trust.

b. The Protected Property is free and clear of all encumbrances other than those subordinated to this Easement, except for existing easements of record and any deferred special assessments.

c. The Owner has no actual knowledge of any use or release of hazardous waste or toxic substances on the Protected Property that is in violation of a federal, state or local environmental law and will defend, indemnify and hold the Trust harmless against any claims of contamination from such substances.

7.6. **Real Estate Taxes.** The Owner shall pay all real estate taxes and assessments levied against the Protected Property, including any levied against the interest of the Trust created by this Easement. The Trust may, at its discretion, pay any outstanding taxes or assessments and shall then be entitled to reimbursement from the Owner.

7.7. **Ownership Costs and Liabilities.** The Owner retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Protected Property. The Owner agrees to defend, indemnify and hold the Trust harmless from any and all costs or liability for any personal injury or property damage occurring on or related to the Protected Property or the existence of this Easement. If the Owner is a government agency, this obligation to indemnify is limited by the limitations on liability granted to the governmental agency by Minnesota law.

7.8. **Notice and Approval.** Any notice or request for approval required by this Easement must be written and is subject to the following:

a. Delivery. Any required notice or request for approval must be delivered personally or sent by first class mail or other nationally recognized delivery service to the appropriate party at the following addresses (or other address specified in writing):

   To the Owner:  
   
   [Signature]
   [Address]

   To the Trust:

   [Signature]
   [Address]

b. Timing. Unless otherwise specified in this Easement, any required notice or request for approval must be delivered at least 30 days prior to the date proposed for initiating the activity in question.
c. Content. The notice or request for approval must include sufficient information to allow the Trust to make an informed decision on whether any proposed activity is consistent with the terms and purposes of this Easement. At a minimum this would include (i) the location, nature and scope of the proposed activity, (ii) the proposed use, design and location of any building, structure or improvement and (iii) the potential impact on the Conservation Values of the Protected Property.

d. Approval. The Trust may withhold its approval if it determines that the proposal is inconsistent with the terms or purposes of this Easement or lacks sufficient information to allow the Trust to reach an informed decision. The Trust may condition its approval on the Owner’s acceptance of modifications, which would, in the Trust’s judgment, make the proposed activity consistent with the Easement or otherwise meet any concerns.

7.9. Binding Effect. This Easement shall run with and burden the Protected Property in perpetuity. The terms of this Easement are binding and enforceable against the current Owner of the Protected Property, all successors in title to the Protected Property and all other parties entitled to possess or use the Protected Property.

This Easement creates a property right immediately vested in the Trust and its successors and assigns that cannot be terminated or extinguished except as set out herein.

7.10. Definitions. Unless the context requires otherwise, the term “Owner” includes, jointly and severally, the current owner or owners of the Protected Property identified above and their personal representatives, heirs, successors and assigns in title to the Protected Property. The term “Trust” includes the Minnesota Land Trust and its successors or assigns to its interest in this Easement.

7.11. Termination of Rights and Obligations. A party’s rights and obligations under this Easement terminate upon the transfer or termination of that party’s interest in this Easement or the Protected Property, provided, however, that any liability for acts or omissions occurring prior to the transfer or termination will survive that transfer or termination.

7.12. Recording. The Trust will record this Easement in a timely manner in the official records for the county in which the Protected Property is located. The Trust may re-record this Easement or any other documents necessary to protect its rights under this Easement or to assure the perpetual enforceability of this Easement.

7.13. Controlling Law and Construction. This Easement shall be governed by the laws of the State of Minnesota and construed to resolve any ambiguities or questions of validity of specific provisions in favor of giving maximum effect to its conservation purposes and to the policies and purposes of Minnesota Statutes Chapter 84C.
7.14. **Severability.** A determination that any provision or specific application of this Easement is invalid shall not affect the validity of the remaining provisions or any future application.

7.15. **Additional Documents.** The Owner agrees to execute or provide any additional documents reasonably needed by the Trust to carry out in perpetuity the provisions and the intent of this Easement, including, but not limited to any documents needed to correct any legal description or title matter or to comply with any federal, state, or local law, rule or regulation.

7.16. **Entire Agreement.** This document sets forth the entire agreement of the parties with respect this Easement and supercedes all prior discussions or understandings.

IN WITNESS WHEREOF, the Owner has voluntarily executed this Conservation Easement on the 28th day of January, 2004.

OWNER:

[Signature]

STATE OF MN

COUNTY OF Hennepin

The foregoing instrument was acknowledged before me this 28th day of January, 2004, by Ann Puellen Smith, singer.

Notary Public

My Commission Expires:
ACCEPTANCE

The Minnesota Land Trust hereby accepts the foregoing Conservation Easement this ___ day of ________________, ______.

MINNESOTA LAND TRUST

By: _______________________

Title: ______________________

STATE OF ________________

COUNTY OF ________________

The foregoing instrument was acknowledged before me this ___ day of ________________, ______, by ______________________, the ______________________ of the Minnesota Land Trust, a non-profit corporation under the laws of the State of Minnesota, on behalf of said corporation.

______________________________
Notary Public
My Commission Expires:

This document drafted by:

Minnetonka City Attorney
14600 Minnetonka Blvd.
Minnetonka MN 55345
EXHIBIT A

TRACT A:    That portion of the following described tract of land, namely:

Commencing at a point in the West line of the East One-half (E½) of the West One-half (W½) of Section Ten (10), Township One hundred seventeen (117), Range Twenty-two (22), according to the United States Government survey thereof, which is 50.5 feet North of the Southwest corner of the Southeast Quarter (SE¼) of the Northwest Quarter (NW¼) of said Section Ten (10); thence East at right angles 1312.8 feet more or less to the East line of the East One-half (E½) of the West One-half (W½) of said Section Ten (10); thence South along said East line 798.85 feet; thence West 1309.15 feet, more or less, to a point in the west line of the East One-half (E½) of the West One-half (W½) of said Section Ten (10) distant 800 feet South of the point of beginning; thence North along said West line of the East One-half (E½) of the West One-half (W½) of said Section Ten (10) 800 feet to the point of beginning; (said tract being designated hereinafter for convenience as "Tract G-H"); lying West of the center line of the public highway as now laid out and traveled across "Tract G-H" prior to November 8, 1935, and formerly known as County Road No. 74; now vacated, subject to the public easement in said County Road No. 74. Oakland Road as now laid out and established by that certain NOTICE OF DEDICATION OF OAKLAND ROAD AS A PUBLIC STREET IN THE VILLAGE OF MINNETONKA filed in the office of the County Recorder in and for the County of Hennepin, State of Minnesota in Book 1045 Mc, page 64, as Document Number 3614108.

TRACT B:    That part of the East One-half (E½) of the Southwest One-Quarter (SW¼) of Section Ten (10), Township One hundred seventeen (117), Range Twenty-two (22), described as follows:

Beginning at a point in the West line of the East One-half (E½) of the Southwest One-Quarter (SW¼) of said Section Ten (10), distant 749.5 feet South of the Northwest corner of said tract; thence South along the West line of the East One-half (E½) of the Southwest Quarter (SW¼) a distance of 250 feet; thence at a right angle East to the center line of County Road Number 74; now vacated; thence Northerly along the center of said vacated County Road 250 feet more or less to a point in a line drawn Easterly from the point of beginning, and at a right angle to the West line of the East One-half (E½) of the Southwest One-Quarter (SW¼) of said Section Ten (10); thence Westerly to the point of beginning, subject to Public Easement in said County Road Oakland Road as now laid out and established by that certain NOTICE OF DEDICATION OF OAKLAND ROAD AS A PUBLIC STREET IN THE VILLAGE OF MINNETONKA filed in the office of the County Recorder in and for the County of Hennepin, State of Minnesota in Book 1045 Mc, page 64, as Document Number 3614108; all according to the United States Government Survey thereof; also,

That part of the East One-half (E½) of the Southwest One-Quarter (SW¼) of Section Ten (10), Township One hundred seventeen (117), Range Twenty-two (22), lying Easterly of the center line of County Road Number 74 now vacated and between the extension of the Northerly and the Southerly side lines of the tract of land hereinbefore described, subject to the public easement in County Road Number 74 Oakland Road as now laid out and established by that certain NOTICE OF DEDICATION OF OAKLAND ROAD AS A PUBLIC STREET IN THE VILLAGE OF MINNETONKA filed in the office of the County Recorder in and for the County of Hennepin, State of Minnesota in Book 1045 Mc, page 64, as Document Number 3614108.
Conveyed by:
Frances J. Nickels, widow Und. 4/10 int.
Horace J. Nickels, unmarried Und. 1/10 int.
Alma W. Smith, widow Und. 1/2 int.

W.D. 11-8-35 filed 12-5-35
Book 1381 of Deeds, Page 60 Doc. # 1820686

Conveyed by:
Frances J. Nickels Und. 4/10 int.
Horace J. & Evelyn K. Nickels Und. 1/10 int.
Alma W. Smith Und. 1/2 int.

W.D. 11-23-40 filed 11-8-40
Book 1488 Deeds pg 473
Doc. # 2062733
AGREEMENT REGARDING
CONSERVATION EASEMENT

This agreement is made on ____________ by the CITY OF MINNETONKA (“City”), a Minnesota municipal corporation, 14600 Minnetonka Boulevard, Minnetonka, MN 55345 and the MINNESOTA LAND TRUST (“Trust”), a non-profit corporation organized and existing under the laws of the State of Minnesota, 2356 University Avenue West, St. Paul, MN 55114.

The City has entered into a purchase agreement (“the Purchase Agreement”) for certain land in the City located at 2510 Oakland Road and legally described on the attached Exhibit A (“the Property”). The seller of the Property has included a condition in the Purchase Agreement that the Property will be subject to a conservation easement (“the Easement”) that will be conveyed to the Trust or other qualified organization. The Purchase Agreement is attached as Exhibit B. The Trust agrees to accept the Easement substantially in the form attached as Exhibit C, subject to certain conditions.

The City will provide notice to the Trust as soon as the City is notified of the death of the owner of the Property described above.

Therefore, the parties agree that before the Trust will accept the Easement, the following conditions must be satisfied, unless waived in the Trust’s sole discretion:

1. Within 10 days after the City receives title evidence pursuant to the Purchase Agreement, the City must deliver to the Trust a current title commitment from a reputable title insurance company or an abstract of title certified to date covering all of the Property to be included in the Easement. The Trust will have 30 days to examine it and to deliver written objections to title, if any, to the City. If the Trust finds title to the Property is unmarketable at any time before execution of the Easement, and cannot be made marketable by the City within 90 days after notice of a defect, then the Trust may choose to not accept the Easement.

2. If requested by the Trust, the City will execute and record a document acceptable to the parties indicating that the City joins in the Easement or otherwise agrees to be bound by the Easement.

3. The Trust must obtain approval of the Easement by the Trust’s Board of Directors.

4. The Trust must undertake an environmental review of the Property with results that are satisfactory to the Trust in its sole discretion.

5. The parties must agree on the funds that the City will pay to the Trust for stewardship and enforcement of the Easement.

6. The Property, and all improvements thereon, are in substantially the same condition as existed at the time of the signing of the Purchase Agreement, as determined by the Trust.

This Agreement shall terminate upon written notification by the Trust, in the event any of the
above conditions is not satisfied, or in the event the City does not purchase the Property under the terms of the Purchase Agreement.

Date: ___________________________                         CITY OF MINNETONKA

By ________________________________
   Its Mayor

And ________________________________
   Its City Manager

Date: ___________________________                         MINNESOTA LAND TRUST

By ________________________________
   Its ________________________________
Wallin noted that the ISO rates each fire department, and Minnetonka carries a rating of 3. The rating is based on distribution of stations, training and water availability.

Anderson added that this high rating benefits everyone in the community through lower insurance rates. She noted that it pays to keep the fire department's equipment up-to-date.

Wiersum moved, Callison seconded a motion to enter into a purchase agreement with Precision Fire Apparatus for the purchase of one new 2004 Freightliner four-door 1250 GPM fire pumper truck for the sum of $232,768. All voted "yes." Motion carried.

B. Items related to the property at 2510 Oakland Road:
1) Approve the purchase agreement subject to approval of the final form by the city attorney.
2) Approve the conservation easement agreement subject to approval of the final form by the city attorney.

Gunyou gave the staff report for this item.

Callison asked about the development potential for this property if it had not been preserved. Gunyou said that at a minimum, it could have been developed into 17 larger sized parcels.

Callison asked about maintenance fees. Peterson said that the city would pay the land trust a nominal annual fee for the trust's inspection of the property. If the city fails to maintain the property, there could be additional fees. The land trust's board will consider the conservation easement on March 18; this agreement with the land trust will also be brought to the council for approval.

Wagner said that this parcel is in his ward. He applauded Cullen Smith for her contribution.

Wagner moved, Thomas seconded a motion to:
1) Approve a purchase agreement with Ann Cullen Smith to purchase the property at 2510 Oakland Road subject to approval of the final form by the city attorney.
2) Approve a conservation easement agreement with Minnesota Land Trust subject to approval of the final form by the city attorney.

All voted "yes." Motion carried.
Brief Description  Order for tobacco license violation for Lucky’s Station LLC

Recommendation  Issue the order

Background

Currently, the city has 32 establishments that hold a tobacco license. The city council has an adopted system of presumptive penalties to be applied when certain tobacco violations occur. Under the presumptive penalties schedule, tobacco licensees are subject to a fine, or a fine plus a license suspension, after the conclusion of criminal proceedings brought by the legal department. A form stipulating the penalty is sent to the licensee, who may agree to the penalty or request an administrative hearing before the city council. When the licensee agrees to the penalty, it must be brought back and acknowledged through issuance of an order by the city council.

Licensees are initially subject to a fine of at least $250, the second violation is at least a $500 fine, and the third and any subsequent offenses within a two-year period have penalties of a $600 fine and a minimum seven-day suspension. The violation described below is a first offense for the licensee.

A stipulation form was sent to Lucky’s Station LLC regarding the sale of tobacco to a minor. The sales occurred during a police department compliance check conducted on August 26, 2014. The licensee has agreed to the penalty listed below:

<table>
<thead>
<tr>
<th>Licensee</th>
<th>Establishment</th>
<th>Offense (Date)</th>
<th>Fine</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lucky’s Station LLC</td>
<td>Lucky’s Station #5 15114 State Hwy 7</td>
<td>1st (08/26/14)</td>
<td>$250</td>
</tr>
</tbody>
</table>

The violation does not require a suspension of the tobacco license.

Recommendation

Per council policy on tobacco violations, presumptive penalties are required. Staff recommends the city council approve issuing the enclosed Finding of Fact, Conclusion, and Order for the establishment listed above (pages A1-A2).

Submitted through:
Geralyn Barone, City Manager
Julie Wischnack, AICP, Community Development Director

Originated by:
Kathy Leervig, Community Development Coordinator
BEFORE THE CITY COUNCIL
CITY OF MINNETONKA, MINNESOTA

In the Matter of:
The Tobacco License of
Lucky’s Station LLC

FINDINGS OF FACT,
CONCLUSION,
AND ORDER

Pursuant to a Stipulation executed by Julie Wischnack, Community Development Director for the City of Minnetonka, and Scott Stevens, Owner of Lucky’s Station #5, the City Council makes the following:

FINDINGS OF FACT

1. The licensee captioned above has been licensed for the sale of tobacco products from the city of Minnetonka for the year 2015, and conducts its licensed activity at 15114 State Highway 7, within the city.

2. Pursuant to Minn. Stat. §609.685 and Minnetonka City Code §625.040, a licensee must not sell tobacco products to a person under 18 years old.

3. On August 26, 2014, Jessica Weizel, a person employed by the above-captioned licensee, sold a tobacco product to a person who was under 18 years old.

CONCLUSION

1. The tobacco licensee captioned above violated Minn. Stat. 609.685 and Minnetonka City Code 625.040 by selling a tobacco product to a juvenile on August 26, 2014.
ORDER

It is hereby ordered, pursuant to Minnetonka City Code §625.055, that the licensee captioned above is subject to the following sanctions:

(1) a $250.00 civil penalty

The penalty must be paid within 30 days of the date of this order.

Failure to comply with this order will subject the licensee to further sanctions.

By order of the City Council of the City of Minnetonka, Minnesota, March 23, 2015.

________________________________
Terry Schneider, Mayor

Attest:

____________________________________
David E. Maeda, City Clerk

Action on this order:

Motion for issuance:
Seconded by:
Voted in favor of:
Voted against:
Absent:
Abstained:
Order issued.

I certify that the above is an accurate copy of the Findings of Fact, Conclusion, and Order issued by the City Council of the City of Minnetonka, Minnesota, at an authorized meeting held on March 23, 2015.

________________________________
David E. Maeda, City Clerk
Brief Description  Resolution amending Council Policy 2.5 regarding tax exempt financing

Recommendation  Adopt the resolution amending the policy

Background

State law allows cities to issue tax exempt financing, in the form of revenue bonds, to assist manufacturing/industrial development, health care facilities, multi-family housing developments and other projects by 501(c)(3) organizations. The bonds are not obligations of the city, nor do they impact the credit rating of the city. The city can issue up to $10 million, annually, both for its own purposes, as well as for projects mentioned above. The city’s legal counsel has provided a brief overview of tax exempt financing (also called conduit debt) on pages A1-A3.

Examples of tax exempt financing projects approved by the city recently include:

- ISLA Affiliated Building Company (associated with the International Spanish Language Academy) to purchase property for their charter school.
- St. David’s Center for Child and Family Development for renovation of their school.

The city may approve the issuance of bonds for projects located outside of the city, if approval is given by the city in which the project is located. A recent example is:

- Wayzata Bay Senior Housing for the development of housing in Wayzata

Finally, the city may give approval for another city to issue bonds for projects located within Minnetonka. An example is:

- City of New Hope issuing financing for renovation of homes across multiple jurisdictions, including homes in Minnetonka, for the disabled by Homeward Bound, Inc.

Council Policy

On average, the city receives one or two requests per year. If the city is not using its $10 million tax exempt financing allocation itself, these requests may be considered. In order to review the requests, staff and the council have relied upon Council Policy 2.5, Tax Exempt Financing for Industrial Development, Health Care Facilities, and Multi-Family Housing Projects (Private Activity Tax Exempt Financing). This policy was first
developed in 1984 to address the large number of office, manufacturing and retail buildings built using this financing in the 1970’s and 1980’s. Since that time, the policy has been amended periodically to address changes occurring both at a local and national level. The last significant amendment was adopted in 1997. The use of the bond funds have changed as well. We often review major redevelopment projects with a housing emphasis or major purchases/renovations by nonprofit organizations.

With the continued requests for this type of financing, changes in the way these projects are financed, and an extended period of time since the policy was reviewed, staff felt that it was beneficial to review the policy and propose revisions where appropriate. Staff reviewed other cities’ policies and consulted with the city’s financial advisor and legal counsel. Based on this, the proposed revisions to the policy are included on pages A4-A9.

Title, Purpose, and Introduction

Qualified 501(c)(3) projects were added to the title, purpose and introduction sections. In recent years, most of the tax exempt financing requests have been by non-profits such as St. David’s and ISLA.

Part A: Standards

Proposed changes in this section include:

- All projects meet all city ordinances and be compatible with the city’s Comprehensive Plan and zoning ordinance.
- Because of the different ways the projects are financed, the language was changed about how the project must show that it is financially feasible, including review by a third party.
- Components of the project that cannot be financed by tax exempt obligations was also modified.

Part B: Additional Review Standards

An important reason for doing these projects is how the city, its residents, and more broadly the region, can benefit from them. With the increase in requests to finance projects outside of the city, a new standard was added about how projects benefit the region.

Part C: Other Provisions

The city’s $10 million annual tax exempt financing allocation is given on a calendar year. Clarification was made in the policy that if approval is given, then it is only good for the calendar year in which it was received.
No changes are proposed to the application and administration fees (both of which are deposited into the city’s Development Account). In staff’s research it was found that the city’s fees are in line with other cities.

**Part D: Miscellaneous Matters**

Several new sections were added pertaining to reporting and audits, as well as clarification on when the city will provide host approval and when the city may act as an issuer on behalf of a project in another city.

**Recommendation**

On February 26, 2015, the EDAC on a 5-1 vote recommended the city council adopt the revised policy. Staff recommends the city council adopt the resolution amending Council Policy 2.5 (pages A10-A11).

Submitted through:
- Geralyn Barone, City Manager
- Merrill King, Finance Director
- Julie Wischnack, AICP, Community Development Director

Originated by:
- Elise Durbin, AICP, Community Development Supervisor
OVERVIEW OF
PRIVATE ACTIVITY / CONDUIT BONDS IN MINNESOTA

Generally

Tax exempt municipal bonds fall into two general categories: “governmental bonds,” issued to finance general governmental needs like public buildings and infrastructure; and “private activity bonds,” issued to finance the construction of facilities by certain kinds of private entities.

Private activity bonds typically work like this: the city issues the bonds, and loans the proceeds to the private entity. The loan repayments are the amount needed to pay principal and interest on the bonds (together with any fee charged by the city). The loan agreement is normally assigned to a trustee under a document called a “trust indenture” or assigned to a bank under a document called a “pledge agreement.” All disbursements and bond payments are handled by the trustee or the bank, and the city has little or no further involvement after closing. (The term “private activity bonds” is usually synonymous with the term “conduit bonds,” so named because the city is a conduit for financing by another party.)

One might ask why private activity bonds are tax-exempt, and why a city would issue them. The answer to the first question is straightforward: Congress has determined, in the Internal Revenue Code, that there are certain kinds of activities that will be promoted by allowing private entities to obtain tax exempt financing (which is less expensive than private financing). Congress did not authorize these private entities to issue their own debt, but rather permitted them to request municipalities to issue the bonds. The law requires public hearings and certain other features to ensure that the public purpose is fostered.

Cities may wish to issue private activity bonds for a variety of reasons. First (as described in more detail below), these bonds do not create financial obligations for the city; the city simply gives the private entity access to the tax-exempt bond market. Second, by issuing the bonds, the city may facilitate certain kinds of projects that benefit the city as whole.
Impact on City

The key feature of private activity bonds is that they are revenue bonds. This means the bonds are payable only from the private borrower’s loan payments (and are typically secured by a first mortgage on the facility being financed and/or guarantees or letters of credit). The city has no obligation to make any bond payment, and the bondholder cannot require the city to levy a tax if revenues are insufficient.

What happens if a private activity bond goes into default? The bondholders look to the trustee, the borrower and the underwriter to develop a work-out strategy. The default has no adverse impact on the city’s general obligation bond ratings maintained by the major rating agencies.

While it is generally true that cities have no financial liability for private activity bonds, that statement must be qualified as a result of actions by the Internal Revenue Service (“IRS”) in recent years. The IRS has a vigorous program of auditing tax-exempt bond transactions, focusing primarily on private activity bonds. The issuing municipality may be drawn into an audit in several ways.

First, the city may be forced to hire counsel to assist it in the audit. Second, it may be required to use staff time and resources to participate in the audit. Third, if the IRS imposes a penalty related to violation of federal tax laws, and the borrower does not have sufficient assets to pay, the issuing city may be forced to choose between an IRS determination that the bonds are taxable or payment of a penalty or negotiated settlement amount to avoid such a determination.

Under procedures authorized by Congress in 1998, issuers may file an appeal with the IRS Office of Appeals in the event of an adverse determination by the IRS regarding the tax-exempt status of a bond issue. Issuers also retain the ability to enter into a closing agreement with the IRS, typically involving a negotiated payment in lieu of an IRS determination that the bonds are taxable. The private borrower will expected (and required under the bond documents) to pay the issuer’s costs in hiring counsel related to any settlement or appeal, and to make any settlement payment. However, if the borrower is insolvent, the city could face the choice described above—that is, to pursue the appeal and/or pay a settlement; or allow the bonds to be declared taxable. A declaration that the bonds are taxable would not directly impact the city, but it would adversely affect the holders of the bonds.

The possibility is very small that any private activity bond issued by the City of Minnetonka would be audited, and smaller still that an audit would result in a tax problem. Nevertheless, the City should be aware of the possibility, and review requests for private activity bond financing with appropriate scrutiny.

Types of Private Activity Bonds

Federal law permits tax exempt financing only for certain types of entities and projects. The types that most cities are likely to encounter are:

Manufacturing Facilities. These are the bonds typically referred to as “industrial development revenue bonds” or “IDBs.” Before the tax reform act of 1986, such bonds could be
issued for a broad range of commercial developments. Under current law, bonds may be issued only for manufacturing facilities, and are subject to a $10 million limit for each project.

*Low Income Housing.* These are bonds issued by for-profit developers, if the facility meets certain low-income set-aside requirements.

*Exempt Facility Bonds.* These are bonds issued by for-profit developers for facilities that have a public purpose (for example, solid waste recycling centers or airports).

*Qualified 501(c)(3).* These are bonds issued for the benefit of nonprofit entities that have received a 501(c)(3) determination from the IRS. Bonds may be issued for a broad range of activities, reflecting the various missions of nonprofit corporations, including low-income housing, health care facilities, nursing homes, and educational facilities.

Bonds for manufacturing facilities, certain exemption facilities, and for-profit housing require an allocation of bond-issuing authority from the State. In some years, the entire allocation is distributed in January or February, and no further bond financing for these types of facilities is available until the following year.

Qualified 501(c)(3) bonds do not require a state allocation. The principal amount of these bonds is included along with the City’s own governmental bonds in calculating the $10 million annual limit for issuance of “bank qualified bonds.” Bank qualified bonds are so called because banks may purchase them with more favorable tax treatment. Such bonds have a broader market, and therefore carry slightly less interest rates. The City prefers to issue its governmental bonds as “bank qualified,” and therefore must evaluate the potential impact of any qualified 501(c)(3) bonds on the issuance of other city bonds planned in any year.
Policy Number 2.5
Tax Exempt Financing for Industrial Development, Health Care Facilities, and Multi-Family Housing, and 501 (c)(3) Projects (Private Activity Tax Exempt Financing)

Purpose of Policy: This policy establishes factors that guide the city council in consideration of applications for tax exempt financing for industrial development, health care facilities, and multi-family housing developments, and qualified 501 (c)(3) projects.

Introduction
Under the Minnesota Municipal Industrial Development Act, Minnesota Statutes Sections 469.152 to 469.165 (the “IDR Act”), the city of Minnetonka has the authority to issue industrial development and health care facility bonds or notes to attract or promote economically sound industry, commerce, and health care in the city.

Under Minnesota Statutes, Chapter 462C (the “Housing Act”), the city is authorized to issue housing revenue bonds to finance multi-family residential housing projects for low and moderate income persons and elderly persons. Projects must be embodied in a Housing Program, as defined in the Housing Act.

Additionally, the city may issue tax exempt financing for qualified 501 (c)(3) entities for various project types including housing, health care, nursing homes and educational facilities.

The council is aware that such financing for certain private activities may be of benefit to the city and will consider requests for tax exempt financing subject to this council policy. The council considers tax exempt financing to be a privilege, not a right.

It is the judgment of the council that tax exempt financing is to be used on a selective basis to encourage certain development that offers a benefit to the city as a whole, including significant employment and housing opportunities, as well as for those projects that may be carried out through a qualified non-profit organization. It is the applicant’s responsibility to demonstrate the benefit to the city, both in writing and at the public hearing(s). The applicant should understand that although approval may have been granted previously by the city for the issuance of financing for a similar project or a similar debt structure, the council is not bound by that earlier approval. Each application will be judged on the merits of the project as it relates to the public purpose of the Housing Act or the IDR Act and benefit to the city at the time the request for financing is being considered.

Part A: Standards
Applications must meet all of the following standards to be eligible for consideration:

- At the time of any application for a guide plan amendment, rezoning or site plan approval for a project, whichever occurs first, the applicant must divulge that private activity tax exempt financing will be requested.
• The project must meet the objectives of and be otherwise consistent with the IDR Act or the Housing Act and any other controlling laws.

• The projects must comply with all applicable federal, state, regional, and city laws, including compatibility with the Comprehensive Guide Plan and the development plans and objectives of the city, as well as applicable zoning and land use regulations and ordinances.

• A project application requesting a public offering must provide reasonable assurance of security resulting in at least an A rating.

• A project application must demonstrate equity participation of at least 10 percent of the total project cost in the form of cash or depreciable assets, financial feasibility and adequate bondholder security through credit enhancement, rating or a financial review by a third party accounting firm or the city’s financial advisor.

• Industrial and health care projects must not be speculative, i.e., they must either be for the applicant’s sole use or 60 percent of the square footage must be pre-leased.

• The total principal amount of tax-exempt obligations for a single project will be limited to the sum of the following hard costs:
  — Land (not more than 25 percent of the issue), and
  — New construction or existing building improvements for a new, redeveloped, or expanded business.

• Working capital and bond reserves will not be financed by tax exempt obligations. The following costs will normally not be financed by tax exempt obligations unless land costs have been financed by the applicant, and then only to the extent of the value of the land:
  — Architectural, legal, engineering and other professional fees.
  — Working capital and bond reserves.
  — Interest during construction.
  — Underwriting and brokerage fees.

Capital equipment purchases will not be financed, except when determined by the council to be essential to a new, redeveloped, or expanded business or health care facility.

• The principal amount of the tax-exempt obligations will be limited to the sum of costs that are financeable with tax-exempt obligations under state and federal law. The proceeds of the tax-exempt obligations cannot be used for working capital.
expenditures. Capital equipment may be financed with the proceeds of tax-exempt obligations only if the City Council finds the equipment to be essential to the new, redeveloped or expanded business.

Those applications which exceed the minimum standards will generally be considered more favorably than those which only meet these standards.

**Part B: Additional Review Standards**
Those applications meeting all of the standards listed above will be further reviewed to determine compliance with the following additional review standards. Applications meeting more of the following standards will generally be considered before those which just meet some of them or meet them less extensively:

- Facilitation of the city’s development or redevelopment objectives.
- The number and type of additional jobs created or retained in the city.
- For housing projects, the number, type and affordability of new or newly available housing units.
- The projected increase in property tax revenue.
- The amount of equity participation above 10 percent.
- The quality of the project, as represented by renderings, site plans, the applicant’s record of development, etc.
- The project’s impact on additional city services.
- For projects located outside of the city, the benefit the project brings to the region, including the number of Minnetonka residents and/or businesses served.

The view of individuals and businesses expressed at the public hearing(s) on the project will also be considered.

**Part C: Other Provisions**
- A project will not normally be given preliminary approval until all city planning and zoning requirements have been met and all related permits and approvals have been issued. Planning and zoning matters may be considered simultaneously with preliminary approval of the project.
- City officials will not deliver documents for the issuance of tax exempt obligations until all required fees have been paid by the applicant to the city and special counsel to the city has issued a favorable opinion on those matters for which special counsel is responsible.
- The council resolution giving preliminary approval to a project must specify:
- That the approval given terminates **one year at the end of the calendar year** from the date of the resolution and may be renewed only upon request of the applicant.

- That the applicant agrees to pay all required fees and reimburse the city for any and all costs incurred by it in the financing.

- That the city reserves the right in its sole discretion to withdraw the preliminary approval at any time prior to the issuance of tax exempt obligations for the project upon its determination that the purposes of the appropriate Act and this policy would not be served thereby, or if any material misstatement is made. The council's decision on this matter is uncontestable.

- The director of community development, under the direction of the city manager, is responsible for the administration and processing of applications for tax exempt financing. The director of community development is to prepare and revise, from time to time, necessary application forms and informational material in order to carry out the objectives of the policy.

- The following fees for the processing of applications are established:
  - A non-refundable application fee of $3,500, and
  - An administrative fee equal to one-eighth of one percent (0.125%) of the principal amount of the bonds. The application fee must accompany the original application. The administrative fee must be paid at or prior to delivery of the bonds to the original purchaser. The proceeds of the administrative fee must be deposited in a special fund of the city to be used to defray administrative costs of the city in the administration of private activity financing. **All fees are subject to Federal arbitrage rules.**

- The applicant must select a financial advisor reasonably acceptable to the city or an underwriter to assist the applicant in preparing all necessary application documents and materials. The financial adviser will subject a letter that establishes the financial feasibility of the project. Applications may, in the alternative, include a signed letter from a responsible financial institution or underwriter indicating that the project is economically feasible and viable and stating that bonds can be successfully sold for the project or that an individual or institution intends to purchase all of the bonds.

  The applicant must receive approval from the appropriate state agencies, secure financing by the end of the calendar year in which approval was given and commence construction within one year of the date of the resolution giving preliminary approval to the project or the housing program. Upon application, the council may approve an extension of the preliminary approval.

- The city is to be reimbursed and held harmless for any out-of-pocket expenses related to the tax exempt financing including, but not limited to, legal fees, financial analyst fees, bond counsel fees, and the city’s administrative expenses in connection
with the application. The applicant must execute a letter to the city undertaking to pay all such expenses even if they exceed the deposit.

**Part D: Miscellaneous Matters**

**Refundings**
The council will approve the refunding of a tax-exempt issue only upon a showing by the applicant of substantial debt service savings and/or the removal of bond covenants significantly impairing the financial feasibility of the project.

For each application for refunding, the non-refundable application fee must be paid together with any city expenses in excess of that fee. If the administrative fees listed in paragraph 5 of Part C were paid for the original bond issue, no new administrative fees are required. If the administrative fees were not paid for the original bond issues, they must be paid for the refunding issue.

**Subsequent Proceedings**
Where changes to the underlying documents or credit facilities of outstanding bond issues are to be made and require council action, no administrative fee is charged but a non-refundable fee of $2,500 must be deposited with the city to cover administrative costs. No formal application form is required.

**Arbitrage and Reporting**
The city must be copied on any reporting to bondholders and/or trustees that the borrower produces. The borrower must also undertake arbitrage calculations every five years or more often if required for legal compliance, and copy the city with these calculations.

**IRS Examination/Audit**
If the borrower is subject to an IRS examination/audit on the tax exempt financing, the city's bond counsel must be involved in a timely fashion on any responses to IRS inquiries. The borrower will reimburse the city for any costs the city occurs related to the examination/audit.

**Issue by Another Political Subdivision (Host Approval)**
The city will consider requests for approval of tax exempt financing by another political subdivision for projects located in the city of Minnetonka by other political subdivisions. In these cases, a non-refundable application fee of $250 must be paid and all procedures followed through the approval of the preliminary resolution. No administrative fee is charged.

**City as Issuer for Another Political Subdivision**
The city may consider requests for tax exempt financing for projects located in another political jurisdiction when host approval must first be given by the jurisdiction in which the project is located. All projects must meet the city's standards as deemed applicable by the Community Development Director, and application and administrative fees will be collected as called out in Part C.
Deadlines
The council conducts all tax exempt financing matters at regularly scheduled council meetings generally held on the second and fourth Monday of each month. Documents for council consideration must be at the city office ten days preceding the council meeting at which the matter is to be considered. No exceptions to this requirement will be made. In the case of a publicly offered bond issue, the documents, when submitted, may specify a maximum price and maximum effective interest rate if prices and rates have not yet been established.

Public Hearings
Published and mailed notice of any required public hearing may be set and arranged administratively by city staff.

Economic Development Authority as Issuer
Regarding any tax exempt financing for which the Minnetonka Economic Development Authority (EDA) is to be the issuer, the EDA is to follow the adopted council policy applicable to such financing.

Adopted by Resolution No. 84-7547
Council Meeting of August 6, 1984

Adopted by Resolution No. 84-7563
Council Meeting of August 27, 1984

Amended by Council Motion
Council Meeting of November 18, 1985

Amended by Resolution No. 97-104
Council Meeting of July 28, 1997

Amended by Resolution No. 2003-077
Council Meeting of August 25, 2003

Amended by Resolution No. 2015-XXX
Council Meeting of March 23, 2015
Resolution no. 2015-

Resolution amending Council Policy 2.5 regarding Tax Exempt Financing for Industrial Development, Health Care Facilities, and Multi-Family Housing Projects (Private Activity Tax Exempt Financing)

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

Section 1. Background.

1.01. On August 6, 1984 the city council adopted the first council policy on tax exempt financing for industrial development, health care facilities and multi-family housing projects in order to provide standards and provisions to be considered when reviewing requests for this type of financing.

1.02. Periodically, the policy has been revised, with the last significant amendment in 1997.

1.03. With continued requests for tax exempt financing and changes in the way projects are financed the council policy was reviewed and updated.

Section 2. Council Action.


Adopted by the City Council of the City of Minnetonka, Minnesota, on March 23, 2015.

________________________________________
Tim Bergstedt, Acting Mayor

Attest:

________________________________________
David E. Maeda, City Clerk
Action on this resolution:

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

Certified Copy:

I certify that the foregoing is a correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a meeting held on March 23, 2015.

_____________________________________
David E. Maeda, City Clerk
Brief Description: Items related to Council Policy 11.6 – Use of the Burwell Property

Recommended Action: Approve a moratorium on private use of the Burwell site

Background

In 1981 Council Policy 11.6 – Use of the Burwell Property was adopted establishing the conditions for use and reservation guidelines for the Burwell property. The property is classified as parkland and has the designation as a National Historic Site. The home (restored to its 1894 condition), adjacent structures and related grounds are the primary focus of this policy. Since its establishment and last amendment in 2003, a number of significant improvements have occurred to the property and surrounding parkland.

Several willing open space acquisitions have occurred which have expanded the size of the park to its current 16 acres, more than half of which is passive. The area has been under natural resource stewardship for invasive species since 2005 and was a focus of the Upper Minnehaha Creek Corridor initiative that began in 2009.

The improvements, which have resulted in the park area now referred to as Minnetonka Mills Park, consisted of additional boardwalk paths, seating areas, garden areas, access points to the creek and a bridge crossing. These now provide for a stronger connection to Minnehaha Creek and the historic property. The improvements have been extremely well received, and both public visits to the park and guided tours have increased exponentially.

Along with the growth in public use, staff has received an increase in requests for private use of the site—primarily weddings and wedding receptions. Prior to the improvements fewer than three private use requests were received annually and were typically small-scale events requiring minimal city resources, often handled by volunteer tour guides. Most recent permit applications have primarily been to host weddings at the site for groups and include requests to install tents, amplify music, serve alcohol and provide logistical coordination with surrounding institutions to utilize cross parking agreements.

Because the policy did not anticipate such intensive use requests, staff asks the council to consider implementing a one-year moratorium on private use of the site. This moratorium would allow staff to conduct an analysis of the type, size and scope of private use of the site that would not conflict with its surroundings. Once that analysis has been completed and the logistical roles of providing for reservations, event coordination and site support can be determined, proposed amendments to the policy
would be reviewed by the park board. Other housekeeping updates will also be considered during this timeframe. Proposed amendments to the policy will then be presented for council consideration. This moratorium would not impact current public or city-sponsored event use of the site.

**Recommendation**

The city council is requested to approve a one-year moratorium on the private use of the Burwell site, City Council Policy 11.6, until amendments to the policy can be presented for consideration.

Submitted through:
- Geralyn Barone, City Manager
- Perry Vetter, Assistant City Manager

Originated by:
- Jacque Larson, Communications Manager
Policy Number 11.6
Use of the Burwell Property

Purpose of Policy: This policy establishes conditions for use of and reservations for the Burwell property.

Introduction
This policy applies to the city-owned property known as the Burwell property, consisting of buildings and land generally located at 13209 McGinty Road.

Burwell Park
The property is designated as "City of Minnetonka Parkland" with the additional designation of "National Historic Site." Because of its unique historical nature, the property is not a typical city park and is not a traditional public forum. Public use of the property is limited to uses that do not detract from that historical nature.

Burwell Park Grounds
The Burwell Park grounds will be open and available to the general public for passive recreational activities such as small picnics and the enjoyment of Minnehaha Creek. The grounds are a designated public forum only for those limited purposes. Any other use of the site requires advance permission.

Burwell Structures
The Burwell buildings are non-public forums and may only be used with advance permission. This is necessary to protect the physical and historical integrity of these structures.

Decision-Making
The city recognizes the joint interests in the Burwell property of its city council, community heritage commission (CHC), park board, and the Minnetonka Historical Society (MHS). The city council has designated the CHC as the lead agency for making recommendations to the city council concerning use of this site. In making this designation, the city council likewise charges the CHC to ensure the involvement of MHS and the park board in decisions related to the site. All significant restoration plans and physical improvements must be approved in advance by the city council. Staff may proceed with emergency or routine maintenance without prior city council approval.

Site Use Policy
The city council places strong emphasis on protection of this site and the safety of visitors and staff. The CHC is responsible for preparing and recommending the site use policy for the Burwell site. A copy of this policy is attached as Appendix A. The council will receive an annual update on site usage.

Rules and Regulations
All other park rules and regulations of the city which are not inconsistent with the above will apply to Burwell Park.
Adopted by Resolution No. 81-6537  
Council Meeting of April 20, 1981

Amended by Resolution No. 94-9770  

Amended by Resolution No. 2002-060  
Council Meeting of June 24, 2002

Amended by Resolution No. 2003-077  
Council Meeting of August 25, 2003

Appendix A follows
APPENDIX A
Burwell Site Use Policy

Responsibility
The Minnetonka city clerk’s office is the primary agency responsible for the use of the Burwell site. They will maintain the site calendar and be responsible for administering this policy.

Public Use
The city of Minnetonka and the Minnetonka Historical Society (MHS) may use the Burwell site for public education, tours, and the staging of events. MHS must contact the city clerk’s office to reserve the dates for its intended use of the site to ensure there are no scheduling conflicts.

The site will be open for public tours from June 1 through September 30, with days and times set by the city clerk’s office each year.

Private Uses
Permits are available for private use of the Burwell site for events such as weddings and receptions. Permits grant the user non-exclusive use of the site. Permits are required for groups of 25 or more. Users must understand that the site is a public park with multiple access points, including Minnehaha Creek, so there may be other users of the park at any time.

- **Written Applications for Permits** – Applications for private uses must be made in writing, on forms provided by the city, and be received by the city at least three weeks in advance of the desired date of use. Residents may apply 18 months in advance of their event; non-residents within 12 months.

- **Fees for Private Use of the Site**
  - Non-refundable reservation fee $100
  - Damage deposit 200
  - User Fee:
    - Minnetonka Resident 200
    - Non-resident 275

  (For example, a Minnetonka resident would pay $300 and post a damage deposit.)

  In addition, permit holders must reimburse the city at the rate of $25/hour for a staff person to be present at the site when the interior of the cottage will be accessed. Permit holders must also hire off-duty Minnetonka police staff to direct traffic when off-site parking is used. The officers must be present one-half hour before and one-half hour after guests are scheduled to arrive. Additional fees will apply if liquor will be served (see below).

- **Application Review Criteria** – The city clerk’s office will use the following criteria to evaluate applications for private use:
- The permitted use may not interfere with the public tour program or conflict with any other scheduled use.

- No more than one event may be scheduled within any one calendar week in order to minimize negative impacts to the site.

- The intended use must not negatively impact the site.

- Because the site offers only minimal parking, the permit holder must have written permission for alternative parking.

- The site may not be used for fundraising or profit making enterprises by organizations other than the city and MHS.

If the proposed use is deemed appropriate by the city clerk, a permit will be issued. In any case, the applicant will be notified within 10 business days of receipt of the application of the application's disposition.

• **Rules** – In addition to the standard rules for Minnetonka parks, the following rules and provisions apply to private use of the Burwell site:

  - Use of the site will not extend beyond 10 hours, and must occur between 10:00 a.m. and 8:00 p.m.

  - Use of tents, canopies, tables, and chairs is subject to prior review and approval by city staff. Staff will consider the following criteria in this review: size, means by which the items will be secured to the ground, and potential damage to the site. No overnight storage is available or allowed. All equipment, including tents or canopies, must be brought in and set up during the permit time period. The city will not be responsible for any damage to or loss of equipment brought to the site by others.

  - Private uses must be limited to 100 people or less.

  - Permit holders may only use the interior of the cottage for permitted uses. The house, workshop and woodshed are not available for private use. Parties wishing interior tours of the house as part of their event must make specific pre-arrangements. With prior approval from the city, the southeast porch may have limited use.

  - Users must not cut or trim plantings, nor may they use paint, tape, nails, staples or screws to affix items to the structure or trees.

  - Running water and a handicapped accessible restroom are available in the cottage.

  - Electric power is available on site. Applicants must provide a list of appliances and/or equipment for which power is needed. These items are subject to staff review and approval.
- Applicants must submit a site plan with their permit application describing where food and beverages will be served, as well as the placement of tables, chairs, and other equipment.

- Motor vehicles may not be operated in any area outside the driveway and parking lot surfaces.

- Arrangements for approval of PA systems must be made through the city’s recreation services department.

- Birdseed may be thrown at weddings, but no other substances may be thrown.

- There are no indoor alternatives at this site. Permit holders are responsible for their own alternate plans.

- If food will be served, the responsible party or the caterer must provide a current catering license to the city. If a non-licensed caterer will be used, a certificate of liability insurance as proof of liability coverage in the amount of $500,000 or more must be provided. This documentation must be received no later than 10 business days prior to the event.

- The use and/or serving of alcoholic beverages is allowed only under the approval of the city by special permit, with an additional fee of $100 and a proof of liability insurance acceptable to the city. Permits will be granted only for beer, or white or blush wine in non-glass containers. Permits will be issued only to groups of 25 or more people. Alcoholic beverages may be possessed and consumed only in areas designated on the site plan. The person responsible for the gathering must remain on the premises at all times that alcohol is being served, must have the special permit in possession, and must display it upon the request of authorized city personnel. Alcohol may not be sold on the site, and servers may not accept gratuities.

- Applicants for permits must provide a signed waiver of liability of the city for damage or injury, and an acceptance of responsibility for any damage to the property occurring as a result of the use of the site. The waiver must be on the city’s form and must be received by the city within ten business days of the intended use.

- The damage deposit will be refunded within 30 days of the event, provided the permit holder causes no damage to the site or structures, and leaves the site and structures in the same condition as when the permit holder arrived at the site (for example, the cottage and site must be clean and the garbage removed).

- **Variance** – The city clerk has discretion to grant variances to this policy provided such variances are in keeping with the spirit of the policy and pose no threat to the historical integrity of the site.
City Council Agenda Item #10D
Meeting of March 23, 2015

Brief Description: Labor agreement between the city of Minnetonka and International Union of Operating Engineers, Local No. 49

Recommended Action: Approve the agreement

Background

Staff has negotiated a labor agreement with the International Union of Operating Engineers (IUOE) Local No. 49, AFL-CIO, which represents the city’s public works staff.

City staff and Local 49 representatives have reached agreement on a three-year contract for 2015 – 2017, the union employees have ratified it, and the city council is requested to approve it. Major changes to the existing labor agreement are described below, and more specifically all amendments can be found in the attached agreement.

Article VII – Employee Rights – Grievance Procedure

The 2014 Minnesota Legislative Session resulted in legislation enacting a Public Employment Relations Board to hear unfair labor practice claims under the Public Employee Relations Act. This board provides an alternate dispute forum to arbitration, which can be extremely costly for all parties involved. Section 7.7 of the contract contains updates to reflect the option of pursuing this forum as well the ability to pursue in a data practices forum, reflective of a recent court decision. This language also includes the requirement that an employee pursing a grievance select one choice of remedy and not multiple venues.

Article VIII – Savings Clause

The savings clause provision update is intended to also acknowledge decisions such as the Public Employee Relations Board, and not just decisions of the court system.

Article XIV – Preshift Premium

When an employee is called into work prior to their regularly scheduled time a preshift premium is applied to their hourly wage. In 2015 the premium remains the same at $5.00 per hour and increases $1.00 per year, resulting in $6.00 in 2016 and $7.00 in 2017. The qualifications of when this premium is applied as additional compensation have been removed, to better reflect the city’s commitment to maintain a work-life balance for employees paged in during off hours.
Article XVI – Vacation

Updates to this section reflect past practice and is consistent for all employee groups. The changes are housekeeping in nature.

Article XVII – Severance Pay

Included in this contract is revised language related to the city’s severance policy that clarifies PERA eligibility. This language is consistent for all employee groups.

Article XXVI – Insurance

The city’s contribution to the employee’s cafeteria benefits program increased in 2015 from $765 to $830 dollars per month. The health insurance portion of the contract remains open for negotiating 2016 and 2017 contributions.

Language specific to the Affordable Care Act has been added to the contract to allow the health insurance provisions in the contract to be opened should the need arise to address any issue related to the federal mandate.

Appendix A – Wages

In 2015 and 2016, the base wage increase is 1% and in 2017 the base wage increase is 1.5%. As part of the city’s MERIT program, a market analysis is conducted annually. If rates are found to be lower than the market comparison group, employees receive a market adjustment. In 2015, the market adjustment is 0.37%, for a total wage increase of 1.37%.

The Skills Based Pay program requires cross training and continuous employee development. The hourly increment paid has remained unchanged since first instituted in 2007. This contract provides for increases of $0.25 per hour in 2015 and an additional $0.25 in 2016. The departmental performance pay increases from 1.0% annually to 1.5% annually, consistent with the other employee groups that are eligible and have a skills related program in their contract.

Several changes are made to reflect recent decisions related to public employee eligibility. The first is the creation of a Public Employee Support Worker classification and defining which articles those support workers are eligible for under the provisions of the contract.

To better reflect the demands that monitoring and troubleshooting our facilities have on the Building Maintenance Technicians, they will now be eligible for standby pay when
assigned as the Acting Foreman for the division. Due to the increase of technology in the facility areas the frequency of call outs for service have decreased as more can be solved using mobile options rather than physically returning to the building. This provision will better position the city to comply with Fair Labor Standards Act in these cases.

**Recommendation**

The city council is requested to approve the 2015 – 2017 labor agreement between the city of Minnetonka and the International Union of Operating Engineers, Local No. 49, AFL-CIO. This agreement allows the city to maintain a competitive salary and benefit package, as well as keep benefits standardized across employee groups.

Submitted through:
- Geralyn Barone, City Manager
- Perry Vetter, Assistant City Manager

Originated by:
- Moranda Zimmer, Administration Intern
LABOR AGREEMENT BETWEEN THE
CITY OF MINNETONKA AND
INTERNATIONAL UNION OF OPERATING ENGINEERS (IUOE)
LOCAL NO. 49, AFL-CIO

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LABOR AGREEMENT BETWEEN
THE CITY OF MINNETONKA AND
INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL NO. 49, AFL-CIO

ARTICLE I - PURPOSE OF AGREEMENT

This Agreement is entered into between the City of Minnetonka, hereinafter called the Employer, and Local No. 49, International Union of Operating Engineers, AFL-CIO, hereinafter called the Union.

The intent and purpose of this Agreement is to:

1.1. Establish certain hours, wages, and other conditions of employment;
1.2. Establish procedures for the resolution of disputes concerning this Agreement's interpretation and/or application;
1.3. Specify the full and complete understanding of the parties; and
1.4. Place in written form the parties’ agreement upon terms and conditions of employment for the duration of this Agreement.

The Employer and the Union, through this Agreement, continue their dedication to the highest quality of public service. Both parties recognize this Agreement as a pledge of this dedication.

ARTICLE II - RECOGNITION

The Employer recognizes the Union as the exclusive representative for all employees in the job classifications listed below who are public employees within the meaning of Minnesota Statute 179A.03, Subdivision 14, excluding supervisory, confidential, and all other employees.
ARTICLE III - DEFINITIONS

3.1. **Union**: The International Union of Operating Engineers, Local No. 49, AFL-CIO.

3.2. **Employer**: The individual municipality designated by this Agreement.

3.3. **Union Member**: A member of the International Union of Operating Engineers, Local No. 49, AFL-CIO.

3.4. **Employee**: A member of the exclusively recognized bargaining unit.

3.5. **Base Pay Rate**: The employee's hourly pay rate exclusive of longevity or any other special allowance.

3.6. **Seniority**: Length of continuous service in any of the job classifications covered by ARTICLE II, RECOGNITION. Employees who are promoted from a job classification covered by this Agreement and return to a job classification covered by this Agreement shall have their seniority calculated on their length of service under this Agreement for purposes of promotion, transfer, and lay off, and total length of service with the Employer for other benefits under this Agreement.

3.7. **Severance Pay**: Payment made to an employee upon honorable termination of employment.

3.8. **Overtime**: Work performed at the express authorization of the Employer in excess of either eight (8) hours within a twenty-four (24) hour period (except for shift changes) or more than forty (40) hours within a seven (7) day period.
3.9. **Call Back**: Return of an employee to a specified work site to perform assigned duties at the express authorization of the Employer at a time other than an assigned shift. An extension of or early report to an assigned shift is not a call back.

**ARTICLE IV - UNION SECURITY**

In recognition of the Union as the exclusive representative, the Employer shall:

4.1. Deduct each payroll period an amount sufficient to provide the payment of dues established by the Union from the wages of all employees authorizing in writing such deduction, and

4.2. Remit such deduction to the appropriate designated officer of the Union.

4.3. The Union may designate certain employees from the bargaining unit to act as stewards and shall inform the Employer in writing of such choice.

4.4. The Union agrees to indemnify and hold the Employer harmless against any and all claims, suits, orders, or judgments brought or issued against the City as a result of any action taken or not taken by the City under the provisions of this Article.

**ARTICLE V - EMPLOYER SECURITY**

The Union agrees that during the life of this Agreement it will not cause, encourage, participate in or support any strike, slow down, other interruption of or interference with the normal functions of the Employer.

**ARTICLE VI - EMPLOYER AUTHORITY**

6.1. The Employer retains the full and unrestricted right to operate and manage all manpower, facilities, and equipment; to establish functions and programs; to set and amend budgets; to determine the utilization of
to establish and modify the organizational structure; to select, direct and determine the number of personnel; to establish work schedules; and to perform any inherent managerial function not specifically limited by this Agreement.

6.2. Any term and condition of employment not specifically established or modified by this Agreement shall remain solely within the discretion of the Employer to modify, establish, or eliminate.

ARTICLE VII - EMPLOYEE RIGHTS - GRIEVANCE PROCEDURE

7.1. Definition of Grievance - A grievance is defined as a dispute or disagreement as to the interpretation or application of the specific terms and conditions of this Agreement.

7.2. Union Representative - The Employer will recognize representatives designated by the Union as the grievance representatives of the bargaining unit having the duties and responsibilities established by this Article. The Union shall notify the Employer in writing of the names of such Union representatives and of their successors when so designated.

7.3. Processing of a Grievance - It is recognized and accepted by the Union and the Employer that the processing of grievances as hereinafter provided is limited by the job duties and responsibilities of the employees and shall therefore be accomplished during normal working hours only when consistent with such Employee duties and responsibilities. The aggrieved employee and the Union Representative shall be allowed a reasonable amount of time without loss in pay when a grievance is investigated and presented to the Employer during normal working hours provided the employee and the Union Representative have notified and received the approval of the
designated supervisor who has determined that such absence is reasonable and would not be detrimental to the work programs of the Employer.

7.4. **Procedure** - Grievances, as defined by Section 7.1, shall be resolved in conformance with the following procedure:

**Step 1.** An employee claiming a violation concerning the interpretation or application of this Agreement shall, within twenty-one (21) calendar days after such alleged violation has occurred, present such grievance to the employee's supervisor as designated by the Employer. The Employer designated representative will discuss and give an answer to such Step 1 grievance within ten (10) calendar days after receipt. A grievance not resolved in Step 1 and appealed to Step 2 shall be placed in writing setting forth the nature of the grievance, the facts on which it is based, the provision or provisions of the Agreement allegedly violated, and the remedy requested and shall be appealed to Step 2 within ten (10) calendar days after the Employer designated representative's final answer in Step 1. Any grievance not appealed in writing to Step 2 by the Union within ten (10) calendar days shall be considered waived.
**Step 2.** If appealed, the written grievance shall be presented by the Union and discussed with the Employer designated Step 2 representative. The Employer designated representative shall give the Union the Employer's Step 2 answer in writing within ten (10) calendar days after receipt of such Step 2 grievance. A grievance not resolved in Step 2 may be appealed to Step 3 within ten (10) calendar days following the Employer designated representative's final Step 2 answer. Any grievance not appealed in writing to Step 3 by the Union within ten (10) calendar days shall be considered waived.

**Step 3.** If appealed, the written grievance shall be presented by the Union and discussed with the Employer designated Step 3 representative. The Employer designated representative shall give the Union the Employer's answer in writing within ten (10) calendar days after receipt of such Step 3 grievance. A grievance not resolved in Step 3 may be appealed to Step 4 within ten (10) calendar days following the Employer designated representative's final answer in Step 3. Any grievance not appealed in writing to Step 4 by the Union within ten (10) calendar days shall be considered waived.

**Step 4.** A grievance unresolved in Step 3 and appealed in Step 4 shall be submitted to the Minnesota Bureau of Mediation Services. A grievance not resolved in Step 4 may be appealed to Step 5
within ten (10) calendar days following the Employer's final answer in Step 4. Any grievance not appealed in writing to Step 5 by the Union within ten (10) calendar days shall be considered waived.

**Step 5.** A grievance unresolved in Step 4 and appealed in Step 5 shall be submitted to arbitration subject to the provisions of the Public Employment Labor Relations Act of 1971, as amended. The selection of an arbitrator shall be made in accordance with the "Rules Governing the Arbitration of Grievances" as established by the Public Employment Relations Board.

7.5. **Arbitrator’s Authority**

A. The arbitrator shall have no right to amend, modify, nullify, ignore, add to, or subtract from the terms and conditions of this Agreement. The arbitrator shall consider and decide only the specific issues submitted in writing by the Employer and the Union, and shall have no authority to make a decision on any other issue not so submitted.

B. The arbitrator shall be without power to make decisions contrary to, or inconsistent with, or modifying or varying in any way the application of laws, rules, or regulations having the force and effect of law. The arbitrator’s decision shall be submitted in writing within thirty (30) days following the close of the hearing or the submission of briefs by the parties, whichever be later, unless the parties agree to an extension. The decision shall be binding on both the
Employer and the Union and shall be based solely on the arbitrator's interpretation or application of the express terms of this Agreement and to the facts of the grievance presented.

C. The fees and expenses for the arbitrator's services and proceedings shall be borne equally by the Employer and the Union provided that each party shall be responsible for compensating its own representatives and witnesses. If either party desires a verbatim record of the proceedings, it may cause such a record to be made, providing it pays for the record. If both parties desire a verbatim record of the proceedings, the cost shall be shared equally.

7.6. **Waiver** - If a grievance is not presented within the time limits set forth above, it shall be considered "waived". If a grievance is not appealed to the next step within the specified time limit or any agreed extension thereof, it shall be considered settled on the basis of the Employer's last answer. If the Employer does not answer a grievance or an appeal thereof within the specified time limits, the Union may elect to treat the grievance as denied at that step and immediately appeal the grievance to the next step. The time limit in each step may be extended by mutual agreement of the Employer and the Union.

7.7. **Choice of Remedy** – If the grievance involves the suspension, demotion, or discharge of an employee who has completed the required probationary period, and if, as a result of the Employer response in Step 4, the grievance remains unresolved, and
suspension, demotion, or discharge of an employee who has completed the required probationary period, if the grievance may be appealed either to Step 5 of ARTICLE VII or a procedure pursued in another forum such as: Civil Service, Veteran’s Preference, or Fair Employment, or Data Practices. Then, if appealed to any procedure other than Step 5 of ARTICLE VII the grievance is not subject to the arbitration procedure as provided in Step 5 of ARTICLE VII. The aggrieved employee shall indicate in writing which procedure is to be utilized: Step 5 of ARTICLE VII or another appeal procedure forum, and shall sign a statement to the effect that the choice of any other hearing forum precludes the aggrieved employee from making a subsequent appeal through Step 5 of ARTICLE VII.

ARTICLE VIII - SAVINGS CLAUSE

This Agreement is subject to the laws of the United States, the State of Minnesota, and the City of Minnetonka. In the event any provision of this Agreement shall be held to be contrary to law by a court of competent jurisdiction from whose judgment or decree no appeal has been taken within the time provided, such provision shall be voided. To the extent a provision of the contract is declared to the contrary to law by a court of final jurisdiction or administrative ruling or is in violation of legislation or administrative regulations, said provision shall be void and of no effect. All other provisions of this Agreement shall continue in full force and effect. The voided provision may be renegotiated at the request of either party.

ARTICLE IX - WORK SCHEDULES

9.1. The sole authority for establishing work schedules is the Employer. The normal work day for an employee shall be eight (8) hours. The normal work week shall be forty (40) hours Monday through Friday.
9.2. Service to the public may require the establishment of regular shifts for some employees on a daily, weekly, seasonal, or annual basis other than the normal 7:00 a.m. to 3:30 p.m. day. The Employer will give 48 hours advance notice to the employees affected by the establishment of work days different from the employee’s normal eight (8) hour work day.

9.3. In the event that work is required because of unusual circumstances such as, but not limited to, fire, flood, snow, sleet, or breakdown of municipal equipment or facilities, no advance notice need be given. It is not required that an employee working other than the normal work day be scheduled to work more than eight (8) hours; however, each employee has an obligation to work overtime or call backs if requested unless unusual circumstances prevent the employee from so working.

9.4. Service to the public may require the establishment of regular work weeks that schedule work on Saturdays and/or Sundays.

ARTICLE X - WAGES

10.1. During the term of this Agreement, the Employer shall pay to members of the bargaining unit wages in accordance with salary schedule attached as Exhibit A.

ARTICLE XI - OVERTIME PAY

11.1 Hours worked in excess of eight (8) hours within a twenty-four (24) hour period, except for shift changes, or more than forty (40) hours within a seven (7) day period, will be compensated for at one and one-half (1 - ½) times the employee’s regular base pay rate.

11.2. Overtime will be distributed as equally as practicable.
11.3. Overtime refused by employees will for record purposes under ARTICLE 11.2 be considered as unpaid overtime worked.

11.4. For the purpose of computing overtime compensation, overtime hours worked shall not be pyramided, compounded, or paid twice for the same hours worked.

ARTICLE XII - COMPENSATORY TIME

Non-exempt employees under the Fair Labor Standards Act shall be eligible for compensatory time in accordance with that act, subject to the following conditions:

12.1. Employees shall choose whether they want to have overtime pay or compensatory time by the end of the pay period in which it was earned.

12.2. No employee shall carry more than 40 hours accumulated compensatory time past the closest pay period ending date prior to November 15 of each year, except as permitted by the Employer. All accumulated compensatory time over 40 hours will be paid to the employee no later than the first paycheck dated on or after November 15 of each year.

12.3. The scheduling of compensatory time shall be at the reasonable discretion of the department director.

12.4. Cash payment for accumulated compensatory time may be taken at the employee's option, with approval of the department director.

12.5. The Employer or department director may prohibit the use of compensatory time.
ARTICLE XIII - CALL BACK

An employee called in for work at a time other than the employee’s normal scheduled shift will be compensated for a minimum of three (3) hours’ pay at one and one-half (1 1/2) times the employee’s base pay rate. Any call outs received during the three-hour time block are considered a continuation of the original call out and will be compensated as such.

ARTICLE XIV - PRESHIFT PREMIUM

Employees who are called to work prior to the starting time of the shift regularly assigned, due to performing snow and ice control operations, or due to utility emergencies, weather emergencies, or a cargo spill that creates a hazard, shall be compensated at a preshift premium of $4.00 $5.00 per hour ($5.00 $6.00 per hour beginning in 20132016; $7.00 per hour beginning in 2017) for the preshift hours worked, provided that when an employee qualifies for both overtime and preshift premium on the same shift, the preshift premium shall not be paid.

ARTICLE XV - HOLIDAYS

Regular full-time employees shall be provided twelve (12) paid holidays as follows:

- New Year’s Day: January 1
- Martin Luther King’s Birthday: Third Monday in January
- President’s Day: Third Monday in February
- Memorial Day: Last Monday in May
- Independence Day: July 4
- Labor Day: First Monday in September
- Veteran’s Day: November 11
- Thanksgiving Day: Fourth Thursday in November
- Day after Thanksgiving: The day after Thanksgiving
- Christmas Day: December 25
- Two (2) Floating Holiday’s: Two days shall be known as “floating holidays” and may be taken as holidays at the election of the employee with Employer approval, on any
day throughout the fiscal year in which granted, or be lost.

15.1. When New Year's Day, January 1; or Independence Day, July 4; or Christmas Day, December 25; falls on Sunday, the following day shall be a holiday, and provided, when New Year's Day, January 1; or Independence Day; July 4; or Christmas Day, December 25; falls on Saturday, the preceding day shall be a holiday.

15.2. Holidays will be administered in accordance with the posted Public Works Policy.

ARTICLE XVI - VACATION

16.1. a. Regular full-time employees hired prior to January 1, 1998 shall be eligible for earned vacation leave on the following basis:

From the beginning of continuous employment through the fifth (5th) year of continuous employment, each regular full-time employee shall earn vacation at the rate of five-sixths (5/6) of a day per month or ten (10) working days per year.

From the sixth (6th) year and on through the fifteenth (15th) year of continuous employment, each employee shall earn vacation at the rate of one and one-fourth (1-1/4) days per month or fifteen (15) working days per year. From the sixteenth (16th) year and on through the twentieth (20th) year, each employee shall earn vacation at the rate of twenty (20) working days per year. From the twenty-first (21st) year on, each employee shall earn twenty-five (25) days.
b. Regular full-time employees hired after January 1, 1998 shall be eligible for earned vacation leave on the following basis:

From the beginning of continuous employment through the fifth (5th) year of continuous employment, each regular full-time employee shall earn vacation at the rate of five-sixths (\(\frac{5}{6}\)) of a day per month or ten (10) working days per year. From the sixth (6th) year through the tenth (10th) year of continuous employment, each employee shall earn vacation at the rate of one and one-fourth (1 1/4) days per month or fifteen (15) working days per year.

During each of the following years of continuous employment, each employee shall earn vacation at the rates as specified:

- 11th year: one and one-third (1 1/3) days per month or sixteen (16) working days per year.
- 12th year: one and four-tenths (1 4/10) days per month or seventeen (17) working days per year.
- 13th year: one and one-half (1 1/2) days per month or eighteen (18) working days per year.
- 14th year: one and six-tenths (1 6/10) days per month or nineteen (19) working days per year.
- From the fifteenth (15th) year of continuous service and on, each employee shall earn one and two-thirds (1 2/3) days per month or twenty (20) working days per year.

16.2. Accrual. Employees may accrue vacation leave not to exceed the following based on the employee's rate of vacation earned.
Rate of vacation earned | Maximum hours of accrued vacation leave
---|---
80 hours per year | 200 hours
120 hours per year | 225 hours
128-160 hours per year | 250 hours
200 hours per year | 275 hours

16.3. Vacation leave may be taken after approval by the Department Director and appointing authority. Employees may request to use earned vacation leave anytime after completion of the first six (6) months of the initial probationary period.

16.4. Any employee leaving the municipal service in good standing after giving proper notice of such termination of employment shall be compensated for vacation leave accrued and unused to the date of separation. Proper notice shall mean, "Written notice of at least ten-fourteen (10-14) days prior to date of termination."

16.5. Waiving Vacation Prohibited. As vacation leave is granted to employees for a period of recreation, no employee shall be permitted to waive such leave for the purpose of receiving double pay.

ARTICLE XVII - SEVERANCE PAY

17.1 To be eligible for severance pay, employees must be regular employees on the date of termination, and have a total of 10 years of continuous service as a regular employee. Severance pay is granted to eligible employees when they leave the municipal service in good standing for one of the following reasons:

A. Elimination of their classification or position by the city.
B. Retirement with immediate eligibility for an annuity from the Public Employees Retirement Association.

C.B. Separation from city employment when the employee is eligible, based on age and/or service requirements, for an annuity from the Public Employees Retirement Association whether or not the employee starts receiving those benefits.

D.C. Mandatory retirement or termination of employment due to health reasons, service-connected injury, illness or death. A letter from a physician is required to indicate an employee’s inability to perform essential functions of the job.

17.2 Employees are entitled to severance pay equal to the greater of:

A. Four weeks of appropriate pay plus one additional week of appropriate pay for each year of service beyond 10 years, not to exceed a total of 13 weeks appropriate pay at their basic rate of pay,

or

B. One-third of the employee's accumulated sick leave at their basic rate of pay the appropriate pay rate.

17.3 Employees eligible for severance pay in accordance with Section 17.1 who submit a written notice of separation from City employment at least three months prior to that separation and who do not revoke it will receive the amount of severance pay pursuant to the policy plus an additional ten percent of that amount.
ARTICLE XVIII - UNIFORMS
In accordance with policies developed at the sole discretion of the Employer, the Employer will provide uniforms for Union members.

ARTICLE XIX - LEGAL DEFENSE
19.1. Employees involved in litigation because of negligence, ignorance of laws, nonobservance of laws, or as a result of employee judgmental decision may not receive legal defense by the municipality.

19.2. Any employee who is charged with a traffic violation, ordinance violation or criminal offense arising from acts performed within the scope of the employee's employment, when such act is performed in good faith and under direct order of the employee's supervisor, shall be reimbursed for reasonable attorney's fees and court costs actually incurred by such employee in defending against such charge.

ARTICLE XX - RIGHT OF SUBCONTRACT
Nothing in this Agreement shall prohibit or restrict the right of the Employer from subcontracting work performed by employees covered by this Agreement.

ARTICLE XXI - DISCIPLINE
21.1. The Employer will discipline employees only for just cause.

21.2. An employee(s) will not be required to participate in an investigatory interview by the Employer where the information gained from the interview could lead to the discipline of the employee(s) unless the employee(s) is given the opportunity to have a third party present at the interview to act as witness for the employee(s).
ARTICLE XXII - SENIORITY

22.1. Seniority will be the determining criterion for transfers, promotions and layoffs only when all job relevant qualification factors are equal.

22.2. Seniority will be the determining criterion for recall when the job relevant qualification factors are equal. Recall rights under this provision will continue for twenty-four (24) months after lay off. Recalled employees shall have ten (10) working days after notification of recall by registered mail at the employee’s last known address to report to work or forfeit all recall rights.

ARTICLE XXIII - PROBATIONARY PERIOD

23.1. All newly hired or rehired employees will serve a twelve (12) month probationary period.

23.2. All employees will serve a twelve (12) month probationary period in any job classification in which the employee has not served a probationary period.

23.3. At any time during the probationary period a newly hired or rehired employee may be terminated at the sole discretion of the Employer.

23.4. At any time during the probationary period a promoted or reassigned employee may be demoted or reassigned to the employee’s previous position at the sole discretion of the Employer.

ARTICLE XXIV - SAFETY

The Employer and the Union agree to jointly promote safe and healthful working conditions, to cooperate in safety matters and to encourage employees to work in a safe manner.
ARTICLE XXV - JOB POSTING

25.1. The Employer and the Union agree that regular job vacancies within the designated bargaining unit shall be filled based on the concept of promotion from within provided that applicants:

A. Have the necessary qualifications to meet the standards of the job vacancy; and

B. Have the ability to perform the duties and responsibilities of the job vacancy.

25.2. Employees filling a higher job class based on the provisions of this ARTICLE shall be subject to the conditions of ARTICLE XXIII (PROBATIONARY PERIOD).

25.3. The Employer has the right of final decision in the selection of employees to fill posted jobs based on qualifications, abilities, and experience.

25.4. Job vacancies within the designated bargaining unit will be posted for five (5) working days so that members of the bargaining unit can be considered for such vacancies.

ARTICLE XXVI - INSURANCE

26.1 For each benefit-earning employee electing health insurance coverage through the employer-sponsored cafeteria benefits program, the employer's contribution toward that employee's benefits program is $715.830 per month in plan year 2014-2015.

26.2 Each benefit-earning employee electing health insurance coverage through the employer-sponsored cafeteria benefits program and who participates in the employer-sponsored health initiative program, the...
employer's contribution toward that employee's benefits program is $815. receives $100 per month. Each benefit-earning employee who opts out of
the Employer sponsored cafeteria benefits program who participates in
the employer-sponsored health initiative program receives $50 per month
in plan year 20142015.

Insurance is open for negotiations in 20132016 and 20142017.

26.3. The Employer agrees to pay the full cost of a $35,000 life insurance policy
for each regular full-time employee.

26.4. The Employer will provide employees with Long Term Disability insurance
provided that a sufficient number of employees enroll to meet the insurer's eligibility requirements. The cost of the insurance will be paid through
deductions in each employee's accrued sick leave account of hours of time
sufficient to provide for the payment of premiums.

26.5 In the event the health insurance provisions of this Agreement fail to meet the
requirements of the Affordable Care Act and its related regulations or cause
the Employer to be subject to a penalty, tax or fine, the Union and the Employer will meet immediately to bargain over alternative provisions.

ARTICLE XXVII - RETIREE HEALTH SAVINGS PLAN

Employees who qualify to receive severance pay upon retiring from the City, as defined by the Personnel Policy, must place 100% of their severance pay and unused vacation pay in their individual Retiree Health Savings Plan accounts at the time of retirement.

ARTICLE XXVIII - WAIVER

28.1. Any and all prior agreements, resolutions, practices, policies, rules and regulations regarding terms and conditions of employment, to the extent inconsistent with provisions of this Agreement, are hereby superseded.
28.2. The parties mutually acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any terms or conditions of employment not removed by law from bargaining. All agreements and understandings arrived at by the parties are set forth in writing in this Agreement for the stipulated duration of this Agreement. The Employer and the Union each voluntarily and unqualifiedly waives the right to meet and negotiate regarding any and all terms and conditions of employment referred to or covered in this Agreement or with respect to any term or condition of employment not specifically referred to or covered by this Agreement, even though such terms or conditions may not have been within the knowledge or contemplation of either or both parties at the time this contract was negotiated or executed.
ARTICLE XXIX - DURATION

This Agreement shall be effective as of December 23, 2014 and shall remain in full force and effect through December 18, 2017.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this __________ day of ________, ______.

International Union of Operating Engineers, Local No. 49, AFL-CIO:

_____________________________________ Business Agent

_____________________________________ Business Manager

_____________________________________ Union Steward

_____________________________________ Union Steward

_____________________________________ Union Steward

_____________________________________ Union Steward

City of Minnetonka:

_____________________________________ Terry Schneider, Mayor

_____________________________________ Geralyn Barone, City Manager
APPENDIX A
IUOE, LOCAL 49 Wages

1. The following positions will be in effect from the first payroll period for 2012 through the last payroll period in 2014.

<table>
<thead>
<tr>
<th>Position</th>
<th>Description</th>
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<tbody>
<tr>
<td><strong>Public Employee Support Worker (PESW)</strong></td>
<td><strong>Automotive Support Worker</strong></td>
</tr>
<tr>
<td>Public Service Worker I (PSW I)</td>
<td>Building Maintenance Custodian Utility Locator</td>
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<td>Public Service Worker II (PSW II)</td>
<td>Lead Building Maintenance Custodian Park Maintenance Worker Street Maintenance Worker Water &amp; Sewer Maintenance Worker Building Maintenance Technician Automotive Service Worker</td>
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<td>Public Service Worker III (PSW III)</td>
<td>Senior Building Maintenance Technician</td>
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<td>Public Service Worker IV (PSW IV)</td>
<td>Automotive Mechanic <strong>Automotive &amp; Equipment Welder/Welder/Fabricator</strong></td>
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<td>Public Service Worker V (PSW V)</td>
<td>Senior Water &amp; Sewer Maintenance Worker</td>
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<tr>
<td>Out of Class Positions</td>
<td>Acting Foreman Field Training Worker Crew Leader</td>
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2. The following wage schedule will be in effect from the first payroll period for 2012 through the last payroll period in 2014.
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<th>POSITION</th>
<th>STEP/DATE ELIGIBLE</th>
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<th>2016</th>
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For 2013-2016, the top 2012-2015 base pay rate for Minnetonka Public Service Workers will be multiplied by the negotiated base pay increase. Using 2012-2015 League of Minnesota Cities salary data for the listed below, the average weighted mean of these cities (excluding Minnetonka) will be multiplied by the negotiated base pay increase for 2013-2016. These two rates will be compared, and the higher of the two will be the 2013-2016 top pay rate for Minnetonka.
This same process will be repeated using 2013-2016 data to determine if there is a 2014-2017 market adjustment.

Minnesota cities included in the comparison are Brooklyn Park, Burnsville, Eagan, Eden Prairie, Edina, Lakeville, Maple Grove, Plymouth, St. Louis Park and Woodbury.

3. The minimum requirements for each of the steps in the wage schedule are as follows:

Progression from the starting salary through the top step of each classification based on actual months of service, demonstrated skill levels, and satisfactory performance.

4. Additional requirements:

A. Water and Sewer Maintenance Worker (PSW II):

   Employees must possess a Class D Operator's License.

B. Senior Building Maintenance Technician (PSW III):

   1. To be placed in Step 1 of the PSW III position, employees in this classification must possess a minimum of a Special Class Engineer Boiler's License; have completed 200 hours of authorized technical training; and have 30 months of Public Service Worker experience with the City of Minnetonka.

   2. To be placed in Step 2 of the PSW III position, employees in this classification must possess a minimum of a 2nd Class Boiler's License; have completed 400 hours of authorized technical training; and have 30 months of experience at PSW III, Step 1, with the City of Minnetonka.

C. Senior Water and Sewer Maintenance Worker (PSW V):

   1. To be placed in Step 1 of the PSW V position, employees must possess Class C Water Supply System Operator and Wastewater Treatment Facility Operator Licenses and have 30 months of water and sewer system and facility operator experience, at least 12 months of which must be with the City of Minnetonka.

   2. To be placed in Step 2 of the PSW V position, employees must possess Class B Water Supply System Operator and Wastewater Treatment Facility Operator Licenses and have six years of water and sewer system and facility operator experience, at least 24 months of which are with the City of Minnetonka.
3. To be placed in Step 3 of the PSW V position, employees must possess Class A Water Supply System Operator and Wastewater Treatment Facility Operator Licenses and have six years of water and sewer system and facility operator experience, at least 36 months of which are with the City of Minnetonka.

5. All employees who have completed Skills Based Pay (SBP) program requirements are eligible to receive the SBP hourly differential as outlined for each classification in the wage schedule of Appendix A. Employees receiving SBP must be recertified on a biannual basis in order to continue receiving said pay.

6. Employees classified in the Public Service Worker I position required by the Employer to operate a skid steer loader will be paid the Public Service Worker II pay rate, same step as their PSW I rate, for those hours assigned to the unit.

7. Employees classified in the Public Service Worker I position required by the Employer to perform duties requiring a State Boiler's Operator License will be paid the Public Service Worker II pay rate, same step as their PSW I rate, for those hours assigned said duties.

8. To be placed in Step 1 of the Public Service Worker II position, utility locators must possess a Class D water and sewer operator's license and have 18 months experience as a utility locator with the City of Minnetonka. This is the top step of the utility locator classification.

9. Employees classified in the Public Service Worker I, II, III or IV position who are assigned to perform Public Service Worker IV – Welder and Mechanic duties will be paid Public Service Worker IV – Mechanic and Welder, Step 4 pay and, if eligible as a Public Service Worker I, II, III, or IV, associated skills-based pay for those hours assigned to that duty.

10. For each seven-day period while serving in the "standby" status, the Lead Building Maintenance Custodian will be compensated by receiving a total of three hours of overtime pay for that one-week period.

11. Employees classified as Public Service Worker I, II, or III who are assigned by the Employer as an Acting Foreman shall be compensated at $0.90/hour above the Public Service Worker III, Step 2 wage for all the time they are assigned to that position. Employees classified as Public Service Worker IV who are assigned by the Employer as an Acting Foreman shall be compensated at $0.90/hour above the Public Service Worker IV, Step 4 wage for all the time they are assigned to that position. Employees classified as Public Service Worker V who are assigned by the Employer as an Acting Foreman shall be compensated at $0.90/hour above the Public Service Worker V, Step 3 wage for all the time they are assigned to that position. Assignments as Acting Foreman are at the sole discretion of the Employer.
12. Employees classified as Public Service Worker I, II, or III who are assigned by the Employer as a Crew Leader shall be compensated at $0.60/hour above the Public Service Worker III, Step 2 wage for all the time they are assigned to that position. Employees classified as Public Service Worker IV who are assigned by the Employer as a Crew Leader shall be compensated at $0.60/hour above the Public Service Worker IV, Step 4 wage for all the time they are assigned to that position. Employees classified as Public Service Worker V who are assigned by the Employer as a Crew Leader shall be compensated at $0.60/hour above the Public Service Worker V, Step 3 wage for all the time they are assigned to that position. Assignments as Crew Leader are at the sole discretion of the Employer.

13. Employees classified as Public Service Worker I, II, or III who are assigned by the Employer as Field Training Worker shall be compensated at $0.60/hour above the Public Service Worker III, Step 2 wage for all the time they are assigned to that position. Employees classified as Public Service Worker IV who are assigned by the Employer as Field Training Worker shall be compensated at $0.60/hour above the Public Service Worker IV, Step 4 wage for all the time they are assigned to that position. Employees classified as Public Service Worker V who are assigned by the Employer as Field Training Worker shall be compensated at $0.60/hour above the Public Service Worker V, Step 3 wage for all the time they are assigned to that position. Assignments as Field Training Worker are at the sole discretion of the Employer.

14. Employees employed by the Employer on a seasonal/temporary basis for no more than 180 calendar days per calendar year either in a full-time or part-time capacity (more than 14 hours per week) will be compensated as determined by the Employer for the term of this employment. Such employees will not be eligible for any benefits under this Agreement except those which may be required by law.

1. Employees who meet the requirements to be classified as “Public Employee Support Workers” under the Public Employment Labor Relations Act (PELRA) are not eligible for the following articles: Compensatory Time (Article XII), Holidays (Article XV), Vacation (Article XVI), Severance (Article XVII) or Uniforms (Article XVIII). Public Employees will only be eligible for Insurance (Article XXVI) if they meet the eligibility threshold under the Affordable Care Act as required by law.

2. Employees who meet the requirements to be classified as “Public Employee Support Workers” under the Public Employment Labor Relations Act (PELRA) are eligible for the following articles: Union Security (Article IV), Employee Rights – Grievance Procedure (Article VII), Wages (Article X), Overtime Pay (Article XI), Legal Defense (Article XIX), Discipline (Article XXI), Safety (Article XXIV), Duration (Article XXIX) and Flexible Work Weeks according to any current MOU.

44,15. Employees who have earned a 22-credit Public Works Certificate from North Hennepin Community College shall receive a one-time payment of $500.
15.16. Employees with one year of service shall receive performance pay as follows:

1. Organizational performance pay - The focus of the organizational performance pay is achievement of organization-wide goals as established by the city council. On an annual basis, employees shall be awarded performance pay in the lump sum amount based on the grade achieved by the organization as follows: for a grade of 4.0, each employee will be awarded $100; for a grade of less than 4.0, the award will be pro-rated based on the actual percentage achieved (e.g., 3.8 grade is 95% of 4.0, so 95% of $100 = $95, 3.5 grade is 87.5% of 4.0, so 87.5% of $100 = $87.50, etc.).

2. Departmental performance pay - The focus of the departmental performance pay is achievement of department-wide goals and performance indicators as established and evaluated annually by a representative group of employer, union and other public works department employees. On an annual basis, employees shall be awarded performance pay in the lump sum amount based on the percentage of goals/indicators achieved by the department as follows: 100% achievement will be awarded 0.5% (one-half percent), 1.5% (one and one-half percent) of base pay; achievement less than 100% shall be pro-rated based on the actual percentage achieved (e.g., 97% achievement = 97% of 0.5%–1.5% base pay; 92% achievement = 92% of 0.5%–1.5% base pay, etc.). Beginning in 2013, 100% achievement will be awarded 1.0% (one percent) of base pay; achievement less than 100% shall be pro-rated based on the actual percentage achieved (e.g., 97% achievement = 97% of 1.0% base pay; 92% achievement = 92% of 1.0% base pay, etc.).

3. Compensation for organizational and departmental performance pay will be paid in lump sums at the same time it is awarded to non-organized personnel.

17. For serving in the “standby” status the Building Maintenance Technician, assigned as the Acting Foreman, will be compensated by receiving one hour of overtime pay per weekday, 2 hours for Saturday and 2 hours for Sunday. For each holiday while serving in the “standby” status, the assigned employee will be compensated by receiving three hours of overtime pay.
MEMORANDUM OF AGREEMENT
BETWEEN
THE CITY OF MINNETONKA AND
THE INTERNATIONAL UNION OF OPERATING ENGINEERS
LOCAL 49

The Union and the City agree on the following amendments to the 2012–2014 labor agreement, during the 2015–2017 contract.

SKILLS BASED PAY

By July 1, 2012 December 31, 2016, the labor and management will develop new Skills Based Pay recertification requirements will be defined and will encompass a combination of training and skills demonstration.

LOCAL 49 PENSION PLAN

The parties agree to discuss the potential of participating in the Local 49 Central Pension Fund.

UTILITIES DIVISION - SECOND SHIFT

The parties agree to the following conditions as it relates to the second shift of the City of Minnetonka’s Public Works Department, Utilities Division.

The second shift of the Utilities Division is hereby established for the above-mentioned interim period as follows:

1. The City retains the right to establish schedules.

2. From the end of the scheduled second shift until the scheduled start time the following morning, Monday through Thursday, the employee who worked the second shift will serve in a "standby" status. An employee on "standby" is required to have with them at all times the City-provided pager and cellular phone and must be able to respond to the City as soon as possible but within 45 minutes.

3. From the end of the second shift on Friday through the scheduled start time the following Monday morning, the assigned second shift employee shall serve in a "standby" status as defined above in paragraph 2.

4. For each week day and weekend day while serving in the "standby" status, the assigned employee will be compensated by receiving a total of ten hours of overtime pay (a total of five hours for the period of Monday through Friday, 2.5 hours for Saturday, and 2.5 hours for Sunday). For each holiday while serving in the "standby" status, the assigned employee will be compensated by receiving three hours of overtime pay.
5. For each telephone call and/or computer alarm in excess of two per shift and a maximum of two per hour (when no response to the City is needed), the assigned employee will be compensated by receiving 30 minutes pay at one and one-half times the employee’s base pay rate.

6. For the purposes of paragraphs 4. and 5. of this Memorandum of Agreement, Article 12.1 of the labor agreement between the City and I.U.O.E. Local 49 does not apply.

7. The weekend and holiday shift is a two-hour morning shift. The employee must begin work on these days before 8 a.m. and work for two hours. The employee is responsible for calling the Police Department Dispatcher to inform police personnel of his arrival. Employees will be compensated for working these hours at the overtime pay rate or compensatory time.

8. Should employees wish to switch assigned second shift or weekend duties, they may do so subject to supervisory approval at least 24 hours in advance of the switch. If an employee wishes to switch duty for either a Friday, Saturday or Sunday (or a holiday which falls on a Friday or Monday), the involved employees must switch for the entire weekend time period starting on Friday at noon through Monday (or Tuesday if a holiday) morning.

This language shall be effective as of December 23, 2014 and shall remain in full force and effect until December 14, 2017, or until a successor Agreement is reached, whichever is later.

For IUOE Local No. 49 For the City of Minnetonka

___________________________ ___________________________

___________________________ ___________________________

___________________________

Dated: Dated:
LABOR AGREEMENT BETWEEN THE
CITY OF MINNETONKA AND
INTERNATIONAL UNION OF OPERATING ENGINEERS (IUOE)
LOCAL NO. 49, AFL-CIO
2015 - 2017
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ARTICLE I - PURPOSE OF AGREEMENT

This Agreement is entered into between the City of Minnetonka, hereinafter called the Employer, and Local No. 49, International Union of Operating Engineers, AFL-CIO, hereinafter called the Union.

The intent and purpose of this Agreement is to:

1.1. Establish certain hours, wages, and other conditions of employment;
1.2. Establish procedures for the resolution of disputes concerning this Agreement's interpretation and/or application;
1.3. Specify the full and complete understanding of the parties; and
1.4. Place in written form the parties’ agreement upon terms and conditions of employment for the duration of this Agreement.

The Employer and the Union, through this Agreement, continue their dedication to the highest quality of public service. Both parties recognize this Agreement as a pledge of this dedication.

ARTICLE II - RECOGNITION

The Employer recognizes the Union as the exclusive representative for all employees in the job classifications listed below who are public employees within the meaning of Minnesota Statute 179A.03, Subdivision 14, excluding supervisory, confidential, and all other employees.
ARTICLE III - DEFINITIONS

3.1. Union: The International Union of Operating Engineers, Local No. 49, AFL-CIO.

3.2. Employer: The individual municipality designated by this Agreement.

3.3. Union Member: A member of the International Union of Operating Engineers, Local No. 49, AFL-CIO.

3.4. Employee: A member of the exclusively recognized bargaining unit.

3.5. Base Pay Rate: The employee’s hourly pay rate exclusive of longevity or any other special allowance.

3.6. Seniority: Length of continuous service in any of the job classifications covered by ARTICLE II, RECOGNITION. Employees who are promoted from a job classification covered by this Agreement and return to a job classification covered by this Agreement shall have their seniority calculated on their length of service under this Agreement for purposes of promotion, transfer, and lay off, and total length of service with the Employer for other benefits under this Agreement.

3.7. Severance Pay: Payment made to an employee upon honorable termination of employment.

3.8. Overtime: Work performed at the express authorization of the Employer in excess of either eight (8) hours within a twenty-four (24) hour period (except for shift changes) or more than forty (40) hours within a seven (7) day period.
3.9. **Call Back**: Return of an employee to a specified work site to perform assigned duties at the express authorization of the Employer at a time other than an assigned shift. An extension of or early report to an assigned shift is not a call back.

**ARTICLE IV - UNION SECURITY**

In recognition of the Union as the exclusive representative, the Employer shall:

4.1. Deduct each payroll period an amount sufficient to provide the payment of dues established by the Union from the wages of all employees authorizing in writing such deduction, and

4.2. Remit such deduction to the appropriate designated officer of the Union.

4.3. The Union may designate certain employees from the bargaining unit to act as stewards and shall inform the Employer in writing of such choice.

4.4. The Union agrees to indemnify and hold the Employer harmless against any and all claims, suits, orders, or judgments brought or issued against the City as a result of any action taken or not taken by the City under the provisions of this Article.

**ARTICLE V - EMPLOYER SECURITY**

The Union agrees that during the life of this Agreement it will not cause, encourage, participate in or support any strike, slow down, other interruption of or interference with the normal functions of the Employer.

**ARTICLE VI - EMPLOYER AUTHORITY**

6.1. The Employer retains the full and unrestricted right to operate and manage all manpower, facilities, and equipment; to establish functions and programs; to set and amend budgets; to determine the utilization of
technology; to establish and modify the organizational structure; to select, direct and determine the number of personnel; to establish work schedules; and to perform any inherent managerial function not specifically limited by this Agreement.

6.2. Any term and condition of employment not specifically established or modified by this Agreement shall remain solely within the discretion of the Employer to modify, establish, or eliminate.

ARTICLE VII - EMPLOYEE RIGHTS - GRIEVANCE PROCEDURE

7.1. Definition of Grievance - A grievance is defined as a dispute or disagreement as to the interpretation or application of the specific terms and conditions of this Agreement.

7.2. Union Representative - The Employer will recognize representatives designated by the Union as the grievance representatives of the bargaining unit having the duties and responsibilities established by this Article. The Union shall notify the Employer in writing of the names of such Union representatives and of their successors when so designated.

7.3. Processing of a Grievance - It is recognized and accepted by the Union and the Employer that the processing of grievances as hereinafter provided is limited by the job duties and responsibilities of the employees and shall therefore be accomplished during normal working hours only when consistent with such Employee duties and responsibilities. The aggrieved employee and the Union Representative shall be allowed a reasonable amount of time without loss in pay when a grievance is investigated and presented to the Employer during normal working hours provided the employee and the Union Representative have notified and received the approval of the
designated supervisor who has determined that such absence is reasonable and would not be detrimental to the work programs of the Employer.

7.4. **Procedure** - Grievances, as defined by Section 7.1, shall be resolved in conformance with the following procedure:

   **Step 1.** An employee claiming a violation concerning the interpretation or application of this Agreement shall, within twenty-one (21) calendar days after such alleged violation has occurred, present such grievance to the employee's supervisor as designated by the Employer. The Employer designated representative will discuss and give an answer to such Step 1 grievance within ten (10) calendar days after receipt. A grievance not resolved in Step 1 and appealed to Step 2 shall be placed in writing setting forth the nature of the grievance, the facts on which it is based, the provision or provisions of the Agreement allegedly violated, and the remedy requested and shall be appealed to Step 2 within ten (10) calendar days after the Employer designated representative's final answer in Step 1. Any grievance not appealed in writing to Step 2 by the Union within ten (10) calendar days shall be considered waived.
Step 2. If appealed, the written grievance shall be presented by the Union and discussed with the Employer designated Step 2 representative. The Employer designated representative shall give the Union the Employer's Step 2 answer in writing within ten (10) calendar days after receipt of such Step 2 grievance. A grievance not resolved in Step 2 may be appealed to Step 3 within ten (10) calendar days following the Employer designated representative's final Step 2 answer. Any grievance not appealed in writing to Step 3 by the Union within ten (10) calendar days shall be considered waived.

Step 3. If appealed, the written grievance shall be presented by the Union and discussed with the Employer designated Step 3 representative. The Employer designated representative shall give the Union the Employer's answer in writing within ten (10) calendar days after receipt of such Step 3 grievance. A grievance not resolved in Step 3 may be appealed to Step 4 within ten (10) calendar days following the Employer designated representative's final answer in Step 3. Any grievance not appealed in writing to Step 4 by the Union within ten (10) calendar days shall be considered waived.

Step 4. A grievance unresolved in Step 3 and appealed in Step 4 shall be submitted to the Minnesota Bureau of Mediation Services. A grievance not resolved in Step 4 may be appealed to Step 5
within ten (10) calendar days following the Employer's final answer in Step 4. Any grievance not appealed in writing to Step 5 by the Union within ten (10) calendar days shall be considered waived.

Step 5. A grievance unresolved in Step 4 and appealed in Step 5 shall be submitted to arbitration subject to the provisions of the Public Employment Labor Relations Act of 1971, as amended. The selection of an arbitrator shall be made in accordance with the "Rules Governing the Arbitration of Grievances" as established by the Public Employment Relations Board.

7.5. **Arbitrator's Authority**

A. The arbitrator shall have no right to amend, modify, nullify, ignore, add to, or subtract from the terms and conditions of this Agreement. The arbitrator shall consider and decide only the specific issues submitted in writing by the Employer and the Union, and shall have no authority to make a decision on any other issue not so submitted.

B. The arbitrator shall be without power to make decisions contrary to, or inconsistent with, or modifying or varying in any way the application of laws, rules, or regulations having the force and effect of law. The arbitrator's decision shall be submitted in writing within thirty (30) days following the close of the hearing or the submission of briefs by the parties, whichever be later, unless the parties agree to an extension. The decision shall be binding on both the
Employer and the Union and shall be based solely on the arbitrator's interpretation or application of the express terms of this Agreement and to the facts of the grievance presented.

C. The fees and expenses for the arbitrator's services and proceedings shall be borne equally by the Employer and the Union provided that each party shall be responsible for compensating its own representatives and witnesses. If either party desires a verbatim record of the proceedings, it may cause such a record to be made, providing it pays for the record. If both parties desire a verbatim record of the proceedings, the cost shall be shared equally.

7.6. **Waiver** - If a grievance is not presented within the time limits set forth above, it shall be considered "waived". If a grievance is not appealed to the next step within the specified time limit or any agreed extension thereof, it shall be considered settled on the basis of the Employer's last answer. If the Employer does not answer a grievance or an appeal thereof within the specified time limits, the Union may elect to treat the grievance as denied at that step and immediately appeal the grievance to the next step. The time limit in each step may be extended by mutual agreement of the Employer and the Union.

7.7. **Choice of Remedy** – If the grievance involves the suspension, demotion, or discharge of an employee who has completed the required probationary period, and if, as a result of the Employer response in Step 4, the grievance remains unresolved, and if the grievance may be pursued in
another forum such as: Civil Service, Veteran's Preference, Fair Employment, or Data Practices, then the aggrieved employee shall indicate in writing which procedure is to be utilized, Step 5 of ARTICLE VII or another forum, and shall sign a statement to the effect that the choice of any other forum precludes the aggrieved employee from making a subsequent appeal through Step 5 of ARTICLE VII.

ARTICLE VIII - SAVINGS CLAUSE
This Agreement is subject to the laws of the United States, the State of Minnesota, and the City of Minnetonka. In the event any provision of this Agreement shall be held to be contrary to law by a court of competent jurisdiction from whose judgment or decree no appeal has been taken within the time provided, such provision shall be voided. To the extent a provision of the contract is declared to the contrary to law by a court of final jurisdiction or administrative ruling or is in violation of legislation or administrative regulations, said provision shall be void and of no effect. All other provisions of this Agreement shall continue in full force and effect. The voided provision may be renegotiated at the request of either party.

ARTICLE IX - WORK SCHEDULES

9.1. The sole authority for establishing work schedules is the Employer. The normal work day for an employee shall be eight (8) hours. The normal work week shall be forty (40) hours Monday through Friday.

9.2. Service to the public may require the establishment of regular shifts for some employees on a daily, weekly, seasonal, or annual basis other than the normal 7:00 a.m. to 3:30 p.m. day. The Employer will give 48 hours advance notice to the employees affected by the establishment of work days different from the employee's normal eight (8) hour work day.
9.3. In the event that work is required because of unusual circumstances such as, but not limited to, fire, flood, snow, sleet, or breakdown of municipal equipment or facilities, no advance notice need be given. It is not required that an employee working other than the normal work day be scheduled to work more than eight (8) hours; however, each employee has an obligation to work overtime or call backs if requested unless unusual circumstances prevent the employee from so working.

9.4. Service to the public may require the establishment of regular work weeks that schedule work on Saturdays and/or Sundays.

ARTICLE X - WAGES

10.1. During the term of this Agreement, the Employer shall pay to members of the bargaining unit wages in accordance with salary schedule attached as Exhibit A.

ARTICLE XI - OVERTIME PAY

11.1 Hours worked in excess of eight (8) hours within a twenty-four (24) hour period, except for shift changes, or more than forty (40) hours within a seven (7) day period, will be compensated for at one and one-half (1 ½) times the employee's regular base pay rate.

11.2. Overtime will be distributed as equally as practicable.
11.3. Overtime refused by employees will for record purposes under ARTICLE 11.2 be considered as unpaid overtime worked.

11.4. For the purpose of computing overtime compensation, overtime hours worked shall not be pyramided, compounded, or paid twice for the same hours worked.

**ARTICLE XII - COMPENSATORY TIME**

Non-exempt employees under the Fair Labor Standards Act shall be eligible for compensatory time in accordance with that act, subject to the following conditions:

12.1. Employees shall choose whether they want to have overtime pay or compensatory time by the end of the pay period in which it was earned.

12.2. No employee shall carry more than 40 hours accumulated compensatory time past the closest pay period ending date prior to November 15 of each year, except as permitted by the Employer. All accumulated compensatory time over 40 hours will be paid to the employee no later than the first paycheck dated on or after November 15 of each year.

12.3. The scheduling of compensatory time shall be at the reasonable discretion of the department director.

12.4. Cash payment for accumulated compensatory time may be taken at the employee's option, with approval of the department director.

12.5. The Employer or department director may prohibit the use of compensatory time.
ARTICLE XIII - CALL BACK

An employee called in for work at a time other than the employee's normal scheduled shift will be compensated for a minimum of three (3) hours' pay at one and one-half (1 1/2) times the employee's base pay rate. Any call outs received during the three-hour time block are considered a continuation of the original call out and will be compensated as such.

ARTICLE XIV - PRESHIFT PREMIUM

Employees who are called to work prior to the starting time of the shift regularly assigned shall be compensated at a preshift premium of $5.00 per hour ($6.00 per hour beginning in 2016; $7.00 per hour beginning in 2017) for the preshift hours worked.

ARTICLE XV - HOLIDAYS

Regular full-time employees shall be provided twelve (12) paid holidays as follows:

New Year's Day January 1
Martin Luther King's Birthday Third Monday in January
President's Day Third Monday in February
Memorial Day Last Monday in May
Independence Day July 4
Labor Day First Monday in September
Veteran's Day November 11
Thanksgiving Day Fourth Thursday in November
Day after Thanksgiving The day after Thanksgiving
Christmas Day December 25
Two (2) Floating Holiday's Two days shall be known as “floating holidays” and may be taken as holidays at the election of the employee with Employer approval, on any day throughout the fiscal year in which granted, or be lost.

15.1. When New Year's Day, January 1; or Independence Day,
July 4; or Christmas Day, December 25; falls on Sunday, the following day shall be a holiday, and provided, when New Year’s Day, January 1; or Independence Day; July 4; or Christmas Day, December 25; falls on Saturday, the preceding day shall be a holiday.

15.2. Holidays will be administered in accordance with the posted Public Works Policy.

ARTICLE XVI - VACATION

16.1. a. Regular full-time employees hired prior to January 1, 1998 shall be eligible for earned vacation leave on the following basis:

From the beginning of continuous employment through the fifth (5th) year of continuous employment, each regular full-time employee shall earn vacation at the rate of five-sixths (5/6) of a day per month or ten (10) working days per year.

From the sixth (6th) year and on through the fifteenth (15th) year of continuous employment, each employee shall earn vacation at the rate of one and one-fourth (1-1/4) days per month or fifteen (15) working days per year. From the sixteenth (16th) year and on through the twentieth (20th) year, each employee shall earn vacation at the rate of twenty (20) working days per year. From the twenty-first (21st) year on, each employee shall earn twenty-five (25) days.

b. Regular full-time employees hired after January 1, 1998 shall be eligible for earned vacation leave on the following basis:
From the beginning of continuous employment through the fifth (5th) year of continuous employment, each regular full-time employee shall earn vacation at the rate of five-sixths (5/6) of a day per month or ten (10) working days per year. From the sixth (6th) year through the tenth (10th) year of continuous employment, each employee shall earn vacation at the rate of one and one-fourth (1 1/4) days per month or fifteen (15) working days per year.

During each of the following years of continuous employment, each employee shall earn vacation at the rates as specified:

- 11th year: one and one-third (1 1/3) days per month or sixteen (16) working days per year.
- 12th year: one and four-tenths (1 4/10) days per month or seventeen (17) working days per year.
- 13th year: one and one-half (1 1/2) days per month or eighteen (18) working days per year.
- 14th year: one and six-tenths (1 6/10) days per month or nineteen (19) working days per year.
- From the fifteenth (15th) year of continuous service and on, each employee shall earn one and two-thirds (1 2/3) days per month or twenty (20) working days per year.

16.2. Accrual. Employees may accrue vacation leave not to exceed the following based on the employee’s rate of vacation earned.
<table>
<thead>
<tr>
<th>Rate of vacation earned</th>
<th>Maximum hours of accrued vacation leave</th>
</tr>
</thead>
<tbody>
<tr>
<td>80 hours per year</td>
<td>200 hours</td>
</tr>
<tr>
<td>120 hours per year</td>
<td>225 hours</td>
</tr>
<tr>
<td>128-160 hours per year</td>
<td>250 hours</td>
</tr>
<tr>
<td>200 hours per year</td>
<td>275 hours</td>
</tr>
</tbody>
</table>

16.3. Vacation leave may be taken after approval by the Department Director.

16.4. Any employee leaving the municipal service in good standing after giving proper notice of such termination of employment shall be compensated for vacation leave accrued and unused to the date of separation. Proper notice shall mean, "Written notice of at least fourteen (14) days prior to date of termination."

16.5. Waiving Vacation Prohibited. As vacation leave is granted to employees for a period of recreation, no employee shall be permitted to waive such leave for the purpose of receiving double pay.

ARTICLE XVII - SEVERANCE PAY

17.1 To be eligible for severance pay, employees must be regular employees on the date of termination, and have a total of 10 years of continuous service as a regular employee. Severance pay is granted to eligible employees when they leave the municipal service in good standing for one of the following reasons:

A. Elimination of their classification or position by the city.

B. Separation from city employment when the employee is eligible, based on age and/or service requirements, for an annuity from the Public Employees Retirement Association whether or not the employee starts receiving those benefits.
C. Mandatory retirement or termination of employment due to health reasons, service-connected injury, illness or death. A letter from a physician is required to indicate an employee’s inability to perform essential functions of the job.

17.2 Employees are entitled to severance pay equal to the greater of:

A. Four weeks of appropriate pay plus one additional week of appropriate pay for each year of service beyond 10 years, not to exceed a total of 13 weeks appropriate pay at their basic rate of pay,

or

B. One-third of the employee's accumulated sick leave at the appropriate pay rate.

17.3 Employees eligible for severance pay in accordance with Section 17.1 who submit a written notice of separation from City employment at least three months prior to that separation and who do not revoke it will receive the amount of severance pay pursuant to the policy plus an additional ten percent of that amount.

ARTICLE XVIII - UNIFORMS

In accordance with policies developed at the sole discretion of the Employer, the Employer will provide uniforms for Union members.

ARTICLE XIX - LEGAL DEFENSE

19.1 Employees involved in litigation because of negligence, ignorance of laws, nonobservance of laws, or as a result of employee judgmental
decision may not receive legal defense by the municipality.

19.2. Any employee who is charged with a traffic violation, ordinance violation or criminal offense arising from acts performed within the scope of the employee’s employment, when such act is performed in good faith and under direct order of the employee's supervisor, shall be reimbursed for reasonable attorney's fees and court costs actually incurred by such employee in defending against such charge.

ARTICLE XX - RIGHT OF SUBCONTRACT

Nothing in this Agreement shall prohibit or restrict the right of the Employer from subcontracting work performed by employees covered by this Agreement.

ARTICLE XXI - DISCIPLINE

21.1. The Employer will discipline employees only for just cause.

21.2. An employee(s) will not be required to participate in an investigatory interview by the Employer where the information gained from the interview could lead to the discipline of the employee(s) unless the employees is given the opportunity to have a third party present at the interview to act as witness for the employee(s).

ARTICLE XXII - SENIORITY

22.1. Seniority will be the determining criterion for transfers, promotions and layoffs only when all job relevant qualification factors are equal.

22.2. Seniority will be the determining criterion for recall when the job relevant qualification factors are equal. Recall rights under this provision will continue for twenty-four (24) months after lay off. Recalled employees
shall have ten (10) working days after notification of recall by registered mail at the employee's last known address to report to work or forfeit all recall rights.

ARTICLE XXIII - PROBATIONARY PERIOD

23.1. All newly hired or rehired employees will serve a twelve (12) month probationary period.

23.2. All employees will serve a twelve (12) month probationary period in any job classification in which the employee has not served a probationary period.

23.3. At any time during the probationary period a newly hired or rehired employee may be terminated at the sole discretion of the Employer.

23.4. At any time during the probationary period a promoted or reassigned employee may be demoted or reassigned to the employee's previous position at the sole discretion of the Employer.

ARTICLE XXIV - SAFETY

The Employer and the Union agree to jointly promote safe and healthful working conditions, to cooperate in safety matters and to encourage employees to work in a safe manner.

ARTICLE XXV - JOB POSTING

25.1. The Employer and the Union agree that regular job vacancies within the designated bargaining unit shall be filled based on the concept of promotion from within provided that applicants:

A. Have the necessary qualifications to meet the standards of the job vacancy; and
B. Have the ability to perform the duties and responsibilities of the job vacancy.

25.2. Employees filling a higher job class based on the provisions of this ARTICLE shall be subject to the conditions of ARTICLE XXIII (PROBATIONARY PERIOD).

25.3. The Employer has the right of final decision in the selection of employees to fill posted jobs based on qualifications, abilities, and experience.

25.4. Job vacancies within the designated bargaining unit will be posted for five (5) working days so that members of the bargaining unit can be considered for such vacancies.

ARTICLE XXVI - INSURANCE

26.1. For each benefit-earning employee electing health insurance coverage through the employer-sponsored cafeteria benefits program, the employer's contribution toward that employee's benefits program is $830 per month in plan year 2015.

26.2. Each benefit-earning employee electing health insurance coverage through the employer-sponsored cafeteria benefits program and who participates in the employer-sponsored health initiative program receives $100 per month. Each benefit-earning employee who opts out of the Employer sponsored cafeteria benefits program who participates in the employer-sponsored health initiative program receives $50 per month in plan year 2015.

Insurance is open for negotiations in 2016 and 2017.

26.3. The Employer agrees to pay the full cost of a $35,000 life insurance policy
26.4. The Employer will provide employees with Long Term Disability insurance provided that a sufficient number of employees enroll to meet the insurer's eligibility requirements. The cost of the insurance will be paid through deductions in each employee's accrued sick leave account of hours of time sufficient to provide for the payment of premiums.

26.5 In the event the health insurance provisions of this Agreement fail to meet the requirements of the Affordable Care Act and its related regulations or cause the Employer to be subject to a penalty, tax or fine, the Union and the Employer will meet immediately to bargain over alternative provisions.

ARTICLE XXVII - RETIREE HEALTH SAVINGS PLAN

Employees who qualify to receive severance pay upon retiring from the City, as defined by the Personnel Policy, must place 100% of their severance pay and unused vacation pay in their individual Retiree Health Savings Plan accounts at the time of retirement.

ARTICLE XXVIII - WAIVER

28.1. Any and all prior agreements, resolutions, practices, policies, rules and regulations regarding terms and conditions of employment, to the extent inconsistent with provisions of this Agreement, are hereby superseded.

28.2. The parties mutually acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any terms or conditions of employment not removed by law from bargaining. All agreements and understandings arrived at by the parties are set forth in writing in this Agreement for the stipulated duration of this Agreement. The Employer and the Union each voluntarily and unqualifiedly waives the right to meet and
negotiate regarding any and all terms and conditions of employment referred to or covered in this Agreement or with respect to any term or condition of employment not specifically referred to or covered by this Agreement, even though such terms or conditions may not have been within the knowledge or contemplation of either or both parties at the time this contract was negotiated or executed.
ARTICLE XXIX - DURATION

This Agreement shall be effective as of December 19, 2014 and shall remain in full force and effect through December 14, 2017.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this __________ day of __________, ______.

International Union of Operating Engineers, Local No. 49, AFL-CIO:

_____________________________________ Business Agent

_____________________________________ Business Manager

_____________________________________ Union Steward

_____________________________________ Union Steward

_____________________________________ Union Steward

_____________________________________ Union Steward

City of Minnetonka:

_____________________________________ Terry Schneider, Mayor

_____________________________________ Geralyn Barone, City Manager
1. The following positions will be in effect from the last payroll period for 2014 through the last payroll period in 2017.

<table>
<thead>
<tr>
<th>Position</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Employee Support Worker (PESW)</td>
<td>Automotive Support Worker</td>
</tr>
<tr>
<td>Public Service Worker I (PSW I)</td>
<td>Building Maintenance Custodian Utility Locator</td>
</tr>
<tr>
<td>Public Service Worker II (PSW II)</td>
<td>Lead Building Maintenance Custodian Park Maintenance Worker Street Maintenance Worker Water &amp; Sewer Maintenance Worker Building Maintenance Technician Automotive Service Worker</td>
</tr>
<tr>
<td>Public Service Worker III (PSW III)</td>
<td>Senior Building Maintenance Technician</td>
</tr>
<tr>
<td>Public Service Worker IV (PSW IV)</td>
<td>Automotive Mechanic Welder/Fabricator</td>
</tr>
<tr>
<td>Public Service Worker V (PSW V)</td>
<td>Senior Water &amp; Sewer Maintenance Worker</td>
</tr>
<tr>
<td>Out of Class Positions</td>
<td>Acting Foreman Field Training Worker Crew Leader</td>
</tr>
</tbody>
</table>

2. The following wage schedule will be in effect from the last payroll period for 2014 through the last payroll period in 2017.
<table>
<thead>
<tr>
<th>POSITION</th>
<th>STEP/DATE</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>PESW</td>
<td>Automotive Support Worker</td>
<td>$16.37</td>
<td>$16.53</td>
<td>$16.78</td>
</tr>
<tr>
<td>PSW I</td>
<td>Step 1 - Start</td>
<td>18.02</td>
<td>18.20</td>
<td>18.47</td>
</tr>
<tr>
<td></td>
<td>Step 2 - 6 months</td>
<td>19.06</td>
<td>19.25</td>
<td>19.54</td>
</tr>
<tr>
<td></td>
<td>Step 3 - 18 months</td>
<td>20.12</td>
<td>20.32</td>
<td>20.62</td>
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<td></td>
<td>Step 4 - 30 months</td>
<td>21.18</td>
<td>21.39</td>
<td>21.71</td>
</tr>
<tr>
<td></td>
<td>SBP hourly differential</td>
<td>0.95</td>
<td>1.20</td>
<td>1.20</td>
</tr>
<tr>
<td>PSW II</td>
<td>Step 1 - Start</td>
<td>22.34</td>
<td>22.56</td>
<td>22.90</td>
</tr>
<tr>
<td></td>
<td>Step 2 - 6 months</td>
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<td>23.89</td>
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<tr>
<td></td>
<td>Step 3 - 18 months</td>
<td>25.00</td>
<td>25.25</td>
<td>25.63</td>
</tr>
<tr>
<td></td>
<td>Step 4 - 30 months</td>
<td>26.31</td>
<td>26.57</td>
<td>26.97</td>
</tr>
<tr>
<td></td>
<td>SBP hourly differential</td>
<td>0.95</td>
<td>1.20</td>
<td>1.20</td>
</tr>
<tr>
<td>PSW III</td>
<td>Step 1 - Start</td>
<td>26.94</td>
<td>27.21</td>
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<td></td>
<td>Step 2 - 6 months</td>
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<td>27.67</td>
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<td></td>
<td>SBP hourly differential</td>
<td>0.95</td>
<td>1.20</td>
<td>1.20</td>
</tr>
<tr>
<td>PSW IV</td>
<td>Step 1 - Start</td>
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<td>24.19</td>
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<tr>
<td></td>
<td>Step 2 - 6 months</td>
<td>25.35</td>
<td>25.60</td>
<td>25.98</td>
</tr>
<tr>
<td></td>
<td>Step 3 - 18 months</td>
<td>26.79</td>
<td>27.06</td>
<td>27.47</td>
</tr>
<tr>
<td></td>
<td>Step 4 - 30 months</td>
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<td>28.88</td>
</tr>
<tr>
<td></td>
<td>SBP hourly differential</td>
<td>0.95</td>
<td>1.20</td>
<td>1.20</td>
</tr>
<tr>
<td>PSW V</td>
<td>Step 1 - Start</td>
<td>28.12</td>
<td>28.40</td>
<td>28.83</td>
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<tr>
<td></td>
<td>Step 2 - 6 months</td>
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<td></td>
<td>Step 3 - conditional</td>
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<td>29.71</td>
<td>30.16</td>
</tr>
<tr>
<td></td>
<td>SBP hourly differential</td>
<td>0.75</td>
<td>1.00</td>
<td>1.00</td>
</tr>
</tbody>
</table>

For 2016, the top 2015 base pay rate for Minnetonka Public Service Workers will be multiplied by the negotiated base pay increase. Using 2015 League of Minnesota Cities salary data for the listed below, the average weighted mean of these cities (excluding Minnetonka) will be multiplied by the negotiated base pay increase for 2016. These two rates will be compared, and the higher of the two will be the 2016 top pay rate for Minnetonka.

This same process will be repeated using 2016 data to determine if there is a 2017 market adjustment.

Minnesota cities included in the comparison are Brooklyn Park, Burnsville, Eagan, Eden Prairie, Edina, Lakeville, Maple Grove, Plymouth, St. Louis Park and Woodbury.
3. The minimum requirements for each of the steps in the wage schedule are as follows:

Progression from the starting salary through the top step of each classification based on actual months of service, demonstrated skill levels, and satisfactory performance.

4. Additional requirements:

A. Water and Sewer Maintenance Worker (PSW II):

Employees must possess a Class D Operator's License.

B. Senior Building Maintenance Technician (PSW III):

1. To be placed in Step 1 of the PSW III position, employees in this classification must possess a minimum of a Special Class Engineer Boiler's License; have completed 200 hours of authorized technical training; and have 30 months of Public Service Worker experience with the City of Minnetonka.

2. To be placed in Step 2 of the PSW III position, employees in this classification must possess a minimum of a 2nd Class Boiler's License; have completed 400 hours of authorized technical training; and have 30 months of experience at PSW 111, Step 1, with the City of Minnetonka.

C. Senior Water and Sewer Maintenance Worker (PSW V):

1. To be placed in Step 1 of the PSW V position, employees must possess Class C Water Supply System Operator and Wastewater Treatment Facility Operator Licenses and have 30 months of water and sewer system and facility operator experience, at least 12 months of which must be with the City of Minnetonka.

2. To be placed in Step 2 of the PSW V position, employees must possess Class B Water Supply System Operator and Wastewater Treatment Facility Operator Licenses and have six years of water and sewer system and facility operator experience, at least 24 months of which are with the City of Minnetonka.

3. To be placed in Step 3 of the PSW V position, employees must possess Class A Water Supply System Operator and Wastewater Treatment Facility Operator Licenses and have six years of water and sewer system and facility operator experience, at least 36 months of which are with the City of Minnetonka.
5. All employees who have completed Skills Based Pay (SBP) program requirements are eligible to receive the SBP hourly differential as outlined for each classification in the wage schedule of Appendix A. Employees receiving SBP must be recertified on a biannual basis in order to continue receiving said pay.

6. Employees classified in the Public Service Worker I position required by the Employer to operate a skid steer loader will be paid the Public Service Worker II pay rate, same step as their PSW I rate, for those hours assigned to the unit.

7. Employees classified in the Public Service Worker I position required by the Employer to perform duties requiring a State Boiler's Operator License will be paid the Public Service Worker II pay rate, same step as their PSW I rate, for those hours assigned said duties.

8. To be placed in Step 1 of the Public Service Worker II position, utility locators must possess a Class D water and sewer operator's license and have 18 months experience as a utility locator with the City of Minnetonka. This is the top step of the utility locator classification.

9. Employees classified in the Public Service Worker I, II, III or IV position who are assigned to perform Public Service Worker IV – Welder and Mechanic duties will be paid Public Service Worker IV – Mechanic and Welder, Step 4 pay and, if eligible as a Public Service Worker I, II, III, or IV, associated skills-based pay for those hours assigned to that duty.

10. For each seven-day period while serving in the "standby" status, the Lead Building Maintenance Custodian will be compensated by receiving a total of three hours of overtime pay for that one-week period.

11. Employees classified as Public Service Worker I, II, or III who are assigned by the Employer as an Acting Foreman shall be compensated at $0.90/hour above the Public Service Worker III, Step 2 wage for all the time they are assigned to that position. Employees classified as Public Service Worker IV who are assigned by the Employer as an Acting Foreman shall be compensated at $0.90/hour above the Public Service Worker IV, Step 4 wage for all the time they are assigned to that position. Employees classified as Public Service Worker V who are assigned by the Employer as an Acting Foreman shall be compensated at $0.90/hour above the Public Service Worker V, Step 3 wage for all the time they are assigned to that position. Assignments as Acting Foreman are at the sole discretion of the Employer.

12. Employees classified as Public Service Worker I, II, or III who are assigned by the Employer as a Crew Leader shall be compensated at $0.60/hour above the Public Service Worker III, Step 2 wage for all the time they are assigned to that position. Employees classified as Public Service Worker IV who are assigned by the Employer as a Crew Leader shall be compensated at $0.60/hour above the Public Service Worker IV, Step 4 wage for all the time they are assigned to that position. Employees classified as Public Service Worker V who are
assigned by the Employer as a Crew Leader shall be compensated at $0.60/hour above the Public Service Worker V, Step 3 wage for all the time they are assigned to that position. Assignments as Crew Leader are at the sole discretion of the Employer.

13. Employees classified as Public Service Worker I, II, or III who are assigned by the Employer as Field Training Worker shall be compensated at $0.60/hour above the Public Service Worker III, Step 2 wage for all the time they are assigned to that position. Employees classified as Public Service Worker IV who are assigned by the Employer as Field Training Worker shall be compensated at $0.60/hour above the Public Service Worker IV, Step 4 wage for all the time they are assigned to that position. Employees classified as Public Service Worker V who are assigned by the Employer as Field Training Worker shall be compensated at $0.60/hour above the Public Service Worker V, Step 3 wage for all the time they are assigned to that position. Assignments as Field Training Worker are at the sole discretion of the Employer.

14. Employees employed by the Employer on a seasonal/temporary basis for no more than 180 calendar days per calendar year either in a full-time or part-time capacity (more than 14 hours per week) will be compensated as determined by the Employer for the term of this employment.

1. Employees who meet the requirements to be classified as “Public Employee Support Workers” under the Public Employment Labor Relations Act (PELRA) are not eligible for the following articles: Compensatory Time (Article XII), Holidays (Article XV), Vacation (Article XVI), Severance (Article XVII) or Uniforms (Article XVIII). Public Employees will only be eligible for Insurance (Article XXVI) if they meet the eligibility threshold under the Affordable Care Act as required by law.

2. Employees who meet the requirements to be classified as “Public Employee Support Workers” under the Public Employment Labor Relations Act (PELRA) are eligible for the following articles: Union Security (Article IV), Employee Rights – Grievance Procedure (Article VII), Wages (Article X), Overtime Pay (Article XI), Legal Defense (Article XIX), Discipline (Article XXI), Safety (Article XXIV), Duration (Article XXIX) and Flexible Work Weeks according to any current MOU.

15. Employees who have earned a 22-credit Public Works Certificate from North Hennepin Community College shall receive a one-time payment of $500.

16. Employees with one year of service shall receive performance pay as follows:

1. Organizational performance pay – The focus of the organizational performance pay is achievement of organization-wide goals as established by the city council. On an annual basis, employees shall be awarded performance pay in the lump sum amount based on the grade achieved by the organization as follows: for a grade of 4.0, each employee will be awarded $100; for a grade of less than 4.0, the award will be pro-rated based on the...
actual percentage achieved (e.g., 3.8 grade is 95% of 4.0, so 95% of $100 = $95, 3.5 grade is 87.5% of 4.0, so 87.5% of $100 = $87.50, etc.).

2. Departmental performance pay - The focus of the departmental performance pay is achievement of department-wide goals and performance indicators as established and evaluated annually by a representative group of employer, union and other public works department employees. On an annual basis, employees shall be awarded performance pay in the lump sum amount based on the percentage of goals/indicators achieved by the department as follows: 100% achievement will be awarded 1.5% (one and one-half percent) of base pay; achievement less than 100% shall be pro-rated based on the actual percentage achieved (e.g., 97% achievement = 97% of 1.5% base pay; 92% achievement = 92% of 1.5% base pay, etc.).

3. Compensation for organizational and departmental performance pay will be paid in lump sums at the same time it is awarded to non-organized personnel.

17. For serving in the “standby” status the Building Maintenance Technician, assigned as the Acting Foreman, will be compensated by receiving one hour of overtime pay per weekday, 2 hours for Saturday and 2 hours for Sunday. For each holiday while serving in the “standby” status, the assigned employee will be compensated by receiving three hours of overtime pay.
MEMORANDUM OF AGREEMENT
BETWEEN
THE CITY OF MINNETONKA AND
THE INTERNATIONAL UNION OF OPERATING ENGINEERS
LOCAL 49

The Union and the City agree on the following during the 2015 – 2017 contract.

SKILLS BASED PAY

By December 31, 2016, labor and management will develop new Skills Based Pay recertification requirements.

UTILITIES DIVISION - SECOND SHIFT

The parties agree to the following conditions as it relates to the second shift of the City of Minnetonka’s Public Works Department, Utilities Division.

The second shift of the Utilities Division is hereby established for the above mentioned interim period as follows:

1. The City retains the right to establish schedules.

2. From the end of the scheduled second shift until the scheduled start time the following morning, Monday through Thursday, the employee who worked the second shift will serve in a "standby" status. An employee on "standby" is required to have with them at all times the City-provided pager and cellular phone and must be able to respond to the City as soon as possible but within 45 minutes.

3. From the end of the second shift on Friday through the scheduled start time the following Monday morning, the assigned second shift employee shall serve in a "standby" status as defined above in paragraph 2.

4. For each week day and weekend day while serving in the "standby" status, the assigned employee will be compensated by receiving a total of ten hours of overtime pay (a total of five hours for the period of Monday through Friday, 2.5 hours for Saturday, and 2.5 hours for Sunday). For each holiday while serving in the "standby" status, the assigned employee will be compensated by receiving three hours of overtime pay.

5. For each telephone call and/or computer alarm in excess of two per shift and a maximum of two per hour (when no response to the City is needed), the assigned employee will be compensated by receiving 30 minutes pay at one and one-half times the employee’s base pay rate.

6. For the purposes of paragraphs 4. and 5. of this Memorandum of
Agreement, Article 12.1 of the labor agreement between the City and I.U.O.E. Local 49 does not apply.

7. The weekend and holiday shift is a two-hour morning shift. The employee must begin work on these days before 8 a.m. and work for two hours. The employee is responsible for calling the Police Department Dispatcher to inform police personnel of his arrival. Employees will be compensated for working these hours at the overtime pay rate or compensatory time.

8. Should employees wish to switch assigned second shift or weekend duties, they may do so subject to supervisory approval at least 24 hours in advance of the switch. If an employee wishes to switch duty for either a Friday, Saturday or Sunday (or a holiday which falls on a Friday or Monday), the involved employees must switch for the entire weekend time period starting on Friday at noon through Monday (or Tuesday if a holiday) morning.

This language shall be effective as of December 19, 2014 and shall remain in full force and effect until December 14, 2017, or until a successor Agreement is reached, whichever is later.

For IUOE Local No. 49

___________________________

___________________________

___________________________

For the City of Minnetonka

___________________________

___________________________

___________________________

Dated: Dated:
City Council Agenda Item #10E
Meeting of March 23, 2015

Brief Description: Items related to the grant of a cable communications franchise

Recommended Action: Authorize publication of notice of intent to franchise and notice of public hearing

Background

The city of Minnetonka is a member of the Southwest Suburban Cable Commission (“Commission”) along with the cities of Eden Prairie, Hopkins, Edina and Richfield. Each member city has authorized a non-exclusive cable television service franchise to Comcast Corporation within their city.

CenturyLink has requested that the city consider the grant of a cable communications franchise so CenturyLink can provide cable television services in the city. Pursuant to this request, staff has prepared the necessary documents to process the city’s consideration of the grant of a competitive cable communications franchise. To that end, please find the following attached:

a) Procedural timeline regarding the request for a cable communications franchise;
   b) Notice of intent to franchise, required pursuant to Minn. Stat. Section 238.081, subd. 2;
   c) A request for proposals, required pursuant to Minn. Stat. Section 238.081, subd. 4; and
   d) Notice of public hearing.

The above referenced documents have been prepared to comply with the franchising procedure required under Minnesota state law. The documents should be reviewed by and, if acceptable, the city council should authorize staff to publish the notice of intent to franchise and subsequently follow the required statutory procedural requirements. Staff is also requesting that the council authorize the call for a public hearing to be scheduled before the council on this matter as part of this process.

Summary

Interested parties may obtain copies of the request for proposals and related franchise documentation as described in the notice of its intent to franchise and the city will follow the procedure outlined in the notice of its intent to franchise and request for proposals which is derived substantially from state law.
To the extent an application is submitted by an entity (presumably CenturyLink) the city will then be required to assess the legal, technical and financial qualifications of the applicant(s).

It is important to stress that at this time the city is only considering the implementation of the state statutory franchising process and that no entity will be permitted in the city’s right-of-way for the provision of cable television services until the city council considers the award of a cable communications franchise.

**Recommendation**

Authorize the publication of notice of intent to franchise and the notice of public hearing and thereafter follow the required statutory procedural requirements for items related to the granting of a cable communications franchise.

Submitted through:
- Geralyn Barone, City Manager
- Perry Vetter, Assistant City Manager

Originated by:
- Patty Latham, Information Technology Manager
<table>
<thead>
<tr>
<th>DATE</th>
<th>TASK</th>
</tr>
</thead>
<tbody>
<tr>
<td>February 2015</td>
<td>Meeting of Commission staff and any other interested parties to review process, law, concerns.</td>
</tr>
<tr>
<td>March 23, 2015</td>
<td>City considers publication of Notice of Intent to Franchise and Notice to call Public Hearing.</td>
</tr>
<tr>
<td>March - May 2015</td>
<td>Commission begins negotiations regarding franchise terms with prospective Applicant.</td>
</tr>
<tr>
<td>March 31, 2015 and April 7, 2015</td>
<td>City publishes Notice of Intent to Franchise once each week for two (2) successive weeks in local newspaper. Notice also mailed directly to existing operator (Comcast) and other prospective Applicants (CenturyLink).</td>
</tr>
<tr>
<td>April 21, 2015</td>
<td>Closing date for submission of Application [must be at least 20 days from date of first publication].</td>
</tr>
<tr>
<td>April/May 2015</td>
<td>Consideration of Application received.</td>
</tr>
<tr>
<td>April 28, 2015</td>
<td>City publishes Notice of Public Hearing [10 to 14 days before conduct of hearing].</td>
</tr>
<tr>
<td>May 18, 2015</td>
<td>City conducts Public Hearing regarding Franchise Applications – considers resolution regarding qualifications.</td>
</tr>
<tr>
<td>April 2015</td>
<td>Preparation of report by Moss &amp; Barnett regarding qualifications of Applicant’s.</td>
</tr>
<tr>
<td>April 22, 2015</td>
<td>Commission meets to consider Applicant’s qualifications and Moss &amp; Barnett’s report – issue recommendation to Member Cities. NOTE - April 22, 2015 is the Commission’s next regularly scheduled meeting date.</td>
</tr>
<tr>
<td>May 2015</td>
<td>Commission considers Applicant’s Franchise and issues its recommendation to the Member Cities regarding adoption of the Franchise.</td>
</tr>
<tr>
<td>May/June, 2015</td>
<td>City Council considers award of Franchise to successful Applicant(s) [must be at least 7 days after Public Hearing – no time limit on when action must be taken].</td>
</tr>
<tr>
<td>June 2015</td>
<td>Successful Applicant accept franchise document and submits required closing documentation [typically within 30 days of the grant of a franchise].</td>
</tr>
</tbody>
</table>
Notice by the city of Minnetonka, Minnesota
Of its intent to consider an application for a franchise

Notice is hereby given that it is the intent of the City Council of the city of Minnetonka, Minnesota, to consider an application for a franchise for the purpose of operating a cable communications system to serve the city of Minnetonka, Minnesota. This notice is given in accordance with the requirements of Minn. Stat. § 238.081.

Applications shall be submitted in response to this Notice and Request for Proposals available on request in the office of the Perry Vetter, Assistant City Manager at 14600 Minnetonka Boulevard, Minnetonka, Minnesota 55345.

A. The deadline for submitting applications is 4:30 p.m. local time April 21, 2015.

B. Applications shall be in writing, notarized, in a format consistent with the Request for Proposals, and sealed with two (2) copies enclosed. Applications shall be delivered to the attention of Perry Vetter, Assistant City Manager at 14600 Minnetonka Boulevard, Minnetonka, Minnesota 55345. Two (2) additional copies shall be simultaneously submitted to the City’s outside legal counsel, Brian Grogan, Moss & Barnett, 150 South Fifth Street, Suite 1200, Minneapolis, Minnesota 55402.

C. Pursuant to Minn. Stat. § 238.081 subd. 8, Applicants will be required to reimburse the city for all necessary costs of processing a cable communications franchise. Each application shall include an application fee of Ten Thousand and No/100 Dollars ($10,000) in the form of a certified check made payable to the city of Minnetonka, Minnesota. Any unused portion of the application fee shall be returned to the Applicant and any additional fees required to process the application and franchise beyond the Application fee shall be assessed to the Applicant.

D. Applicants are requested to be present at a public hearing before the City Council that is presently scheduled to be held at the Minnetonka Community Center – City Council Chambers, beginning at 6:30 p.m. on May 18, 2015. Each applicant will be given time to summarize its application.

E. The Request for Proposals sets forth in detail the expectations of the city of Minnetonka, Minnesota and the requirements of the content of the franchise proposal and are made in conformance to the requirements of Minn. Stat. § 238.081, subd. 4.

F. The services to be offered are identified in the Request for Proposals and include a system providing public, educational and governmental access channels consistent with state law; a mix, level and quality of programs and services comparable to other systems in the region serving similar sized communities and customer services and maintenance plans to ensure quality service to the subscriber. The Request for Proposals provides further details of the services to be offered.
G. The criteria for evaluating the applications and priorities for selection are as follows:

1. The completeness of applications and conformance to Request for Proposals;
2. Customer service policies and system testing;
3. The legal, technical, and financial qualifications of the applicant; and
4. The proposal for community services, including public, educational, and governmental access in accordance with state law.

H. Applications which meet the above criteria in the opinion of the City Council shall be considered for a franchise.

I. The applicant(s) selected by the City Council will be required to accept the franchise documents granted within thirty (30) days after adoption.

J. All questions concerning this request should be directed to the City's outside legal counsel, Brian Grogan, Moss & Barnett, 150 South Fifth Street, Suite 1200, Minneapolis, Minnesota 55402; phone (612)877-5340.

Date: March 23, 2015

City of Minnetonka

By: David Maeda

Its: City Clerk
Applicants interested in submitting a proposal for a cable communications franchise shall submit
the following information as required by Minnesota Statutes Section 238.081 (subd. 4) to the city
of Minnetonka, Minnesota (“city”) on or before 4:30 p.m. local time Tuesday April 21, 2015.

A. Plans for channel capacity, including both the total number of channels capable of
being energized in the system and the number of channels to be energized
immediately.

B. A statement of the television and radio broadcast signals for which permission to
carry will be requested from the Federal Communications Commission.

C. A description of the proposed system design and planned operation, including at
least the following items:
   1. The general area for location of antenna and headend, if known;
   2. The schedule for activating cable and two-way capacity;
   3. The type of automated services to be provided;
   4. The number of channels and services to be made available for access cable
      broadcasting; and
   5. A schedule of charges for facilities and staff assistance for access cable
      broadcasting.

D. Terms and conditions under which particular service is to be provided to
governmental and educational entities.

E. A schedule of proposed rates in relation to the services to be provided and a
proposed policy regarding unusual or difficult connection of services.

F. A time schedule for construction of the entire system with the time sequence for
wiring the various parts of the area requested to be served.

G. A statement indicating the applicant's qualifications and experience in the cable
communications field, if any.

H. An identification of the municipalities (including contact information for the
municipal officials in each community) in which the applicant either owns or
operates a cable communications system, directly or indirectly, or has outstanding
franchises for which no system has been built.

I. Plans for financing the proposed system, which must indicate every significant
anticipated source of capital and significant limitations or conditions with respect to
the availability of the indicated sources of capital. This information should include:
   1. Current financial statements;
2. Proposed sources and uses of funds for the construction project;

3. Financial budgets for the next three (3) years;

4. Documentation regarding the commitment of funds; and

5. Any other information that applicant determines would be useful in evaluating its financial qualifications.

J. A statement of ownership detailing the corporate organization of the applicant, if any, including the names and addresses of officers and directors and the number of shares held by each officer or director, and intercompany relationship, including the parent, subsidiary or affiliated company.

K. A notation and explanation of omissions or other variations with respect to the requirements of the proposal.

Substantive amendments may be made to a proposal after a proposal has been submitted only upon approval of the city and before the award of a franchise. All proposals must be notarized and must include responses to the above information requests, as well as the information requested in the Notice by the City of its Intent to Franchise a Cable Communications System, available from the city upon request.

Applicants are advised that Comcast currently provides cable television service throughout the city of Minnetonka, Minnesota.

The City reserves its right to request additional information of any applicant at any time during this process.

Any questions regarding this Request for Proposals may be directed in writing to the city's outside legal counsel, Brian Grogan, Moss & Barnett, 150 South Fifth Street, Suite 1200, Minneapolis, Minnesota 55402; phone (612)877-5340.
City of Minnetonka
14600 Minnetonka Boulevard
Minnetonka, MN 55345
Notice of Public Hearing

Pursuant to the provisions of Chapter 10 of the City Charter of the City of Minnetonka, notice is hereby given that the city of Minnetonka, Minnesota will be holding a public hearing on May 18, 2015 at 6:30 p.m., or as soon thereafter as the matter may be heard, to consider the applications received for a cable communications franchise. The public hearing will be held at the Minnetonka Community Center in the City Council Chambers at 14600 Minnetonka Boulevard, Minnetonka, Minnesota. All interested parties are invited to attend and voice their opinions. Written statements may be submitted at or before the public hearing.

/s/ David E. Maeda
City Clerk
Administrative Services Department
City Council Agenda Item #12A  
Meeting of March 23, 2015

**Brief Description**  
Ordinance removing area at 5735 County Road 101 from the wetland overlay district

**Recommendation**  
Introduce the ordinance and refer it to the planning commission

**Proposal**

As part of the County Road 101 project, the Clear Spring Elementary School bus access will be relocated to Covington Road; the city has acquired a portion of the property on which the drive will be located. By separating bus and automobile traffic, the relocated access is intended to simplify site circulation and improve safety. The preliminary design of the access was approved by the council in August 2013. Under final design, an existing wetland must be filled and a larger ponding area must be created to accommodate the bus access and associated ponding requirements. This ponding area will be constructed within a drainage and utility easement on private property. (See pages A1–A4.)

By city code, wetland impact associated with the repair and rehabilitation of existing roadways is exempt from the requirements of the wetland ordinance. However, as the new bus access is not existing, the wetland ordinance applies:

- By City Code §300.23 Subd. 9 wetland area may be filled – or removed from wetland overlay zoning district – only by a rezoning.
- By City Code §300.23 Subd. 10(c) wetland impact must be mitigated at a 1:1 ratio within the same watershed of the wetland being altered, unless otherwise approved by the city council.

**Wetland Mitigation**

While city code has a wetland impact exemption for existing roadways, the wetland conservation act (WCA) does not. Under WCA wetland impact must be mitigated at a 2:1 ratio. The repair and rehabilitation of the County Road 101 project will result in some wetland impact throughout the roadway corridor. Given the safety improvements resulting from this wetland impact, the Board of Soil and Water Resources (BWSR) has allowed the purchase of Road Replacement Program credits to ensure compliance with the WCA mitigation standard. BWSR considered the relocation of the bus access as contributing to the County Road 101 safety improvements and included it in the purchase of program credits approval.

As these credits would be located outside of the watershed, the city council must approve the use of the Road Replacement Program credits for the new bus access area. This approval is an action separate from the wetland rezoning and may be adopted at the time the rezoning is formally considered by the council.
Introduction

The purpose of introducing an ordinance is to give the city council the opportunity to review an application before sending it to the planning commission for a recommendation. Introducing an ordinance does not constitute an approval. The tentative planning commission date is April 9, 2015.

Staff Recommendation

Introduce the ordinance on pages A5–A7 and refer it to the planning commission.

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

Originated by:
   Susan Thomas, AICP, Principal Planner
LOCATION MAP

WETLAND REZONING
5735 Co Rd 101

This map is for illustrative purposes only.
Wetland to be removed
WETLAND REZONING
5735 CO RD 101
AREA TO BE REMOVED FROM WETLAND OVERLAY DISTRICT
Ordinance No. 2015-
An ordinance removing area at 5735 County Road 101
from the wetland overlay district

The City Of Minnetonka Ordains:

Section 1.

1.01 As part of the County Road 101 reconstruction project, the bus access to Clear Spring Elementary School site will be relocated to the property at 5735 County Road 101. An existing wetland must be filled and a larger ponding area must be created to accommodate the relocated access and associated ponding requirements.

1.02 The property to be removed from the overlay district is depicted on Exhibit A of this ordinance.

Section 2. The existing wetland area at 5734 County Road 101 is hereby removed from the wetland overlay zoning district. This action is based on the following findings:

2.01 The removal of the area from the overlay district would not compromise the public health, safety, and welfare.

2.02 The removal of area from the overlay district would be consistent with the intent of the code and the comprehensive plan.

1. The wetland ordinance recognizes that the reconstruction of existing public roads may be necessary to improve functionality and safety and, therefore, exempts such reconstruction. Because the bus access is not existing, this exemption does not apply. However, the relocation of the bus access – and resulting wetland fill – is directly related to reconstruction of an existing road. It would improve the functionality and safety of the county road.

2. One of the primary transportation-oriented community values outlined in the comprehensive plan is to “enhance resident and business mobility with
The relocation of the bus access – and resulting wetland fill – is directly related to reconstruction of an existing road. It would improve the functionality and safety of the county road, thereby enhancing mobility.

Section 3. This ordinance is effective immediately.

Adopted by the city council of the City of Minnetonka, Minnesota, on April 20, 2015.

Terry Schneider, Mayor

Attest:

David E. Maeda, City Clerk

Action on this ordinance:

Date of introduction: March 23, 2015
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 correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota at a regular meeting held on April 20, 2015.

David E. Maeda, City Clerk

Date: