Agenda
Minnetonka City Council
Regular Meeting, Monday, April 20, 2015
6:30 P.M.
Council Chambers

1. Call to Order
2. Pledge of Allegiance
3. Roll Call: Wagner-Ellingson-Allendorf-Acomb-Wiersum-Bergstedt-Schneider
4. Approval of Agenda
5. Approval of Minutes:
   A. March 23, 2015 regular meeting
   B. April 6, 2015 regular meeting
6. Special Matters:
   A. Proclamation declaring April 22, 2015 as Earth Day
   B. Proclamation declaring April 24, 2015 as Arbor Day
   C. Presentation of Tree City USA 20 year award
7. Reports from City Manager & Council Members
8. Citizens Wishing to Discuss Matters not on the Agenda
9. Bids and Purchases:
   A. Joint Powers Agreement (JPA) for the acquisition of structural firefighting
      self-contained breathing apparatus (SCBA)
      Recommendation: Award the contract to Clarey’s Safety Equipment for Scott
      SCBA on behalf of the joint powers agreement (4 Votes)
   B. Bids for 2015 Street Rehabilitation Project No. 15401
      Recommendation: Award the contract and amend the CIP (5 Votes)

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Fridays, 12:00 p.m., Saturdays, 12:00 p.m. The city’s web site also offers video streaming of the council meeting.
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9C. **Bids for Replacement of the Ice Arena A Refrigeration System**  
Recommendation: Award the contract (4 Votes)

10. **Consent Agenda - Items Requiring a Majority Vote:**  
A. Telecommunications lease with Verizon for Tanglen water tower  
B. Fifth amendment to site lease with New Cingular Wireless PCS, LLC for Ridgedale water tower  
C. Orders for liquor license stipulations  
D. Resolution approving preliminary and final plats for Congregation Hill, a three-lot subdivision at 2051 Meeting Street  
E. Amended and restated Joint Powers Agreement with the St. Paul Port Authority for the PACE program  
F. Resolution for the Excelsior Boulevard pond outlet

11. **Consent Agenda - Items Requiring Five Votes: None**

12. **Introduction of Ordinances:**  
A. Ordinance rezoning the “Music Barn” properties at 5740 and 5750 Shady Oak Road from R-1, low-density residential, to PUD, planned unit development.  
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: Continue the public hearing and adopt the ordinances and resolutions approving the proposal (5 Votes)  

B. Off-sale liquor license for Target Corporation, 4848 Co Rd 101  
Recommendation: Open the public hearing and continue to May 18, 2015 (4 Votes)
14. Other Business:

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

Recommendation: Approve the revised agreements (4 Votes)

B. Resolution, ordinance, and motions approving items associated with reconstruction of County Road 101 from Highway 62 to Hutchins Drive and new construction at 5735 County Road 101:

1) Floodplain alteration permit;
2) Wetland rezoning;
3) Wetland mitigation plan; and
4) Tree removal/mitigation

Recommendation: Adopt the resolution and ordinance and make appropriate motions (4 Votes)

C. Items concerning construction of a new convenience store/gas station at 3864 Hopkins Crossroad:

1) Conditional use permit;
2) Final site and building plans, with setback variance; and
3) Monument sign variance.

Recommendation: Adopt the resolutions approving the conditional use permit and final site and building plans, and denying the sign variance (5 Votes)

15. Appointments and Reappointments: None

16. Adjournment
1. **Call to Order**

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

4. **Approval of Agenda**

   Wiersum moved, Acomb seconded a motion to accept the agenda with an addendum to item 13A. All voted “yes.” Motion carried.

5. **Approval of Minutes: February 9, 2015 regular meeting**

   Wiersum moved, Allendorf seconded a motion to approve the February 9, 2015 regular meeting minutes. All voted “yes.” Motion carried.

6. **Special Matters:**

   **A. Proclamation declaring April as Safe Digging Month**

   Bergstedt read the proclamation.

7. **Reports from City Manager & Council Members**

   Barone reported on the schedule for upcoming council meetings.

   Acomb reported she represented the city at the National League of Cities conference a few weeks ago.

   Wiersum reported he had the opportunity to co-emcee the recent Caring Youth event.

8. **Citizens Wishing to Discuss Matters not on the Agenda**

   No one appeared.
9. **Bids and Purchases:**

   **A. Items related to the property at 2510 Oakland Road**

   Assistant City Manager Perry Vetter gave the staff report.

   Wiersum asked for additional information about how residents would access the property once it was developed. Vetter said there would be a planning process to determine what amenities would be on the property. The agreement was very restrictive. Any structure would be built in the footprint of the house. There was an allowance for benches, interpretive signs, etc. but basically it would be a nature preserve with minimal walking paths. ADA accessibility would be allowed.

   Acomb said the $2.6 million purchase price was a lot of money but it was half of what the property was valued at. She said she hoped the city could do something to honor and recognize Ann Cullen Smith’s generosity and gift to residents.

   Allendorf moved, Acomb seconded a motion to:
   1) Amend the 2015-2019 Capital Improvement Program
   2) Adopted resolution 2015-018 reimbursing certain expenditures from the proceeds of the bonds to be issued by the city

   All voted “yes.” Motion carried.

10. **Consent Agenda - Items Requiring a Majority Vote:**

   **A. Order for tobacco license violation for Lucky's Station LLC**

   Allendorf moved, Wiersum seconded a motion to approve issuing the Finding of Fact, Conclusion, and Order for Lucky's Station LLC

   All voted “yes.” Motion carried.

   **B. Resolution amending Council Policy 2.5 regarding tax exempt financing**

   Allendorf moved, Wiersum seconded a motion to adopt the resolution amending Council Policy 2.5. All voted “yes.” Motion carried.

   **C. Items related to Council Policy 11.6 – Use of the Burwell Property**

   Allendorf asked that the item be pulled from the consent agenda. He noted the recommendation was for a 12 month moratorium on the use of the Burwell property. The reason was there had been some requests to hold
some large events like weddings on the property and there were not procedures and policies in place to accommodate those requests. He said he couldn’t recall many times when the council approved a 12 month moratorium for something. The few granted dealt with difficult development related issues. He felt in this case staff could develop appropriate rules and procedures without having to take away an important asset for residents for an entire year. He asked if a six month moratorium would allow staff and the park board to come up with a process and procedures to handle the larger requests. Vetter said he believed six months would allow enough time to develop a process and procedures. The initial concern was it would be sometime in late summer before the item could be added onto the next available park board agenda. Allendorf said the Burwell House was such an asset that he would hate to see it unavailable for general use for 12 months.

Wiersum said he did not disagree with Allendorf’s concern but given the timing of the park board meetings perhaps a compromise of a nine month moratorium might make sense.

Allendorf said he thought six months would be enough time to allow the park board to look at the item in time for the joint meeting with the council in November.

Barone said staff had not received many, if any, requests for winter use. The goal would be to have a policy in place to allow use in the summer of 2016.

Bergstedt said if the vast majority of requests were for spring and summer the compromise suggestion seemed to make sense.

**Allendorf moved, Wiersum seconded a motion to approve a moratorium until the end of 2015 on the private use of the Burwell site, City Council Policy 11.6, until amendments to the policy can be presented for consideration.** All voted “yes.” Motion carried.

**D. Labor agreement between the city of Minnetonka and the International Union of Operating Engineers Local 49 – Public Service Workers**

Allendorf moved, Wiersum seconded a motion to approve the 2015-2017 labor agreement between the city of Minnetonka and the International Union of Operating Engineers, Local No. 49, AFL-CIO. All voted “yes.” Motion carried.

**E. Items related to the grant of a cable communications franchise**
Allendorf moved, Wiersum seconded a motion to authorize the publication of notice of intent to franchise and notice of public hearing and thereafter follow the statutory procedural requirements for items related to the granting of cable franchise. All voted “yes.” Motion carried.

11. Consent Agenda - Items requiring Five Votes: None

12. Introduction of Ordinances:
   
   A. Ordinance removing area from the wetland overlay district

   City Planner Loren Gordon gave the staff report.

   Acomb moved, Wiersum seconded a motion to introduce the ordinance and refer it to the planning commission. All voted “yes.” Motion carried.

13. Public Hearings:
   
   A. Items concerning At Home Apartments at 5709 Rowland Road

   Bergstedt opened the public hearing at 6:59 p.m. No one spoke.

   Wiersum moved, Acomb seconded a motion to continue the item and the public hearing to the April 6, 2015 council meeting at the request of the applicant. All voted “yes.” Motion carried.

14. Other Business:
   
   A. Concept plan review for Kraemer’s Hardware redevelopment at 14730 Excelsior Boulevard, 5431, and 5439 Williston Road

   Gordon gave the staff report.

   Darren Lazan, Landform Professional Services, said he was representing the applicant, Lakewest. He said they still considered it a very fluid plan. There were previous proposals for the site.

   Pete Keely, Collage Architects, said information from the studies had been taken into account. Open space and the knoll on top were important. The idea was to preserve that portion of the natural landscape. Another important aspect of Williston Road was the serial nature of development that occurred over time. Traditionally there were single family home developments and parcels were developed along lot line patterns. He said
for this proposal the idea was to respect those developments. Also being looked at was where on the site access should occur. The Kraemer’s site had access on to Excelsior Boulevard. Traffic could turn on to Williston Road. Two access points are being looked at for this plan: one at the current access point and another on Williston Road. He said although it would be a four story building, there would be a lot of grade break. Three stories would face Excelsior Boulevard due to the step back. He showed illustrations of the building with a portion with a pitched roof and the same portion with a flat roof. The pitched roof might fit in better with some of the residential character but would add mass.

Keely said council feedback would be helpful on the idea of the access from Williston Road coming into 25 parking stalls. There were some concern that the stalls were too close. Feedback would also be helpful on the idea of the 50 foot setback from Excelsior Boulevard and if the location of the building was right, and the nature of the transition.

Wiersum asked for more information about the number of units that would be in the building. Keely said as of now there would be 78 total units. Evaluation was being done over the right mix. What was being shown now was 60 one bedroom apartments and 18 two bedroom apartments. There was one to one below enclosed parking with 41 exterior stalls. Wiersum asked if it was feasible to slide the curb cut over and still qualify as a fire lane. Keely said the fire access would have a hammerhead at the end making it pretty restrictive. One option would be to have residents enter and take two 90 degree turns. One turn would be going up a hill and the other down a hill and this seemed a little convoluted. Wiersum agreed the topography would be challenging.

Allendorf said the illustration of the building with a pitched roof looked to him like architecturally something was being forced on to a major building that doesn’t belong on a major building. Keely said the idea was to have that end of the building feel a little bit different than the rest. He agreed the pitched roof was a little bit forced but that it would work. His preference was to have a flat roof. There were options for breaking down the look of the building. Allendorf said to his eye the material matching was a better option. He asked if Keely looked at having the fire lane on the north side of the twin homes rather than the south side. Keely said he did look at that option. There was concern about the location of the hill. He said the fire lane provided a natural barrier and by putting it on the north side it would move the twin homes close to the apartments.

Acomb noted the building would be further back from Excelsior Boulevard than the existing buildings. She asked if this was to accommodate more parking. Keely said one reason was to respect the 50 foot setback. Within the setback additional parking could be added. In addition the idea was
not to have units right off the parking lot. He said the location of the building would be further discussed because it would impact other future development as well as the number of parking stalls.

Allendorf asked, thinking long term, if the dance studio property could be purchased by the owner of this property, how the two properties would work together as one. Keely said in the future he thought Excelsior Boulevard would develop along its length. The existing drive access was probably in the right location. If the second property were developed he thought there would still be the ability to get behind the buildings with a parking structure. He thought there would be options for the dance studio property into the future because the knoll and the green space at the top of the hill creates a natural pinch point. He did not see this plan as precluding future development.

Brian Farley, 14811 Peteler Lane, said he was present to see the preliminary plans and from what he had seen he was pretty excited about the project. The property had been an eyesore for a number of years and he hoped the project moved forward.

Bob Streff, 5407 Williston Road, said this was the best concept plan he had seen so far. He still had some concern about the impact of the traffic flow.

Bergstedt shared comments Schneider had provided to him. Schneider indicated for a concept plan he thought the proposal fit in nicely with the site. He had some concern about the proximity of the two driveways.

Bergstedt said staff had asked for input on tax increment financing and thoughts on affordable housing.

Wiersum said it was speculative to talk about TIF or other economic development tools when they had not been requested. If they were to be considered the question was what the city would get in return for using those tools. The city supports and needs more affordable housing. When the economy took a downturn the number of affordable units diminished. In the past the city had traded affordable housing for density above zoning. He said in the end it will come down to evaluating what the project would look like without those tools versus what it would look like with the tools and if the investment was worth what could be gained.

Wischnack said a more direct question was if the council expected affordable housing to be part of an application. Acomb said the Glen Lake area as being appropriate for affordable housing because it was one of the village centers that offered services that would help support affordable housing needs. The city needs affordable housing.
Allendorf asked what the market study showed was the target market for a project like this in Glen Lake. Lazan said right now what was being looked at was a market rate project. He felt there was a market that would support the project. For the number of units it was thought all could be market rate housing. If affordability was a component the city was interested in, it was something that could be looked at. Allendorf said in this area he thought a certain number of affordable units would be appropriate. If the market study showed the desire for very expensive apartments he might have thought differently. But given the idea for market rate apartments he thought some affordable units could be fit in and would be a good addition to Glen Lake and the city.

Bergstedt said when looking at the metro area goal for affordable units and how behind the city was, and given the history and precedent of most of the recent approvals, he hoped staff, the applicant, and the council would be discussing the possibilities of some affordable units and how to best make that work.

Wiersum said adding the Kraemer property to the other properties enabled the developer to come up with a plan that fit far better than anything the council had previously seen. He was encouraged by the residents’ comments and by what he had seen. The biggest concern with previous proposals was moving commercial and higher density housing up Williston Road. This plan would reduce the density and provide a nice transition.

Acomb said she too liked the transition going up into the neighborhood on Williston Road. She preferred the flat roof for the building. Her concerns related to the potential for a PUD. These concerns came from other projects from the past that were approved as a PUD, only later to come back as something else that wasn’t initially approved. She was looking for some reassurances this would not occur.

Bergstedt said at this point in the process the builder had not been identified. As the process moved forward it might give some of the council members some comfort to know who else would be involved with the development. The concern was rezoning a property, approving a plan, and then having the plan sit for a number of years since the zoning goes with the property and not with the application.

Lazan said it was the group’s intent to construct the project. A PUD would only be looked at if some of the zoning guidelines made the project difficult to work.

Acomb asked if there could be a stipulation that if the approved project did not get built the PUD zoning would go away or some mechanism so the
PUD rezoning would expire. City Attorney Corrine Heine the council would have to go through a rezoning process because PUD was a form of zoning. Once it was put in place it stayed in place until the council rezoned the property. On another development that is not a PUD, staff proposed the zoning would not go into effect until the plat is filed. This was a way to tie the zoning into another measurable event but it does not ensure that building permits would not be pulled.

Bergstedt said the council had looked at several plans for the property. One plan was looked at approximately a year ago and he credited this plan that seemed to be much more sensitive to the site and much more appropriately scaled and creative.

Bergstedt called a recess at 7:55 p.m. He called the meeting back to order at 8:06 p.m.

B. 2015 Assessment Report

City Assessor Colin Schmidt presented the report.

Allendorf noted that the weekend newspaper included information about area sales for the past month. The information included five sales in Minnetonka. The highest sales price was $419,000. Three others were in the $200,000’s and the final one was $179,000. He said the city’s message that Minnetonka wasn’t just million dollar homes was a message reflected by those recent sales.

15. Appointments and Reappointments: None

16. Adjournment

Acomb moved, Wiersum seconded a motion to adjourn the meeting at 8:24 p.m. All voted “yes.” Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk
Minutes
Minnetonka City Council
Monday, April 6, 2015

1. Call to Order

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

4. Approval of Agenda

Wiersum moved, Wagner seconded a motion to accept the agenda with an addendum to item 13A. All voted “yes.” Motion carried.

5. Approval of Minutes: March 2, 2015 minutes

Wagner moved, Allendorf seconded a motion to approve the March 2, 2015 minutes. All voted “yes.” Motion carried.

6. Special Matters:

A. Recognition of 2015 Police Citizens Academy

Police Chief Jeff Sebenaler provided a staff report.

Bergstedt handed out the certificates.

Steve Arnold, 15017 Highland Lane, thanked the police department for the effort put into the classes.

Dave Larson, 15733 Randall Lane, said staff did a fabulous job.

Bergstedt said modern day policing was not an easy job and the city was fortunate to have a second to none department. The academy was a unique opportunity for residents to see what goes on behind the scenes and hopefully the graduates would work as ambassadors in the community.
7. **Reports from City Manager & Council Members**

City Manager Geralyn Barone reported on the schedule for upcoming council meetings.

Wagner reminded residents of an April 14 meeting to get public input for the LRT station area designs for the Shady Oak and Opus stations.

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. **Order for tobacco violation for Siri Enterprises LLC**

    Allendorf moved, Wagner seconded a motion to issue the Findings of Fact, Conclusion and Order for Siri Enterprises LLC. All voted “yes.” Motion carried.

    b. **Resolution for the 2015 Street Rehabilitation**

    Allendorf moved, Wagner seconded a motion to adopt Resolution No. 2015-020 accepting plans and specifications and authorizing the advertisement for bids for the 2015 Street Rehabilitation Project No. 15401. All voted “yes.” Motion carried.

    c. **Resolution approving a conditional use permit for telecommunications facility at 15001 Minnetonka Industrial Road**

    Allendorf moved, Wagner seconded a motion to adopt Resolution No. 2015-021 approving the request for a 100-foot telecommunications tower at 15001 Minnetonka Industrial Road. All voted “yes.” Motion carried.

11. **Consent Agenda – Items requiring Five Votes:** None

12. **Introduction of Ordinances:** None

13. **Public Hearings:**

    a. **On-sale wine and on-sale 3.2 percent malt beverage liquor licenses for LTF Minnetonka Restaurant Company, LLC dba Life Café, 3310 Co Road 101**.
Barone gave the staff report.

Bergstedt opened the public hearing at 6:47 p.m.

Joan Warner, 17630 Breconwood Road, said she was concerned about noise if Life Time Fitness was doing outside service. She asked if there would be any change to the way the outside service was currently run. Currently there were classes held outside with some going to 10 p.m. The music and the instructor with a microphone was very loud.

Community Development Director Julie Wischnack said the conditional use permit had a provision not allowing speakers or audio equipment in the outdoor patio. She checked with the police department and there were some noise complaints received the past few months. She said staff would devote time to checking into the issue.

Wiersum moved, Wagner seconded a motion to continue the public hearing to May 4, 2015. All voted “yes.” Motion carried.

B. Resolution approving vacation of drainage and utility easements at 14720, 14702, 14680, 14685 and 14711 Williston Glen

Wischnack gave the staff report.

Bergstedt opened the public hearing 6:51 p.m. No one spoke. He closed the public hearing at 6:51 p.m.

Wiersum moved, Acomb seconded a motion to adopt Resolution No. 2015-022 vacating the obsolete drainage and utility easements at 14720, 14702, 14680, 14685 and 14711 Williston Glen. All voted “yes.” Motion carried.

C. Items concerning At Home Apartments at 5709 Rowland Road

Wagner moved, Wiersum seconded a motion to continue the At Home Apartments, LLC land use, TIF and public hearing items to the April 20, 2015 meeting. All voted “yes.” Motion carried.

14. Other Business:

A. Appeal of peddler license denial for Joshua Donald Peterson

Wischnack gave the staff report.
Ellingson asked if the license would have been approved if the applicant had disclosed information about his record. Wischnack said it was likely the license would have been approved. She said she would have done further research into the types of violations involved but the record showed there was no felony violation.

Josh Peterson, 2715 Dupont Avenue South, Minneapolis, said he applied for a solicitor’s license. He didn’t indicate a criminal record because he didn’t think his one DUI in 2013 was a crime. His intention was not to mislead, lie or withhold information. He said if the application had asked if he ever had a DUI he would have indicated he had. He apologized for his mistake.

Ellingson asked if the applicant could reapply after a period of time if the license was denied. City Attorney Corrine Heine said the ordinance provides that if the license was denied, the applicant would have to disclose the denial for falsification and then would not be eligible to reapply for three years.

Ellingson asked if the city received many applications from real estate agents intending to go door to door to solicit clients. Wischnack said she had not received any similar applications during the seven and a half years she has been the community development director.

Bergstedt said he sympathized with Peterson if Peterson was confused by the language on the application. The city had a process for approval of licenses for people who solicit door to door. It was a serious process for the city to give approval to the licensees. He said he wasn’t sure what type of message would be sent to future applicants or residents who were looking to the city to be the gatekeeper, by approving a license for a person that was less than truthful on the application. He was strongly in favor of upholding the decision to deny the license.

Wiersum said he agreed with Bergstedt’s comments. He noted earlier in the meeting the residents who participated in the police academy were recognized. Given that it is a difficult time for law enforcement, he thought the city had to uphold the rules and to say the city takes the licensing process for people who go door to door seriously. There had to be a high standard. The council should be concerned about a precedent being set.

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

B. Resolution amending Council Policy 6.2 regarding presumptive penalties for liquor licensing violations
Barone said there was a straightforward amendment to the policy related to taprooms and breweries. Also, last fall a penalty came before the council and there were questions about whether or not the city’s penalties were appropriate. The staff report included information about other potential changes to the policy to address the council’s earlier questions. She said if the council wanted to have a more in-depth discussion, staff could prepare information for a future study session. She asked the council to provide some direction for what it wanted staff to do.

Wagner said when a violation has come before the council, council members have indicated that they wished more of the businesses participated in the city’s best practices program. The city has had a number of people who participated and then let their participation lapse. He said he would support anything that could be done to encourage participation. He would also support having a further discussion about what other tools could be put into place.

Barone noted although there was an issue with fewer businesses participating in the program, the overall recidivism rate was pretty low. It was pretty rare where there was a third or fourth violation or a total revocation. No matter what program was put in place there likely would continue to be a few violations here and there because human error was involved. She said it was important to know the council’s goal. Was it to have zero incidents or was it to keep the recidivism rate low?

Acomb said she was supportive of the amendment related to taprooms. She noted that during her time on the council the number of failed compliance checks had gone up dramatically. There were some businesses participating in the best practices program and still failing compliance checks. This may indicate the program needs improvement. While zero incidents may be an unrealistic goal, she thought increasing participation in the best practices program, which currently was around 30 percent, was important. She said she would be supportive of looking at the penalties, the best practices program and even how compliance checks are done. The community is full of resources. The school districts have coalitions that work to discourage underage substance abuse.

Allendorf asked how the best practices activities were being kept fresh year to year so that people continue to attend. Wischnack said she has worked with Sebenaler since he became police chief to keep things fresh. The formal training was dispensed with because it was presented by the same person every year. This has changed to a more open house style format that allows interaction with both Sebenaler and herself. This gets at the issues the businesses are concerned about and want to discuss. She
said historically the highest participation was 24 businesses. The number has been pretty consistent over the years at about 14 businesses.

Allendorf said years back when he served on the police advisory commission, an idea that was floated was to look at if the city could require any on sale or off sale establishment to check the ID of anyone under 40 years old. He said some of the establishments really liked the idea because it took them off the hook and helped address the issue of a service person asking for IDs of people that looked around 21 years old and offending somebody causing them not to leave a tip. He asked if the idea had been considered. Sebenaler said currently the best practices program gives points to businesses that have a policy to ID anyone under 40 years old. The program has provisions that are required and then other provisions that are optional. Allendorf said he thought zero incidents was unrealistic but the goal should be less recidivism. Heine indicated that the city could mandate by ordinance that businesses check the ID of anyone under 40 years old.

Wiersum said the proposed changes related to taprooms were good changes. He said he could support expanding the gap between penalties for businesses that participate in the best practices program and those who do not. He was interested in staff coming up with suggestions to address the issues. He would also support having a suspension of a license occur on a day where the business was as likely to be as busy as the day the violation occurred. Wischnack said she picks the day the suspension occurs and she always picks a weekend night.

Bergstedt said his concern was that despite the city’s best efforts with the best practices program, the participation has consistently been around 25 percent. The council had to decide if that level of participation was OK. If the penalties were increased for violations for those who did not participate, no amount would be high enough to have the desired impact on some of the larger businesses. Another option, one he was not recommending, was requiring participation in order to receive a liquor license from the city. Some of the businesses have internal programs so he didn’t think the city wanted to go to that extreme.

Acomb said she has been involved with Tonka Cares and the coalition has done some research on how to provide incentives so that more establishments participate in the best practices programs. Connecting it with license fees was one of these incentives. A participant’s license fee would be lower if they participated in the program and higher if they did not. She said it was frustrating that the program was not being used given the amount of staff work and time especially since the number of violations continue to increase.
Wagner said more and more chain restaurants were moving into the city and that number would increase with the Ridgedale redevelopment. Many of these businesses have established their own best practices programs. He suggested staff look at crediting practices that were in the company’s program that was also in the city’s program. He cited the example of his own job with Carlson Companies where a lot of the pharmaceutical companies want his employer to use their internal training program but allow Carlson to prove that their own program meets the pharmaceutical company’s standards. This reduces duplicative processes.

Wischnack said the city already was doing some of what Wagner was suggesting. She thought it was worthwhile though for the council to take a look at the program. She also could provide more information about the participation numbers.

Allendorf said he didn’t think the best practices program by itself would eliminate violations. He cited an example of a call he received from a business that was a best practices participant where the wife of the owner misread a license leading to a compliance check failure. He said his earlier suggestion was based on not expecting the best practices program to significantly cut down on the number of violations because mistakes happen. He questioned if charging more for the license would similarly lead to a significant decrease in the number of violations.

Wiersum said there was enough passion around the issues that a study session discussion made sense. He said it concerned him that the relative percentage of best practices program participants was low. Other communities have best practices programs and he said it would be helpful to get information about the percentage of participation in those other communities. Looking at successful models in other communities could make Minnetonka’s program better. Ultimately the objective was to minimize violations but he agreed with Allendorf that mistakes do happen.

Bergstedt agreed keeping the mistakes to a minimum and keeping the recidivism rate low were key objectives. He also agreed that it was important to make decisions based on facts and actual numbers and what other cities and businesses were doing.

Allendorf moved, Wiersum seconded a motion to adopt Resolution No. 2015-023 amending council Policy 6.2. All voted “yes.” Motion carried.

15. **Appointments and Reappointments:** None

16. **Adjournment**
Acomb moved, Wagner seconded a motion to adjourn the meeting at 7:34 p.m. All voted “yes.” Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk
WHEREAS, the global community now faces extraordinary challenges, such as global health issues, food and water shortages, and economic struggles; and

WHEREAS, all people, regardless of race, gender, income, or geography, have a moral right to a healthy, sustainable environment with economic growth; and

WHEREAS, it is understood that the citizens of the global community must step forward and take action to create a green economy to combat the aforementioned global challenges; and

WHEREAS, a green economy can be achieved on the individual level through educational efforts, public policy, and consumer activism campaigns; and

WHEREAS, it is necessary to broaden and diversify this global movement to achieve maximum success; and

WHEREAS, Earth Day is the beginning of a new year for environmental stewardship commitments, to implement sustainability efforts and commit to an Earth Day proclamation; and

FURTHERMORE, let it be known that the Minnetonka City Council hereby encourages its residents, businesses and institutions to use EARTH DAY to celebrate the Earth and commit to building a sustainable and green economy;

NOW THEREFORE LET IT BE PROCLAIMED, the Minnetonka City Council hereby pledges this Earth Day, April 22, 2015, to support green economy initiatives in Minnetonka, MN and to encourage others to undertake similar actions.

Terry Schneider, Mayor

April 22, 2015
WHEREAS, trees and forests brighten Minnetonka's future by creating jobs, providing recreational settings, increasing property values, and making cities more livable; and

WHEREAS, trees and forests brighten society by building strong community ties, reducing crime, and providing common meeting places; and

WHEREAS, trees and forests brighten our lives by providing lumber for building homes, fiber for producing paper, foliage for decorating, and food for eating; and

WHEREAS, trees and forests brighten the environment by moderating climate, improving air and water quality, conserving water and energy, and sheltering wildlife; and

WHEREAS, each year, on the last Friday in April, and throughout the month of May, Minnetonka residents pay special tribute to the trees and all the natural resources they represent, and dedicate themselves to the continued health of our state's community and rural forests.

NOW THEREFORE BE IT RESOLVED that the Minnetonka City Council hereby proclaims Friday, April 24th as "Arbor Day" in the city of Minnetonka.

Terry Schneider, Mayor

April 20, 2015
City Council Agenda Item #6C  
Meeting of April 20, 2015  

**Brief Description:** Presentation of Tree City USA 20-Year Award  

**Recommended Action:** Hear the presentation and receive the award  

**Background**  

The Tree City USA designation was again received in 2015 for the city’s commitment to trees in 2014, marking 20 years the city has been named a Tree City USA.  

In order to be eligible for the designation, a city must annually meet four minimum standards which include having a forestry department or tree volunteer board, having at least one community tree ordinance, having a community forestry program with an annual budget of at least $2 per capita and pronouncing an Arbor Day Proclamation. In 2014, the city spent approximately $19 per capita on all forestry related activities including habitat restoration.  

**Recommendation**  

Hear the presentation and receive the award  

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

Originated by:  
   Jacque Larson, Community Relations Manager
City Council Agenda Item #9A
Meeting of April 20, 2015

Brief Description: Joint Powers Agreement (JPA) for the acquisition of structural firefighting self-contained breathing apparatus (SCBA)

Recommended Action: Award the contract to Clarey’s Safety Equipment for Scott SCBA on behalf of the joint powers agreement

Background

On November 8, 2010, the city council approved an amended and revised joint powers agreement (JPA) to allow participating organizations the ability to procure public safety equipment, to be tested and maintained by the manufacturer or distributor, resulting in increased interoperability and life safety. The agreement authorizes one city to act as the lead agency in obtaining bids, but each city would enter into its own contract with the company for the number of units that they need. The JPA operating committee chose Minnetonka to act as the lead agency for obtaining bids, and Minnetonka has worked closely with Eden Prairie staff in this effort.

Bids were received on February 17, 2015 from three vendors. The complicated bids reflect a myriad of options, and staff used typical SCBA with associated components as a method for comparison. The results for bids which were specification compliant are as follows:

<table>
<thead>
<tr>
<th>Bidder</th>
<th>Amount per SCBA unit (2015)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clarey’s (Scott)</td>
<td>$5,244.00</td>
</tr>
<tr>
<td>MES, Inc. (Scott)</td>
<td>$5,636.98</td>
</tr>
<tr>
<td>Emergency Response Solutions (MSA)</td>
<td>$5,776.35</td>
</tr>
</tbody>
</table>

Staff has examined the Clarey’s bid for Scott equipment and has determined that it meets all of the requirements of the bid specifications. Clarey’s is holding to a 2% maximum annual price increase over the five-year contract. The Scott equipment is high quality and will meet the needs of the various fire departments. The JPA operating committee recommended that Minnetonka award the contract to Clarey’s Safety Equipment for Scott SCBA on behalf of the JPA.

The Minnetonka fire department is currently scheduled to replace their SCBA through the Capital Improvements Program with this contract in 2017.
Recommendation

Staff recommends that the council award the contract for acquisition of Scott structural firefighting self-contained breathing apparatus on behalf of the Joint Powers Agreement group to Clarey’s Safety Equipment.

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

Originated by:
   John Vance, Fire Chief
   James Flanders, Assistant Fire Chief
City Council Agenda Item #9B  
Meeting of April 20, 2015

**Brief Description:** Bids for the 2015 Street Rehabilitation Project No.15401

**Recommended Action:** Award the contract and amend the CIP

**Background**

On April 6, 2015, the city council approved plans and specifications, and authorized the advertisement for bids for the 2015 Street Rehabilitation Project. The following streets are included in the 2015 street rehabilitation program:

<table>
<thead>
<tr>
<th>Neighborhood</th>
<th>Streets</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deaverdale</td>
<td>Indian Road West, Council Circle, Tribal Trail, Totem</td>
</tr>
<tr>
<td></td>
<td>Trail, Tonkawa Trail</td>
</tr>
<tr>
<td>Woodhaven</td>
<td>Oakland Place</td>
</tr>
<tr>
<td>Forest Meadows</td>
<td>Forest Meadow Drive, Meadow Circle</td>
</tr>
<tr>
<td>White Birch</td>
<td>White Birch Road, Laurel Road</td>
</tr>
<tr>
<td>Crowne Hill</td>
<td>Crowne Hill Road, Crowne Hill Lane</td>
</tr>
<tr>
<td>Shaker Heights</td>
<td>Blenheim Way, Blenheim Circle, Kemrich Circle</td>
</tr>
</tbody>
</table>

**Bid Opening**

Bids were recently opened for the project. Four bids were received in response to the call for bids, and the results are as follows:

<table>
<thead>
<tr>
<th>Contractor</th>
<th>Total Bids</th>
</tr>
</thead>
<tbody>
<tr>
<td>Valley Paving, Inc.</td>
<td>$6,009,834.36</td>
</tr>
<tr>
<td>Engineer’s Estimate</td>
<td>$6,099,427.25</td>
</tr>
<tr>
<td>Park Construction Company</td>
<td>$6,157,737.11</td>
</tr>
<tr>
<td>Meyer Contracting, Inc.</td>
<td>$6,779,278.46</td>
</tr>
<tr>
<td>Palda &amp; Sons, Inc.</td>
<td>$8,028,781.02</td>
</tr>
</tbody>
</table>

The low bidder, Valley Paving, Inc. has satisfactorily completed similar projects in Minnetonka.
### Estimated Project Costs and Funding

The total estimated construction cost, including engineering, administration, and contingency is $6,930,000. The budget amount for the project is shown below and is included in the 2015 – 2019 Capital Improvements Program (CIP).

<table>
<thead>
<tr>
<th>Proposed Funding</th>
<th>Expense</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction Costs</td>
<td>$6,010,000</td>
</tr>
<tr>
<td>Contingencies – 5%</td>
<td>300,500</td>
</tr>
<tr>
<td>Engineering, Administration, &amp; Indirect Costs</td>
<td>619,500</td>
</tr>
<tr>
<td>Street Improvement Fund</td>
<td>$2,907,000</td>
</tr>
<tr>
<td>Utility Fund</td>
<td>2,923,000</td>
</tr>
<tr>
<td>Storm Water Fund</td>
<td>1,100,000</td>
</tr>
<tr>
<td><strong>Total Budget</strong></td>
<td><strong>$6,930,000</strong></td>
</tr>
</tbody>
</table>

The attached “2015 Street Rehabilitation Funding Summary” provides a recap of estimated costs and funding sources for all 2015 street projects. As mentioned at the November 10, 2014 and April 6, 2015 council meetings and as can be seen on the above table, the CIP needs to be amended to reflect the additional funds needed for the street and utility improvements, and for the inclusion of the Shaker Heights subdivision. Fund balances in the Street Improvement Fund and Storm Water Fund can support the additional costs. Financial projections for the Utility Fund will be revised to accommodate its additional costs.

### Schedule

If the recommended actions are approved by council, construction would likely begin late April or early May.

### Recommendation

1) Award the contract for the 2015 Street Rehabilitation Project No.15401 to Valley Paving, Inc. in the amount of $6,009,834.36.

2) Amend the CIP.

Submitted through:
- Geralyn Barone, City Manager
- Lee Gustafson, P.E., Director of Engineering

Originated by:
- Jeremy Koenen, P.E., Project Engineer
## 2015 Street Rehabilitation Funding Summary

<table>
<thead>
<tr>
<th>Funding Sources</th>
<th>Amended 2015 CIP ¹, ²</th>
<th>2015 Street Rehabilitation ³</th>
<th>CR 101 (TH 62 to Hutchins) ²</th>
<th>Balance ⁴</th>
</tr>
</thead>
<tbody>
<tr>
<td>Street Improvement Fund</td>
<td>$3,842,555</td>
<td>$2,907,000</td>
<td>$1,842,555</td>
<td>$(907,000)</td>
</tr>
<tr>
<td>Storm Sewer Fund</td>
<td>$1,295,000</td>
<td>$1,100,000</td>
<td>$300,000</td>
<td>$(105,000)</td>
</tr>
<tr>
<td>Utility Fund</td>
<td>$1,231,240</td>
<td>$2,923,000</td>
<td>$231,240</td>
<td>$(1,923,000)</td>
</tr>
<tr>
<td><strong>Total Project Cost</strong></td>
<td><strong>$6,368,795</strong></td>
<td><strong>$6,930,000</strong></td>
<td><strong>$2,373,795</strong></td>
<td><strong>$(2,935,000)</strong></td>
</tr>
</tbody>
</table>

¹ 2015 CIP amended on November 10, 2014 to include additional funds needed for local street reconstruction associated with CR 101.

² Storm Sewer Fund: $1,100,000 (Local Street) plus $195,000 for Old Excelsior Boulevard, Phase 2 improvements being included with the CR 101 Project.

³ Includes the addition of the Shaker Heights subdivision to replace the water main.

⁴ Illustrates proposed CIP amendment needed for all 2015 projects.
Legend

2015 Street Rehabilitation

This map is for illustrative purposes only.

Document Path: F:\GIS\Users\Engineering\Fong\Location Map_2015 Blenheim Way.mxd
Legend

- 2015 Street Rehabilitation

This map is for illustrative purposes only.
City Council Agenda Item #9C
Meeting of April 20, 2015

**Brief Description:** Bids for Replacement of the Ice Arena “A” Refrigeration System

**Recommended Action:** Award the contract

**Background**

The existing Ice Arena “A” refrigeration system is the original system installed when the facility was constructed in 1968. The system is a “direct” system meaning that the source of cooling is to circulate R22 refrigerant directly into the rink floor. While this method of cooling is efficient in many ways, it has become extremely expensive due to the rising costs of R22 refrigerant. Due to environmental concerns, Federal law will phase out the production of R22 refrigerant by the year 2020. As a result, all ice arenas using direct R22 must replace these systems with an alternate form of cooling. For most arenas, including Minnetonka, the preferred replacement system is using ammonia to glycol which is circulated through the rink floor.

The 2015 – 2019 Capital Improvement Program had initially included the replacement of Ice Arena “A” refrigeration and dasher board systems in 2018. During the Council’s review of the 2015 operating budget, staff was directed to explore options for moving the project up to avoid possible mechanical breakdowns of an aging system, as well as to get ahead of the bubble of projects that will occur in 2018 and 2019 due to Federal law changes to production of R22.

As adopted by Council in the 2015 budget, the Ice Arena “A” refrigeration and dasher board replacement project is now included in this year’s budget at a cost of $1.6 million. An additional $100,000 was previously included in the 2014 budget to fund the preparation of plans and specifications for the project. Improvements will be funded initially from the Special Assessment Construction Fund and repaid back by the Community Investment Fund (CIF) as dollars become available. This payback will be incorporated in the 2016-20 CIP, which will be discussed at the April 27, 2015 study session. Staff is confident that the project meets all the requirements for use of the CIF, and hearings for use of the CIF are expected to be held on June 22 and July 27, 2015.

Using a National Joint Powers agreement, the city has purchased a new dasher board system that will be constructed beginning in early May following the completion of the spring skating season. The system selected was purchased for $203,000, and was $8,000 below the budgeted amount. Sealed bids for the replacement of the refrigeration system were opened on April 7, 2015, with an estimated budget of $1.3 million.
Summary
Listed below is a summary of bids received for the replacement of the Ice Arena “A” refrigeration system. The project includes removal and replacement of the existing cooling system and ice rink floor. The two alternates included relate to the possible need to remove excess fill from the existing rink floor. Alternate 1 is a cost for the removal of clean fill if required; and Alternate 2 is a cost for removal of contaminated and/or frozen soil if required.

<table>
<thead>
<tr>
<th>COMPANY</th>
<th>BASE BID</th>
<th>ALTERNATE 1</th>
<th>ALTERNATE 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Mechanical</td>
<td>$1,060,695</td>
<td>$70/cubic yard</td>
<td>$100/cubic yard</td>
</tr>
<tr>
<td>American Industrial Refrigeration</td>
<td>$1,142,676</td>
<td>$35/cubic yard</td>
<td>$65/cubic yard</td>
</tr>
<tr>
<td>ENGINEERS ESTIMATE</td>
<td>$1,300,000</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Gartner Refrigeration&amp; Mfg., Inc.</td>
<td>$1,345,901</td>
<td>$59.90/cubic yard</td>
<td>$67.40/cubic yard</td>
</tr>
<tr>
<td>Cool Air Mechanical</td>
<td>$1,509,502</td>
<td>$51.95/cubic yard</td>
<td>N/A</td>
</tr>
</tbody>
</table>

Recommendation

Based upon the review of bids by the Corval Group, the project consultant, staff recommends that the project be awarded to the low bidder, Total Mechanical for the cost of $1,060,695. In addition, staff recommends that the bids for Alternates 1 & 2 be rejected; and the work for soil removals, if needed, be contracted out prior to the start of the rink floor install. A total of $239,305, plus the project contingency amount of $134,500, remains to complete this work if needed.

Submitted through:
   Geralyn Barone, City Manager
   Merrill King, Finance Director
   Dave Johnson, Recreation Services Director

Originated by:
   John Heckmann, Ice Arena Division Manager
City Council Agenda Item #10A  
Meeting of April 20, 2015

Brief Description: Telecommunications lease with Verizon for Tanglen water tower

Recommended Action: Approve the lease

Background

Verizon Wireless (VAW) LLC proposes to lease space on the Tanglen water tower for six telecommunication antennas. Verizon also desires to lease 568 square feet of exterior ground space for an equipment building located near the base of the tower.

Public works and its consultant, SEH Engineering, have reviewed and approved the technical aspects of the proposal, as contemplated by City Council Policy No. 12.5. City staff has negotiated a proposed lease, attached at A-1. The term of the lease is 10 years, with the potential for two additional five-year renewals. Annual rent begins at $39,825.00, with a three-percent annual escalation clause.

The typical escalator provision in city leases for telecommunications towers is five percent. In this instance, Verizon will be paying annual rent that is higher than the city’s prevailing rental rate. The three-percent escalator is calculated to provide the same revenue stream over the life of the lease as would occur if Verizon paid the typical rent with a five-percent escalator. The other terms of the lease are consistent with the city’s other antenna leases.

Recommendation

Staff recommends that the city council approve the lease.

Submitted through: 
- Geralyn Barone, City Manager
- Merrill King, Finance Director
- Brian Wagstrom, Public Works Director

Originated by:
- Corrine Heine, City Attorney
SITE LEASE AGREEMENT

Between

CITY OF MINNETONKA

and

Verizon Wireless (VAW) LLC d/b/a Verizon Wireless

Commencement Year: 2015
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<td>10</td>
</tr>
<tr>
<td>-----------------------------------</td>
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</tr>
<tr>
<td>19. Default</td>
<td>10</td>
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<tr>
<td>20. Lease Termination</td>
<td>10</td>
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<tr>
<td>(a) Events of Termination</td>
<td>10</td>
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<td>(b) Notice of Termination</td>
<td>11</td>
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<td>(c) Tenant’s Liability for Early Termination</td>
<td>11</td>
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<td>11</td>
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<td>12</td>
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<td>25. Enforcement and Attorneys’ Fees</td>
<td>13</td>
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<td>26. Notices</td>
<td>13</td>
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<td>13</td>
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<td>13</td>
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<td>30. Governing Law</td>
<td>13</td>
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<tr>
<td>31. Severability</td>
<td>14</td>
</tr>
</tbody>
</table>
SITE LEASE AGREEMENT

THIS SITE LEASE AGREEMENT ("Lease"), is made with a commencement date of __________, 2015, between CITY OF MINNETONKA, 14600 Minnetonka Boulevard, Minnetonka, MN 55345 ("Landlord"), and Verizon Wireless (VAW) LLC d/b/a Verizon Wireless (" Tenant") with its principal offices located at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 (telephone number 866-862-4404).

For good and valuable consideration, the parties agree as follows:

1. Leased Premises.

   (a) Description. Subject to the terms and conditions of this Lease, Landlord hereby leases to Tenant and Tenant leases from Landlord a portion of Landlord’s property, located at 10901 Hillside Lane West, City of Minnetonka, County of Hennepin, State of Minnesota, legally described in Exhibit A attached hereto ("Property"), subject to any and all existing easements, and certain portions of the Tanglewood Water Tower ("Structure"), as more particularly shown in Exhibit B attached hereto, including 568 square feet of exterior ground space for Tenant’s equipment building as shown on Exhibit B and exterior tower space on which six directional antennas, connecting cables and appurtenances will be attached and located, the exact location of each to be reasonably approved by Landlord’s Public Works Director, together with appurtenant easements and access rights ("Leased Premises").

2. Rent.

   (a) Amount, Adjustments. As consideration for this Lease, Tenant must pay Landlord an annual rent in the amount of $39,825.00 for the initial 12-month period of this Lease, which will be increased on each anniversary of the Commencement Date (as defined in paragraph 4 below) by 3% of the previous year’s annual rent.

   (b) Time of Payment, Taxes. The annual rent must be paid before the anniversary of the Commencement Date of each year. For the first year, the full annual rental amount must be paid to Landlord no later than the Commencement Date. In addition to the annual rent, Tenant agrees to timely pay any personal property, real estate taxes, assessments, or charges owed on the Property which shows the result of Tenant’s use of the Leased Premises and/or the installation, maintenance, and operation of the Tenant’s improvements. Tenant has the right, at its sole option and at its sole cost and expense, to appeal, challenge or seek modification of any tax assessment or billing for which Tenant is wholly or partly responsible for payment. Landlord must reasonably cooperate with Tenant at Tenant’s expense in filing, prosecuting and perfecting any appeal or challenge to taxes as set forth in the preceding sentence, including executing any consent, appeal or other similar document. Tenant does not have the obligation to pay any tax, assessment, or charge that Tenant is disputing in good faith in appropriate proceedings prior to a final
determination that such tax is property assessed, provided that no lien attaches to the Property.

3. Contingencies.

(a) Government Approvals. Tenant's right to use the Leased Premises is expressly made contingent upon its obtaining all the certificates, permits, zoning and other approvals that may be required by any federal, state, or local authority. This includes the engineering study specified in subparagraph 3(b) below on the Structure to be conducted at Tenant's expense. Landlord will cooperate with Tenant in its efforts to obtain and retain such approvals and will take no action that would adversely affect the status of the Leased Premises with respect to the Tenant's proposed use thereof.

(b) Engineering Studies. Before obtaining a building permit, Tenant must pay for the reasonable cost of the following studies conducted by independent and qualified professionals selected by the Landlord: (i) a radio frequency interference study analyzing whether Tenant's intended use will interfere with any existing communications facilities and (ii) an engineering study analyzing whether the Structure is able to support the Tenant's Antenna Facilities, as defined in subparagraph 5(a), without prejudice to the City's use of the Structure. If the studies find that there is a potential for interference that cannot be reasonably remedied or for prejudice to the Structure, Landlord may terminate this Lease immediately and refund the initial rent to Tenant.

(c) Non-approval. In the event that any application necessary under subparagraph 3(a) above is finally rejected or any certificate, permit, license, or approval issued to Tenant is cancelled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority so that Tenant, in its sole discretion, will be unable to use or continue to use the Leased Premises for its intended purposes, Tenant will have the right to terminate this Lease and be reimbursed for prepaid rent, if any, prorated as of the date that Tenant's use of the Leased Premises ceases. Notice of Tenant's exercise of its right to terminate must be given to Landlord in writing by certified mail, return receipt requested, and will be effective upon receipt of such notice by Landlord as evidenced by the return receipt. Except as required under subparagraph 20(d) below, upon such termination, this Lease will become null and void and the parties will have no further obligations to each other.

4. Term and Renewals. The "Initial Term" of this lease will commence on the earlier of actual commencement of construction or July 1, 2015 (“Commencement Date”) and end on June 30, 2025. This Lease will be automatically renewed for two additional five-year renewal periods ("Renewal Term") unless either Landlord or Tenant sends written notice of non-renewal to the other no later than 180 days before the expiration of the Initial Term or any Renewal Term, in accordance with paragraph 26 of this Lease.
5. Tenant's Use.

(a) **Purposes.** Tenant must use the Leased Premises only for the purpose of installing, maintaining, and operating a Landlord-approved communications antenna facility, equipment, cabinets and an accessory building, and uses incidental thereto for providing radio and wireless telecommunication services that Tenant is legally authorized to provide to the public ("Antenna Facilities"). This use will be non-exclusive, except that Tenant's use of the specific area on the Property containing Tenant's equipment building and the specific areas on the Structure where Tenant's antennas are located will be exclusive. Landlord specifically reserves the right to allow the other portions of the Property to be used by other parties and to make additions, deletions, or modifications to its own facilities on the Property. The Antenna Facilities will remain the exclusive property of the Tenant, unless otherwise provided in this Lease.

(b) **Construction, Operation.** Tenant's construction and operation of the Antenna Facilities must be in accordance with its submitted drawings attached as Exhibit B and any supplementary plans approved by Landlord. All modifications to the Leased Premises and all improvements made for Tenant's benefit must be at Tenant's expense. Tenant must comply with all applicable ordinances, statutes and regulations of local, state and federal government agencies. Tenant must secure all improvements, including antenna, facilities and equipment, and must maintain them in accordance with good engineering practices, in compliance with all applicable FCC rules and regulations, and in a good state of repair, at least equal to the standard of maintenance of the Landlord's facilities on or adjacent to the Leased Premises. If facilities are mounted on the exterior of the Structure, they must be at all times painted the same color as the Structure, at Tenant's expense. Tenant will not allow any mechanics' or materialmen's liens to be placed on the Leased Premises.

(c) **Drawings.** Unless duplicative of previous specifications or drawings submitted to Landlord, Tenant must provide Landlord with as-built drawings of the equipment and improvements installed on the Leased Premises, that show the actual location of all Antenna Facilities. These drawings must be accompanied by a complete and detailed inventory of all equipment, personal property, and Antenna Facilities actually placed on the Structure.

(d) **Additional Antennas.** This Lease does not contemplate future installation of any additional antennas.

(e) **Replacements.** Before the Tenant may update or replace the Antenna Facilities, Tenant must submit to Landlord a detailed proposal for any such replacement facilities and any other information reasonably requested by Landlord. Tenant must reimburse Landlord for all reasonable costs incurred by the Landlord in connection with evaluating the proposal, including plan review, structural review, inspection time, and updating of as-built drawings. Landlord may not unreasonably withhold approval.
(f) **Emergency Facilities.** In the event of a natural or man-made disaster, Tenant may erect additional Antenna Facilities and install additional equipment on a temporary basis on the Leased Premises to ensure continuation of service, in accordance with plans approved by the Landlord, which approval will not be unreasonably denied. Such temporary operation must not exceed 90 days unless Tenant obtains written approval from the Landlord.

(g) **Access.** Tenant will have access to the ground portion of the Leased Premises at all times during this Lease, in order to install, operate, and maintain its Antenna Facilities. Tenant will have access to the Structure only with the approval of Landlord, which will not be unreasonably withheld, conditioned, or delayed. Tenant must request access to the Structure at least 24 hours in advance, except in an emergency. Tenant, not its agents, contractors, or subcontractors, must be the one to request access. Landlord may charge Tenant for whatever reasonable expense, including employees' wages, that Landlord incurs in providing access to Tenant if (1) Tenant wants access at a time outside Landlord’s normal working hours, or if (2) Tenant requests emergency access with less than 24 hours’ notice and Landlord reasonably determines that no true emergency existed. Tenant must call 952-988-8400 for access outside of Landlord's normal working hours. If Landlord installs a system that will allow Tenant to access the Structure without Landlord being present, Tenant must pay a proportionate share of the system cost, based on the number of leases for the Structure.

(h) **Payment of Utilities.** Tenant must separately meter charges for the consumption of electricity and other utilities associated with its use of the Leased Premises and must promptly pay all costs associated therewith.

(i) **Emergency Contact Information.** Tenant must post and maintain a current telephone number on the Antenna Facilities to be used for notice to Tenant in emergency situations.

(j) **Agent Representations.** Subject to Paragraph 29, each party is responsible for, and bound by, all representations made to the other by its employees, agents, contractors, and subcontractors with respect to this Lease and the installation, operation and maintenance of the Antenna Facilities and Property.

(k) **City Requirements.** Tenant is bound by the requirements and standards contained in City Council Policy No. 12.5, attached and made a part of this Agreement as Exhibit C, except those that are not applicable to Tenant or are waived by Landlord.

6. **Landlord Maintenance Activities.** Landlord agrees to give Tenant reasonable advance written notice of any non-emergency repair or maintenance activities related to Structure operations that are likely to affect the Antenna Facilities. Landlord agrees to coordinate the timing of such maintenance activities with the Tenant and will attempt to minimize adverse impacts on Tenant's operations. Tenant is responsible for securing and protecting its Antenna Facilities during Landlord’s repair and maintenance activities.
Tenant waives any claims it might have for damage to its Antenna Facilities resulting in whole or in part from Landlord’s repair and maintenance activities.

Tenant agrees to cooperate with the Landlord when the Landlord is performing maintenance activities on the Structure. Tenant must attend any pre-construction meeting if reasonably notified by Landlord. Tenant must provide Landlord’s maintenance contractor with pertinent safety instructions relative to working near the antennas. Tenant must interrupt transmissions or reduce them to levels meeting occupational safety standards when the transmissions could cause a safety hazard to workers. Tenant must remove cables to avoid damage if sandblasting is planned. If Tenant fails to reduce or interrupt transmissions or to remove cables in a timely manner, Landlord has the right undertake the work for Tenant if delay would cause the maintenance work to extend past June 1 for work in the spring and November 1 for work in the fall. Landlord also has the right to require Tenant to pay any delay costs charged by Landlord’s contractor.

7. **Temporary Interruptions of Service.** If Landlord reasonably determines that continued operation of the Antenna Facilities would cause or contribute to an immediate threat to public health and/or safety, Landlord may order Tenant to discontinue its operation by giving emergency notice under paragraph 5(i). Tenant must immediately comply with such an order. Service must be discontinued only for the period that the immediate threat exists. If Landlord reasonably believes that immediate action is necessary for the protection of public health and/or safety, Landlord may take reasonable actions to discontinue Tenant’s operations without advance notice. In that situation, Landlord must notify Tenant as soon as possible after its action and give its reason for taking the action. Landlord will not be liable to Tenant or any other party for any interruption in Tenant’s service or interference with Tenant’s operation of its Antenna Facilities, except as may be caused by the willful misconduct of the Landlord, its employees or agents. If the discontinuance extends for a period greater than three days, either consecutively or cumulatively, Tenant will have the right to terminate this Lease within its sole discretion for cause and without payment of the early termination fee.

8. **Additional Maintenance Expenses.** Upon notice from Landlord, Tenant must pay to Landlord all additional expenses incurred by Landlord in operating and maintaining the Leased Premises, including painting or other maintenance of the Structure, that are caused by Tenant’s occupancy of the Leased Premises. Landlord’s notice must state the reason(s) for the additional costs and include a reasonable itemization of the costs.

9. **Deposit.** Upon the commencement of this Lease, Tenant must deposit with Landlord the sum of $10,000.00 which will be fully refunded to Tenant upon the timely removal of the Antennas Facilities and related equipment, the repair of the site and the restoration of the Structure surface to the reasonable satisfaction of the Landlord, and payment of all amounts owed to Landlord. Landlord may use this deposit to complete work not done by Tenant as required by this Lease and to reimburse itself for any
amounts owed by Tenant to Landlord, after ten days written notice to Tenant. If the
deposit is not sufficient to cover all costs, Tenant must reimburse the Landlord for any
additional costs, within ten days after Landlord's written demand. If Landlord uses any
of the deposit, Tenant must provide sufficient funds to replenish the deposit to the full
$10,000.00, within 30 days after Landlord's written notice.

10. **Damage Repairs.** Any damage done to the Property and the Structure during
installation or operations must be repaired to the condition that existed before the
damage, at Tenant's expense either (1) by the Tenant within 30 days after notification of
damage, or within such longer period as may be reasonably necessary to make the
corrections if they cannot be made within 30 days, or (2) by the Landlord if Landlord
reasonably believes repairs need to be made immediately or if Tenant fails to make the
repairs under clause (1). Tenant must reimburse the Landlord for its reasonable repair
costs. If Tenant causes any damage to the Structure that requires the Structure to be
closed down, Tenant must pay a fee of $1000.00 per day or any portion of a day that
the Structure is unavailable for its primary use as a water storage facility.

11. **Landlord's Right to Correct.** If Tenant fails to comply with any requirement of
this Lease regarding installation, operation, maintenance, repair, removal or restoration,
Landlord may give Tenant 30 days advance written notice of the matters that require
correction. If Tenant fails to make the corrections within that time period, or within such
longer period as may be reasonably necessary to make the corrections if they cannot
be made within 30 days, then Landlord will have to right to make the corrections and
charge the Tenant for its reasonable costs in doing so.

12. **Payment of Fees.** Except as otherwise provided in this Lease, Tenant must pay
all rent, fees or costs due to the Landlord within 30 days after receiving written notice of
the costs. Tenant must pay a late fee of $100.00 per day if the rent, fees or costs are
not paid within ten days of the due date. If Tenant fails to pay promptly, Landlord may
use the deposit in paragraph 9 to pay for the amounts owed.

13. **Advances in Technology.** As technology advances and improved antennas are
developed that are routinely used in Tenant's business, Landlord may require, in its sole
discretion, the replacement of existing antennas with the improved antennas if the new
antennas are more aesthetically pleasing or otherwise foster a public purpose, as long
as the installation and use of the improved antennas are practical and technically
feasible at this location.

14. **Additional Buildings.** Tenant acknowledges that Landlord may permit
additional buildings to be constructed on the Property. At such time as this may occur,
Tenant will permit said buildings to be placed immediately adjacent to Tenant's building,
if one exists, and will allow "attachments" to its building so as to give the appearance
that all buildings are a connected facility, but not on top of Tenant's grounding ring.
Said attachments will be made at no cost to Tenant and will not compromise the
structural integrity of Tenant's building or interfere with the operation of Tenant's
installation, including its cabling or other equipment or access thereto.
15. Tenant Interference.

(a) User Priority. Tenant agrees that the following priorities of use, in descending order, will apply in the event of communication interference or other conflict while this Lease is in effect, and Tenant's use will be subordinate accordingly:

1. Landlord;
2. Public safety agencies, including law enforcement, fire, and ambulance services, that are not part of the Landlord;
3. Other governmental agencies where use is not related to public safety; and
4. Government-regulated entities whose antennae offer a service to the general public for a fee, in a manner similar to a public utility, such as long distance and cellular telephone, not including radio or television broadcasters.

(b) Interference With Structure. Tenant must not interfere with Landlord's use of the Structure and the Property and agrees to cease all such actions that unreasonably and materially interfere with Landlord's use thereof no later than three business days after receipt of written notice of the interference from Landlord. If Tenant's cessation of action is material to Tenant's use of the Leased Premises and such cessation frustrates Tenant's use of the Leased Premises, within Tenant's sole discretion, Tenant will have the immediate right to terminate this Lease for cause and without payment of the early termination fee.

(c) Interference With Higher Priority Users or Prior Tenants. If Tenant's Antenna Facilities cause impermissible interference with higher priority users as set forth in subparagraph (a) above or with pre-existing tenants, Tenant must take all measures necessary to correct and eliminate the interference. The interference must be eliminated within 24 hours for public safety antennas and 96 hours for other users, after receiving Landlord's notice of the interference under the emergency notification procedures in paragraph 5(i). If Tenant is not able to eliminate the interference within the required time period, Tenant must immediately cease operating its Antenna Facilities and must not reactivate operation, except intermittent operation for the purpose of testing, until the interference has been eliminated. Higher priority users and pre-existing tenants are deemed third party beneficiaries of this sub-paragraph. If the interference cannot be eliminated within 30 days after Tenant received Landlord's notice, Landlord may at its option terminate this Lease immediately.

(d) Interference Study - New Occupants. Upon written notice by Landlord that it has a bona fide request from any other party to lease a portion of the Property for telecommunications purposes, Tenant agrees to provide Landlord, within 30 days, the radio frequencies currently in operation or to be operated in the future of each transmitter and receiver installed and operating on the Leased Premises. Landlord may have an independent, registered professional engineer of Landlord's choosing perform
the necessary interference studies to determine if the new applicant's frequencies will cause harmful interference to Tenant. Landlord will require the new applicant to pay for such interference studies, unless the Landlord or other higher priority user requests the use, in which case the Tenant and all other tenants occupying the Property must pay for the necessary interference studies, pro rata.

(e) Interference - New Occupants. Landlord agrees that it will not grant a future lease on the Property to any party who is of equal or lower priority to Tenant, if such party's use is reasonably anticipated to interfere with Tenant's operation of its Antenna Facilities. Landlord agrees further that any future lease of the Property will prohibit a user of equal or lower priority from interfering with Tenant's Antenna Facilities. However, Landlord makes no guarantees of non-interference with Tenant's Antenna Facilities. Landlord will use its best efforts to notify other users of interference and to coordinate elimination of interference among site users. If such interference is not eliminated, Tenant will have the right to terminate this Lease for cause and without payment of the early termination fee or seek injunctive relief against the interfering occupant, at Tenant's expense.


(a) General. Tenant agrees to defend, indemnify and hold harmless Landlord and its elected officials, officers, employees, agents, and representatives, from and against any and all claims, costs, losses, expenses, demands, actions, or causes of action, including reasonable attorneys' fees and other costs and expenses of litigation, to the extent caused by the actions of the Tenant, its employees, agents or contractors during the installation, operation, use, maintenance, repair, removal, or presence of Tenant's Antenna Facilities, equipment and related facilities on the Leased Premises, which may be asserted against or incurred by Landlord or for which Landlord may be liable in the performance of this Lease, except to the extent attributable to the Landlord or the State of Minnesota.

(b) Hazardous Materials. Without limiting the scope of subparagraph 16(a) above, Tenant will be responsible for and will defend, indemnify, and hold Landlord, its agents, and employees harmless from and against any and all claims, costs, and liabilities, including attorney's fees and costs, arising out of or in connection with the cleanup or restoration of the Leased Premises to the extent caused by the Tenant's use of Hazardous Materials in violation of applicable law. For purposes of this Lease, "Hazardous Materials" must be interpreted broadly and specifically includes asbestos, fuel, batteries or any hazardous substance, waste, or materials as defined in any federal, state, or local environmental or safety law or regulations including CERCLA.

(c) Tenant's Warranty. Tenant represents and warrants that its use of the Leased Premises will not generate and Tenant will not store or dispose of on the Leased Premises, nor transport to or over the Leased Premises, any Hazardous Materials, unless Tenant specifically informs Landlord thereof in writing twenty-four hours prior to such storage, disposal or transport, or otherwise as soon as Tenant
becomes aware of the existence of Hazardous Materials on the Leased Premises. Landlord and Tenant acknowledge that Tenant will be utilizing and maintaining on the Property sealed batteries, propane/diesel/gasoline, HVAC system, and a halon/FM200 fire suppression system and that the use and maintenance of such items will not constitute a violation or breach of the preceding sentence of this paragraph. The obligations of this Paragraph 16 will survive the expiration or other termination of this Lease.

17. Insurance.

(a) Workers’ Compensation. The Tenant must maintain Workers’ Compensation insurance in compliance with all applicable statutes. The policy must also provide Employer’s Liability coverage with limits of not less than $500,000 Bodily Injury each accident, $500,000 Bodily Injury by disease, policy limit, and $500,000 Bodily Injury by disease, each employee.

(b) General Liability. The Tenant must maintain an occurrence form commercial general liability coverage for bodily injury, property damage including personal and advertising injury, for the hazards of Premises/Operation, contractual liability, independent contractors, and products/completed operations.

The Tenant must maintain this commercial general liability coverage with combined single limits of not less than $1,000,000 each occurrence; $1,000,000 personal and advertising injury; $2,000,000 general aggregate, and $2,000,000 products and completed operations aggregate. These limits may be satisfied by the general liability coverage or in combination with an umbrella or excess liability policy, provided coverage afforded by the umbrella or excess policy are no less than the underlying general liability coverages.

Tenant will maintain Completed Operations coverage for a minimum of one year after the construction is completed.

(c) Automobile Liability. The Tenant must carry Commercial Automobile Liability coverage. Coverage must afford combined single limits for Bodily Injury Liability and Property Damage Liability in the amount of $1,000,000 per accident for hired, non-owned, owned and leased vehicles. The liability limits may be afforded under the Commercial Policy, or in combination with an Umbrella or Excess Liability Policy, provided coverages afforded by the Umbrella Excess Policy are no less than the underlying Commercial Auto Liability coverage.

(d) Tenant Property Insurance. The Tenant must keep in force for the duration of the Lease a policy covering damages to its property at the Leased Premises. The amount of coverage must be sufficient to replace the damaged property, loss of use and comply with any ordinance or law requirements. (e) Adjustment to Insurance Coverage Limits. The Tenant and Landlord agree to negotiate in good faith to adjust insurance coverage limits if, at any time during the term of this Agreement, the coverage limits
stated are more than 25% at variance from the limits of insurance that represent an industry standard for similar leases at the time the request to renegotiate is made.

(f) **Additional Insured - Certificate of Insurance.** The Tenant must provide, prior to tenancy, evidence of the required insurance issued by a company (rated A- or better), licensed, authorized or permitted to do business in the state of Minnesota, which includes all coverages required in this Paragraph 17. Tenant must include the Landlord as an Additional Insured as their interest may appear on the General Liability and Commercial Automobile Liability Policies.

18. **Damage or Destruction.** If the Leased Premises is destroyed or damaged, without contributory fault of the Tenant or its agents, so as, in Tenant's judgment, to hinder its effective use of the Antenna Facilities, Tenant may elect to terminate this Lease upon 30 days' written notice to Landlord. In the event Tenant elects to terminate the Lease, Tenant will be entitled to reimbursement of prepaid rent covering the period subsequent to the date of damage to or destruction of the Leased Premises.

19. **Default.** Any of the following occurrences, conditions, or acts will be deemed a "Default" under this lease:

   (a) If Tenant fails to pay amounts due under this Lease within 30 days of receipt of Landlord's written notice that such payments are overdue;

   (b) Except as otherwise provided in this Lease, if either party fails to observe or perform its obligations under this Lease and does not cure that failure within 60 days after receipt of written notice of the breach. If the default may not be reasonably cured within such 60-day period, Tenant may request that Landlord grant an extension of the time to cure.

   (c) Except as expressly limited in this Lease, Landlord and Tenant will have such remedies for the default of the other party as may be provided by this Lease, at law or equity following written notice of the default and failure to cure within the applicable time under the terms of this Lease.

20. **Lease Termination.**

   (a) **Events of Termination.** Except as otherwise provided herein, this Lease may be terminated by either party upon 60 days written notice to the other party as follows:

   (i) by either party upon a Default which is not cured within 60 days of receipt of written notice of the Default to the other party (without, however, limiting any other rights of the parties pursuant to any other provisions in this Lease);
(ii) by Tenant if it is unable to obtain or maintain any license, permit or other governmental approval necessary for the construction and/or operation of the Antenna Facilities or Tenant's business;

(iii) by Tenant if the Leased Premises is or becomes unacceptable for technological reasons under the Tenant's Antenna Facilities, design or engineering specifications or the communications systems to which the Antenna Facilities belong;

(iv) by Landlord, if its Council decides, for any reason, to redevelop the Property and/or discontinue use of the Structure for all purposes;

(v) by Landlord if it determines that the Structure is structurally unsound, considering such things as the age of the Structure, damage or destruction of all or part of the Structure, or factors relating to the Structure's condition;

(vi) by Landlord if it determines that a potential user with a higher priority under paragraph 15(a) above cannot find another adequate location, or the Antenna Facilities unreasonably interfere with another user with a higher priority or with a pre-existing user, regardless of whether or not such interference was predicted in the initial interference study that was part of the application process; or

(vii) by Landlord if it determines that Tenant has failed to comply with applicable ordinances, or state or federal law, or any conditions attached to government approvals granted thereunder, after a public hearing before the Landlord's Council.

(b) Notice of Termination. The parties must give notice of termination in writing in accordance with paragraph 26. All rents paid for the Lease prior to the termination date will be retained by Landlord.

(c) Tenant's Liability for Early Termination. If Tenant terminates this Lease other than of right as provided in this Lease, Tenant must pay to Landlord as liquidated damages for early termination, 150% of the annual rent for the year in which Tenant terminates, unless Tenant terminates during the last year of any Term under Paragraph 4 and Tenant has paid the annual rent for that year.

(d) Site Restoration. If this Lease is terminated or not renewed, Tenant will have 60 days from the termination or expiration date to remove its Antenna Facilities, and related equipment from the Leased Premises, repair and restore the site and the surface of the Structure to their original conditions, ordinary wear and tear excepted. If Tenant's Antenna Facilities, and related equipment are not removed to the reasonable satisfaction of the Landlord, they will be deemed abandoned and become the property of the Landlord, and Tenant will have no further rights to them. In addition, Landlord

Site Lease Agreement

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may use the deposit required in paragraph 9 to complete the proper removal and restoration. Tenant will notify Landlord of any entities having an interest in the Antenna Facilities and related equipment because of financing arrangements. If Landlord removes the Antenna Facilities or related equipment, Landlord must give written notice to such entities at the addresses provided, informing them that Antenna Facilities or related property have been removed and will be deemed abandoned if not claimed and the storage fees and other reasonable costs paid within 30 days.

21. **Limitation of Liability.** Neither Party will be liable to the other, or any of their respective agents, representatives, and employees for any recovery for value of the business as a going concern, future expectation of profits, loss of business or profit or other consequential damages.

22. **Assignment.** Tenant may not assign, or otherwise transfer all or any part of its interest in this Agreement or in the Leased Premises without the prior written consent of Landlord, which will not be unreasonably withheld, delayed or conditioned; provided, however, that Tenant may assign its interest to its parent company, any subsidiary or affiliate of it or its parent company or to any successor-in-interest or entity acquiring 51% or more of its stock or assets in the market defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition or other business reorganization. Landlord hereby consents to the assignment by Tenant of its rights under this Lease as collateral to any entity that provides financing for the purchase of the equipment to be installed at the Leased Premises.

23. **Condemnation.** In the event the whole of the Leased Premises is taken by eminent domain or if a portion of the Leased Premises is taken by eminent domain so that Tenant is unable to use the Premises for the purposes intended under this Lease, Tenant will have the right to terminate this Lease, by giving 30 days’ written notice to the Landlord. In the event of any taking under the power of eminent domain, Tenant will not be entitled to any portion of the award paid for the taking of the Property or Leased Premises and the Landlord will receive full amount of such award. Tenant hereby expressly waives any right or claim to any portion thereof. Although all damages, whether awarded as compensation for diminution in value of the leasehold or to the fee of the Leased Premises, will belong to Landlord, Tenant will have the right to claim and recover from the condemning authority, but not from Landlord, such compensation as may be awarded or recoverable by Tenant on account of any and all damage to Tenant’s business and any costs or expenses incurred by Tenant in moving/removing its equipment, personal property, Antenna Facilities, and leasehold improvements.

24. **Disputes.** Except for interference issues, any claim, controversy or dispute arising out of this Lease not resolved within 30 days following notice of the dispute, must be submitted first and promptly to mediation. Each party must bear its own costs of mediation. If mediation does not result in settlement within 45 days after the matter was submitted to mediation, either party may file a claim in arbitration in accordance with the applicable rules of the American Arbitration Association. The award rendered
by the arbitrator may be entered as a judgment in any court having jurisdiction thereof. The arbitration must be conducted in the county where the Leased Premises is located. Arbitration will be the exclusive remedy of the parties.

25. **Enforcement and Attorneys' Fees.** If either party to this Lease brings a claim in arbitration to enforce any rights hereunder, the prevailing party will be entitled to recover costs and reasonable attorneys' fees incurred as a result of such claim.

26. **Notices.** Except as otherwise provided in this Lease, all notices under this Lease must be in writing and will be deemed validly given if given in person, sent by certified mail with return receipt requested, or delivered by a nationally recognized overnight courier service, addressed as follows (or to any other address of Tenant or Landlord that is given to the other party pursuant to this provision):

If to Landlord, to:

City of Minnetonka  
14600 Minnetonka Boulevard  
Minnetonka, Minnesota 55345  
Attention: City Manager

If to Tenant, to:

Verizon Wireless (VAW) LLC  
d/b/a Verizon Wireless  
180 Washington Valley Road  
Bedminster, New Jersey 07921  
Attention: Network Real Estate

27. **Authority.** Each of the individuals executing this Lease on behalf of the Tenant or the Landlord represents to the other party that such individual is authorized to do so by requisite action of the party to this Lease.

28. **Binding Effect.** This Lease runs with the Property. This Lease extends to and binds the heirs, personal representatives, successors and assigns of the parties hereto.

29. **Complete Lease; Amendments.** This Lease and attachments constitute the entire agreement and understanding of the parties and supersedes all offers, negotiations, and other agreement of any kind. There are no representations or understandings of any kind not set forth herein. Any modification of or amendment to this Lease must be in writing and executed by both parties.

30. **Governing Law.** This Lease must be construed in accordance with the laws of the State of Minnesota.
31. **Severability.** If any term of this Lease is found to be void or invalid, such invalidity will not affect the remaining terms of this Lease, which will continue in full force and effect.

IN WITNESS WHEREOF, the parties have executed this document and affixed their respective seals.

**LANDLORD:**

**CITY OF MINNETONKA**

By ________________________  
Its City Manager

Date: ________________________

**TENANT:**

**VERIZON WIRELESS (VAW) LLC**  
D/B/A VERIZON WIRELESS

By ________________________  
Its: Area Vice President Network

Date: 4/2/15
Exhibit A

10901 Hillside Lane West, Minnetonka, MN

Legal Description of Property:

The South 150 feet of the East 210 feet of the West 936 feet of the Southwest 1/4 of the Northwest 1/4 of Section 12, Township 117, Range 22, Hennepin County, Minnesota.

MINC
Site Lease Agreement
Exhibit B

Drawings showing the location of the equipment building and antenna installation

MINC
Site Lease Agreement
<table>
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<th>Quantity</th>
<th>Model</th>
<th>Description</th>
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<td>115-122</td>
<td>HYDRO POSE 1/2</td>
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<tr>
<td>1</td>
<td>115-122</td>
<td>HYDRO POSE 2/2</td>
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</tbody>
</table>

**Antenna Key**

- **Hydro Pose 1/2**: Scale None
- **Hydro Pose 2/2**: Scale None

**Coax Key**

- **AWS/1/E Line Diagram**: Scale None

**Verizon Wireless**

- **Design**: A-1
- **Project**: A-3
- **Minneapolis, MN 55429**
SECTION 09 97 15
COATING SYSTEMS FOR TELECOMMUNICATION EQUIPMENT

PART 1 GENERAL

1.01 SUMMARY

A. Section includes painting and polishing repair work accomplished with the installation of

1.02 REFERENCES

A. Society for Protective Coating (SSPC)

1.03 SUBMITTALS

B. Product Data: Submit data sheet for each

PART 2 PRODUCTS

2.01 MATERIALS

A. Manufacturers:

PART 3 EXECUTION

3.01 EXAMINATION

A. Visualy evaluate surface preparation by comparison with pictorial standards of

3.02 PREPARATION

A. Remove all surface contaminants in accordance with SSPC-SP1 Solvent

B. Clean and remove all rust, dirt, oil, water, oil sludge, mill scale, and loose

C. Protect areas adjacent to welding and or grinding operations to prevent damage of

D. Furnace Blast SSPC-SP6 Commercial Blast Cleaning

E. Galvanized Steel: SSPC-SP7 Brush Off Blast

F. Antenna Covers, Coated Cables, Non-metallic Substrates and Pre-Existing Painted

G. Surface profile shall be in accordance with manufacturer's product recommendations.

H. Re-blast all surfaces:

3.03 APPLICATION

A. Coatings shall be applied in accordance with manufacturer's printed instructions.

B. Surfaces to be coated shall be clean, dry, and free of lint, dust and contaminants of the
time of application and while film is forming.

C. Finish coat shall be uniform in color and sheen without streaks, laps, runs, sags, or

D. Shop painting: Type of (2-inch minimum) surfaces that will be in the Painted-Zone
during field welding.

E. Component Painting:

1. Interior Exposed Furnace Metal and

2. Exterior Exposed Furnace Metal and Galvanized Stainless: Coat to de-glass, SSPC-SP7

F. Clear Water: SSPC-SP7 Brush Off Blast

G. Antenna Covers: Coated Cables, Non-metallic Substrates and Pre-Existing Painted

H. Interior Exposed Furnace Metal and Galvanized Stainless: Coat to de-glass, SSPC-SP7

I. Number of Coats: 3

J. Number of Coats: 3

K. Number of Coats: 3

L. Number of Coats: 3

M. Number of Coats: 3

N. Number of Coats: 3

2.03 QUALITY CONTROL

A. Measure dry film thickness with a magnetic

B. Visually inspect dried film for runs, sags, dry spray, overspray, embossed portables

C. Report defective of damaged areas in accordance with Articles 2.05 and 3.02.

END OF SECTION

3.03 APPLICATION

A. Prepare the damage by one of the two

B. Apply primer coat to bare metal surface.

C. Apply primer coat to bare metal surface.

D. Apply finish coat.

2.03 QUALITY CONTROL

A. Measure dry film thickness with a magnetic

B. Visually inspect dried film for runs, sags, dry spray, overspray, embossed portables

C. Report defective of damaged areas in accordance with Articles 2.05 and 3.02.

END OF SECTION
SECTION 03 07 15
COATING SYSTEMS FOR TELECOMMUNICATION EQUIPMENT

PART 1  GENERAL

3.02 PREPARATION
A. Remove all surface contaminants in accordance with SSPC-SP6 Solutions Cleaning.
B. Clean and remove all rust, slag, weld spatter, mill scale, mill scale, and loose paint.
C. Protect areas adjacent to welding and air grinding operations to prevent damage to surrounding intact paint system.
D. Furnace Metal: SSPC-SP6 Commercial Blast Cleaning.
E. Coated Steel: SSPC-SP7 Brush Off Blast.
F. Anodized Cover, Coated Cables, Non-metallic Substrates and Previously Painted Surfaces: Scour to dry-gloss, SSPC-SP7 with a non-hydrocarbon solvent.
G. Surface profile shall be in accordance with manufacturer's product recommendations.
H. Re-check of surfaces.

3.03 APPLICATION
A. Coatings shall be applied in accordance with manufacturer's printed instructions.
B. Surfaces to be coated shall be clean, dry, and free of all dust and contaminants of the time of application and while film is forming.
C. Finish coat shall be uniform in color and shown without streaks, blemishes, sags, or missed areas.
D. Shop protective Tapes off (2-inch minimum) surfaces that will be in the heat-affected-Zone during field welding.

E. Component Painting:
   1. Anodized Exposed Furnace Metal and Galvanized Steel:
      a. Product: Sherwin Williams
         b. Minimum Sheen: 400 or Tracemco Series 161
        1. Number of Coats: 2
        2. Dry Film Thickness: 4.0 - 6.0 Mils
        3. Color: By Owner
   2. Exterior Exposed Furnace Metal and Galvanized Steel:
      a. Primer: Sherwin Williams
         b. Acrylic: Sherwin Williams Acrylic
         c. Number of Coats: 1
        1. Dry Film Thickness: 2.0 - 3.0 Mils
        2. Color: By Owner

3.04 QUALITY CONTROL
A. Varnish dry film thickness with a magnetic thickness gage in accordance with SSPC-P22.
B. Visually inspect dried film for flaws, gaps, dry spots, overpaint, embedded particles and missed areas.
C. Repair defective of damaged areas in accordance with Articles 3.02 and 3.03.

END OF SECTION
### General Notes:
1. Construction of all metal, structural, landing, and guard rail penetrations shall be in accordance with these drawings.
2. Field-verify exact locations of new landing penetrations to avoid interfering with control cabling and air考虑到 part of the structure.
3. Proposed penetrations shall not be dipped in cold mastic. Use methylmethacrylate screws and fasteners to attach all existing metal, and potential. 

### Proposed Penetration

**Proposed Penetration at Existing Water Tower Landings (if needed)**

<table>
<thead>
<tr>
<th>Project</th>
<th>Proposed Penetration at Existing Water Tower Landings (if needed)</th>
</tr>
</thead>
<tbody>
<tr>
<td>20115977265</td>
<td>MINC STARBURST</td>
</tr>
<tr>
<td>18001 HILLSIDE LANE W.</td>
<td>MINNETONKA, MN 55305</td>
</tr>
<tr>
<td>SHEET CONTENTS:</td>
<td>REVISIONS AND DETAILS</td>
</tr>
</tbody>
</table>

**Table of Proposed Antennas**

<table>
<thead>
<tr>
<th>Proposed Antenna</th>
<th>Proposed Antenna with Equipment</th>
<th>Proposed Main Distribution Box Mounting Hardware</th>
</tr>
</thead>
<tbody>
<tr>
<td>No Scale</td>
<td>No Scale</td>
<td>No Scale</td>
</tr>
</tbody>
</table>

**Notes:**
1. Contactors to verify the exact location of the proposed antenna mounting frame and mounting hardware to avoid interfering with control cabling and air考虑到 part of the structure.
2. All equipment is to be identified by Verizon.
3. All equipment is to be mounted with the Verizon logo and equipment identification.

**General Specifications:**

- **Material:**
  - All metal components shall be in accordance with these drawings.
- **Fasteners:**
  - Use methylmethacrylate screws and fasteners to attach all existing metal, and potential.

**Penetration Points:**

- **Proposed Point:**
  - **Type:** Metal
  - **Size:** 2" pipe
  - **Material:** Stainless steel
  - **Location:** Inside existing tower walls
  - **Usage:** Support for equipment

**Existing Antenna Pipe:**

- **Type:** Steel pipe
- **Size:** 2" pipe
- **Material:** Stainless steel
- **Location:** Inside existing tower walls
- **Usage:** Support for equipment

**Proposed Equipment and Mounting Brackets:**

- **Type:** Stainless steel
- **Material:** Methylmethacrylate
- **Location:** Inside existing tower walls
- **Usage:** Support for equipment
PROPERTY DESCRIPTION:
The land referred to in the Commitment is Tommasi/Gueti, No. 419419 situated in the County of Hennepin, State of Minnesota and is described as follows:

The West 210 feet of the most Southwesterly 190 feet of that part of the Southwest quarter of the Northwest quarter described as beginning at the Northeast corner thereof thence West along the North line of the Southwest quarter of the Northwest quarter to a point 755.2 feet East of the Northwest corner thereof; thence deflecting to the left 84 degrees 20 minutes a distance of 430 feet; thence deflecting to the right 88 degrees 5 minutes a distance of 216.5 feet; thence South parallel to the West line of the Southwest quarter of the Northwest quarter drawn parallel to and 650 feet North of the South line of said Southwest quarter of the Northwest quarter; thence East along the West line described parallel line to a point 720 feet East of the West line of the Southwest quarter of the Northwest quarter; thence South parallel to said West line to the South line of the Southwest quarter of the Northwest quarter; thence East to the Southeast corner thereof; thence North to the point of beginning, in Section 12, Township 117, Range 22.

LEGEND:
- Found Monument (MN)
- Light Pole (LP)
- Water Valve (W)
-.shallow Surface (SS)
- Existing Elevation Contour (ECC)
- Edge of Wooded Area (EWA)
- Underground Fiber Optic (UFO)
- Sanitary Sewer (SS)
- Storm sewer (ST)
- Underground Electric (UE)
- Chain Link Fence (CLF)
- Existing Elevation Contour (ECC)
- Watermain (WM)

CENTER OF WATER TOWER
LATITUDE: 44° 27' 26.23" N
LONGITUDE: 93° 05' 33.39" W
ELEVATION AT GROUND: 888.6 FT
(NAD 83 & NAVD 88)

SURVEYORS NOTE
MARKINGS ARE BASED ON THE Hennepin
COUNTY CORRECTIONAL, SOUTH (MNSH9138)
RIGHT DIRECTION: 220°

SIGNER'S NAME
Date: 10/09/2014
App. By: JMC

MINN STARBURST
TOPOGRAPHIC SURVEY
HENNEPIN, MINNESOTA

Project Number
V101
MINC STARBURST

PROPERTY DESCRIPTION:
The land referred to in the Condominium is Tor predecessors, Inc., No. 4154.19
situated in the County of Hennepin, State of Minnesota and is described as follows:
The West 215 feet of the most southerly 150 feet of that part of the
Southeast quarter of the Northwest quarter described as beginning at the
Northeast corner thereof, thence West along the North line of the
Southeast quarter of the Northwest quarter to a point 200 feet East of the
Northeast corner thereof, thence deflecting to the left 90 degrees 20
minutes and a distance of 635 feet; thence deflecting to the right 88 degrees
5 minutes a distance of 216.5 feet; thence South parallel to the West
line of the Southwest quarter of the Northwest quarter to a line drawn
parallel to and 190 feet North of the South line of said Southwest
quarter of the Northwest quarter; thence East along the last described
parallel line to a point 726 feet East of the West line of the Southwest
quarter of the Northwest quarter; thence South parallel to said West line
to the South line of the Southwest quarter of the Northwest quarter;
thence East to the Southeast corner thereof; thence North to the point
ingin Section 32, Township 117, Range 22.

LAND SPACE DESCRIPTION:
A tract of land for telecommunication purposes over, under and across
the aforementioned Property described as follows:
Commencing at the southeast corner of Lot 6, Block 1, R.U.N.,
Hennepin County, Minnesota; thence North 01 degrees 27 minutes
05 seconds East a distance of 91.56 feet; thence North 28 degrees 32
seconds East a distance of 91.54 feet to the point of beginning of the
Land Space to be described; thence North 28 degrees 40 minutes
05 seconds East a distance of 95.53 feet; thence North 01 degrees
14 minutes 55 seconds East a distance of 16.09 feet to a point
hereafter referred to as "Point A"; thence South 28 degrees 40
minutes 05 seconds West a distance of 25.50 feet; thence North 61
degrees 14 minutes 55 seconds West a distance of 16.02 feet to the
point of beginning.
Contains 566 square feet, more or less.

ACCESS AND UTILITY RIGHT-OF-WAY DESCRIPTION:
A 20.00 feet wide strip of land for ingress, egress and utility right-of-way
purposes over, under and across the foregoing described Property, lying
10.00 feet on each side of the following described centerline:
Commencing at the previously described "Point A"; thence South 61
degrees 14 minutes 55 seconds East a distance of 10.02 feet to the
point of beginning of the centerline to be described; thence South 35
degrees 48 minutes 00 seconds West a distance of 33.00 feet;
thence South 16 degrees 59 minutes 52 seconds West a distance of 31.82 feet;
thence South 28 degrees 45 minutes 57 seconds West a distance of 33.24 feet;
more or less, to the south line of said Property;
and said centerline there terminating.
The sides of said strip shall be lengthened or shortened as to
terminate on the south line of said Property.
Contains 2,095 square feet, more or less.

LEGEND:
- Bluff Area
- Gravel Surface

Design 1
Eden Prairie, MN
Policy Number 12.5
Use of City Water Towers for the Location of Antennas

Purpose of Policy: This policy establishes a uniform policy for reviewing requests for the location of antennas on city water towers.

Introduction
The city has received requests for the location of various antennae on its water towers. The council has determined that a uniform policy for reviewing these requests is desirable.

Permitted Locations
Antennae not owned by the city of Minnetonka will be permitted only on water towers that have been sufficiently modified, in the opinion of the public works director to adequately accommodate those antennae. The modification must be done at the user's expense.

Permitted Users
Only the following entities may place antennae on city water towers, in order of descending priority:

1. City of Minnetonka
2. Public safety agencies, including law enforcement, fire, and ambulance services, that are not part of the city of Minnetonka.
3. Other governmental agencies, for uses that are not related to public safety.
4. Government-regulated entities whose antennae offer a service to the general public for a fee, in a manner similar to a public utility, such as long distance and cellular telephone. This does not include radio or television broadcasters.

If there is a conflict in use between potential and existing users, permission for use will be granted in order of priority listed above.

Application Process
All applicants who wish to locate antennae on city water towers must submit to the public works director a completed application form and a detailed plan of the proposed installation. Staff will review the application to determine the appropriateness of the request, including the aesthetic impact and the structural integrity of the tower. Staff may retain the services of a structural engineer to analyze the structural capacity. The applicant must reimburse the city for the cost of this analysis.

The technical analysis and other relevant data will be submitted to the city council for its review. City council approval is conditioned on a finding by a professional communications engineer that there will be no interference with other users. The applicant must reimburse the city for the cost of this analysis before installation of the
antennas. After approval by the city council, the successful applicant must sign an agreement with the city, in a form acceptable to the city attorney, that requires the application to pay a periodic fee, to obtain adequate liability insurance, and to comply with other appropriate requirements. The fees will be established by the city council after considering comparable rates in other cities, potential expenses and risks to the city, and other appropriate factors.

Standards
No application will be granted unless the following standards are met:

- The potential use must not interfere with other users who have a higher priority.
- The user must comply with minimum equipment and site standards prepared by the city.
- The user must have its own sources of electrical power and telephone service.
- The user's equipment and personnel must not interfere with normal operation of the water tower.
- The user must reimburse the city for any costs that it incurs because of the user's existence on city property.
- The user must agree to pay a fee for each time it wants admittance into the tower structure, if required by the city.
- The user must be responsible for the security of its own equipment.
- The user must have obtained all necessary land use approvals.
- The user must comply with the attached Guidelines for Antennas on City Water Towers.

Revocation
The city council may revoke permission to use a city water tower if it determines that any one of the following situations exist:

- A potential user with a higher priority cannot find another adequate location and the potential use would be incompatible with an existing use;
- A user's antennae unreasonably interfere with other users with higher priority, regardless of whether or not this was adequately predicted in the technical analysis; or
- A user violates any of the standards in this policy or the conditions attached to the city's permission.
City of Minnetonka

City Council Policy 12.5

- The city council decides to dismantle the water tower.

Before taking action, the city will provide notice to the user of the intended revocation and the reasons for it, and provide an opportunity for the user to address the city council regarding the proposed action. This procedure need not be followed in emergency situations.

Reservation of Right
Notwithstanding the above, the city council reserves the right to deny, for any reason, the use of any or all city water towers by any one or all applicants.

Adopted by Resolution No. 88-8767
Council Meeting of November 7, 1988

Amended by Resolution No. 97-043
Council Meeting of March 31, 1997

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

Amended by Resolution No. 2006-026
Council Meeting of March 27, 2006
Guidelines for Antennas on City Water Towers

1. **Design plans.** Drawings and specifications detailing equipment installation, cable runs, supports, penetrations, fastening methods, foundations, panels, electrical power connections, grounding, and all other required details for a complete installation must be submitted for review and approval. A drawing depicting the final appearance of the tank must also be included. A certified professional engineer in the utility's state must stamp all drawings and specifications.

2. **Operation.** Either by design, function, or installation, proposed equipment must not interfere with the facility's operation and its ability to deliver safe, potable water at sufficient pressure to customers.

3. **Appearance.** The equipment must have minimal detrimental effect on the facility's aesthetic appearance. The design must not significantly alter the appearance of the tank. The use of permanently installed false overflow pipes as cable conduits is not allowed. Wherever possible, tank cable runs must be internal to the tank's structure. No exposed exterior cable runs will be allowed without the written approval of the utility. Color for cables, antennas, and any other visible appurtenances must match the tank colors and be submitted for approval.

4. **Coatings.** Existing rank interior and exterior coating systems must be protected or repaired with new equivalent coating systems during the work of antenna company equipment installation. Coating repairs must be subject to approval. Existing tank coating specifications are available on request.

5. **Enclosures.** Proposed communication equipment to be installed at ground level outside a tank's structure must be enclosed in approved, aesthetically pleasing enclosures. All ground structures must be contained within the city owned parcel subject to planning approval. Unsupervised access into the water storage facility is not permitted. Supervised access shall be granted based on the Lease agreement. Wherever possible, a private access to the antenna company's designated area must be provided by the antenna company. The antenna company will have unlimited access to its designated area through this access point.

6. **Exclusion zone.** An exclusion perimeter zone of 10 ft (minimum) beyond the outermost tank component (i.e., catwalk or widest tank diameter) must exist (outermost structure from the tank center plus 10 ft). No aboveground appurtenance is permitted within the exclusion zone without the utility's written approval.

7. **Installation.** All cable runs between the antenna company's designated area and the tank must be buried. No ice bridges or other exposed (above grade) cable support systems may be installed without written approval. All cable tank penetrations must be sealed. The penetration sealing method and/or detail must be submitted for approval. The utility may request a structural analysis be performed, at antenna company expense, if the number of wall penetrations is a structural concern. No proposed
appurtenance may interfere with the periodic maintenance of the site grounds. The antenna company must maintain the grounds inside its designated equipment area.

8. Maintenance. Presence and operation of proposed equipment must have minimal impact on the tank's periodic maintenance work (e.g., tank inspections and painting). Antennas may be required to be out of service for a period of time during periodic tank maintenance work.

9. Safety. Any and all proposed equipment, installation work, maintenance work, or any other work performed on the premises by the antenna company, or agents of the antenna company, must not result in any safety hazards or OSHA violations. Such hazards and violations may include, but are not limited to, ladder cage/riser clearance, toe-rung clearance, hatch interference, and vent interference.

10. Security. No antenna company property or activities, including the operation and maintenance of antenna company equipment and appurtenances, may, in any way, impinge on the ability of the utility to provide security for its facility.

11. Regulations. The proposed communication system design must comply with all federal, state, and local standards regulations, whether identified by the utility in its review or not. Antenna company must correct any design deficiencies discovered subsequent to approval of the installation at its expense and with the approval of the utility. Communication equipment must not interfere with any utility communication or control signals. If interference between the antenna company and other communication equipment is discovered, it must be corrected at the antenna company's expense.
Brief Description: Fifth amendment to site lease with New Cingular Wireless PCS, LLC for Ridgedale water tower

Recommended Action: Approve the fifth amendment to site lease

Background

New Cingular Wireless PCS, LLC currently leases space on the Ridgedale water tower. The city approved a lease amendment in 2011 that allowed New Cingular to increase the number of antennae from 10 to 13, with an appropriate increase in rent. New Cingular has been paying the rent for the 13 spaces that is uses or has reserved, but it has not yet installed the additional three antennae.

New Cingular now proposes to install the three additional antennae, as well as additional equipment that was not included in its previous proposal. The additional equipment occupies approximately two square feet of space inside the tower. Staff has been advised by SEH engineering consultants to expect an increase in demands on interior water tower space and to give consideration to volume-based pricing (rather than per-antenna pricing) in future leases. Such a dramatic change in pricing structure requires time for a thorough study of pricing alternatives and is not practical at this time, given the minor impact in this particular instance. Therefore, staff extrapolated rent of $50 per year for the additional equipment, based on the additional rent charged to AT&T for larger equipment installed inside the Williston tower.

Public works and its consultant, SEH Engineering, have reviewed and approved the technical aspects of the proposal, as contemplated by City Council Policy No. 12.5. City staff has negotiated a proposed lease, attached at A-1. In addition to the increase in rent, the amendment allows the tenant to extend the lease for one additional 60-month term. Rent for 2016 will be $46,378.57 with a five-percent annual escalator and, if all renewal options are exercised, the lease will expire in 2026.

Recommendation

Staff recommends that the city council approve the fifth amendment to site lease agreement.

Submitted through:
Geralyn Barone, City Manager
Merrill King, Finance Director
Brian Wagstrom, Public Works Director

Originated by:
Corrine Heine, City Attorney
FIFTH AMENDMENT TO SITE LEASE AGREEMENT

THIS FIFTH AMENDMENT TO SITE LEASE AGREEMENT ("Fifth Amendment"), dated as of the latter of the signature dates below (the "Effective Date"), is by and between City of Minnetonka, a Minnesota municipal corporation, duly organized under the laws of the State of Minnesota and having a mailing address of 14600 Minnetonka Boulevard, Minnetonka, MN 55345 ("Landlord") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as successor in interest to AT&T Wireless Services of Minnesota, Inc., having a mailing address of 575 Morosgo Drive NE, Atlanta, Georgia 30324 ("Tenant").

WHEREAS, Landlord and Tenant entered into a Site Lease Agreement dated September 24, 2001, as amended by a certain First Amendment to Site Lease Agreement on April 1, 2002, as amended by a certain Second Amendment to Site Lease Agreement on May 9, 2002, as amended by a certain Third Amendment to Site Lease Agreement on November 12, 2002, which is inaccurately titled as the Second Amendment to Site Lease Agreement, due to a scrivener’s error, and as amended by a certain Fourth Amendment to Site Lease Agreement on December 22, 2011 (collectively, the "Agreement") whereby Landlord leased to Tenant certain Premises including but not limited to space on the Ridgedale Water Tower, therein described, that are a portion of the Property located at 13001 Wayzata Boulevard, Minnetonka, Minnesota 55345; and

WHEREAS, Landlord and Tenant want to extend the Term for one (1) additional five (5) year term; and

WHEREAS, Landlord and Tenant agree that Tenant has by the prior amendments become entitled to 13 Antennas and the appurtenant equipment and shall continue to have the rights to the 13 Antennas and the appurtenant equipment, even though the loading set forth in Exhibit A does not fully utilize all antennas that Tenant is entitled to have placed on the tower; and

WHEREAS, Landlord agrees to allow Tenant to modify and add equipment to the water tower as set forth in Exhibit A attached hereto; and

WHEREAS, Landlord and Tenant agree to increase the rent to compensate Landlord for the additional equipment set forth in Exhibit A being added to the tower; and

WHEREAS, Landlord and Tenant desire to amend the Agreement to permit Tenant to add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including but not limited to emergency 911 communication services; and
WHEREAS, Landlord and Tenant, in their mutual interest, wish to amend the Agreement as set forth below accordingly.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. **Commencement Date.** The commencement date of this Fifth Amendment is the latter of the signature dates below.

2. **Renewal Term.** Tenant shall have the right to extend this Agreement for one (1) additional term of sixty (60) months on the same terms and conditions as set forth in the Agreement (each a "Renewal Term"). The parties acknowledge that the current renewal term expires December 31, 2016, and that if all Renewal Terms are exercised as provided in this Fifth Amendment, the Site Lease will terminate on December 31, 2026.

3. **Leased Premises.** Tenant shall modify the equipment on the water tower as set forth in the attached Exhibit A. Additional modifications and upgrades will take place within the existing shelter, the size of which will not be expanded in any way.

4. **Notices.** Section 2 of the Agreement is hereby deleted in its entirety and replaced with the following:

   **NOTICES.** All notices, requests, and demands hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties as follows.

   **If to Tenant:** New Cingular Wireless PCS, LLC
   By: AT&T Mobility Corporation,
   Attn: Network Real Estate Administration
   Re: Cell Site #: MNL01021; Cell Site Name: Ridgepoint Water Tower (MN)
   FA No: 10107422
   575 Morosgo Drive NE,
   Atlanta, Georgia 30324

   With the required copy of legal notice sent to Tenant at the address above, a copy to the Legal Department:

   New Cingular Wireless PCS, LLC
   Attn: Legal Department,
   Re: Cell Site #: MNL01021; Cell Site Name: Ridgepoint Water Tower (MN)
   FA No: 10107422
   208 S. Akard Street
   Dallas, Texas, 75202-4206
A copy sent to the Legal Department is an administrative step which alone does not constitute legal notice.

If to Landlord: City of Minnetonka
14600 Minnetonka Boulevard
Minnetonka, Minnesota 55345
Attention: City Manager

5. Rent. Tenant agrees the rent payable under the Agreement shall be increased by Fifty and 00/100 Dollars annually ($50.00) for the equipment listed in Exhibit A. The annual rent for 2015 must be paid in full, without proration, on or prior to the Effective Date for this Fifth Amendment. Annual rent for the year 2016 for a maximum of 13 antennas and appurtenances, including the equipment listed in Exhibit A and existing GPS antenna, will increase to Forty-Six Thousand Three Hundred Seventy-Eight and 57/100 Dollars ($46,378.57) (which amount is inclusive of the annual 5% increase as required by the Agreement), and must thereafter be paid as provided for in the Agreement. Additionally, Tenant will pay all costs for the structural modifications to the tower to support Tenant’s proposed equipment listed in Exhibit A of this Fifth Amendment, if any are needed.

6. Retained Rights. Landlord agrees that Tenant shall retain the rights to all equipment and antennas, 13 antennas and appurtenant equipment, lines and cables, from the Agreement.

7. Emergency 911 Service. In the future, without the payment of additional rent and at a location mutually acceptable to Landlord and Tenant, Landlord agrees that Tenant may add, modify and/or replace equipment to the extent mandated by federal, state or local law or regulation, including but not limited to emergency 911 communication services.

8. Memorandum of Lease. Either party will, at any time upon fifteen (15) days prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum of Lease. Either party may record the memorandum at any time, in its absolute discretion.

9. Other Terms and Conditions Remain. Except as expressly set forth in this Fifth Amendment, all other terms and conditions of the Agreement, as previously amended, remain unmodified.

10. Capitalized Terms. All capitalized terms used but not defined herein shall have the same meanings as defined in the Agreement.

11. Conditions. This Fifth Amendment is contingent upon the Landlord reviewing and approving construction plans for the proposed equipment listed in Exhibit A and upon the Tenant reimbursing the Landlord for Landlord’s reasonable expenses in conducting that review.

[SIGNATURES APPEAR ON FOLLOWING PAGE]
IN WITNESS WHEREOF, the parties have caused their properly authorized representatives to execute and seal this Fifth Amendment on the dates set forth below.

“LANDLORD”
City of Minnetonka
By: _______________________
Name: _______________________
Title: _______________________
Date: _______________________

By: _______________________
Name: _______________________
Title: _______________________
Date: _______________________

“TENANT”
New Cingular Wireless PCS, LLC
By: AT&T Mobility Corporation
Its: Manager
By: _______________________
Name: _______________________
Title: _______________________
Date: _______________________

Approved as to form:

________________________________________
City Attorney
TENANT ACKNOWLEDGEMENT

STATE OF __________________________)
COUNTY OF __________________________)

On the _____ day of _______, 2015 before me personally appeared ___________________, and
acknowledged under oath that he is the __________________________ of AT&T Mobility Corporation,
a ____________ corporation and the manager of New Cingular Wireless PCS, LLC, a Delaware limited
liability company, the Tenant named in the attached instrument, and as such was authorized to execute
this instrument on behalf of the corporation and limited liability company.

________________________________________
Notary Public: ____________________________
My Commission Expires: ____________________

LANDLORD ACKNOWLEDGEMENT

STATE OF MINNESOTA )
COUNTY OF HENNEPIN )

On the _____ day of _______, 2015 before me personally appeared Terry Schneider and
acknowledged under oath that he is the mayor of City of Minnetonka, a Minnesota municipal corporation,
the Landlord named in the attached instrument, and as such was authorized to execute this instrument on
behalf of the corporation.

________________________________________
Notary Public: ____________________________
My Commission Expires: ____________________

STATE OF MINNESOTA )
COUNTY OF HENNEPIN )

On the _____ day of _______, 2015 before me personally appeared Geralyn Barone and
acknowledged under oath that she is the city manager of City of Minnetonka, a Minnesota municipal
corporation, the Landlord named in the attached instrument, and as such was authorized to execute this
instrument on behalf of the corporation.

________________________________________
Notary Public: ____________________________
My Commission Expires: ____________________
EXHIBIT-A

See attached exhibits comprised of thirteen pages, last revision date 12/17/2014, prepared by Velocitel.

Notes:
1. THIS EXHIBIT MAY BE REPLACED BY A LAND SURVEY AND/OR CONSTRUCTION DRAWINGS OF THE PREMISES ONCE RECEIVED BY TENANT.
2. ANY SETBACK OF THE PREMISES FROM THE PROPERTY’S BOUNDARIES SHALL BE THE DISTANCE REQUIRED BY THE APPLICABLE GOVERNMENTAL AUTHORITIES.
3. WIDTH OF ACCESS ROAD SHALL BE THE WIDTH REQUIRED BY THE APPLICABLE GOVERNMENTAL AUTHORITIES, INCLUDING POLICE AND FIRE DEPARTMENTS.
4. THE TYPE, NUMBER AND MOUNTING POSITIONS AND LOCATIONS OF ANTENNAS AND TRANSMISSION LINES ARE ILLUSTRATIVE ONLY. ACTUAL TYPES, NUMBERS AND MOUNTING POSITIONS MAY VARY FROM WHAT IS SHOWN ABOVE.
Antenna System Upgrade Project

- LTE 2ND CARRIER ADD
- RELOCATE EXISTING ANTENNAS
- ADD & REPLACE LTE ANTENNAS
- IMPROVE QUALITY OF SERVICE

DIRECTIONS:
START OUT GOING NORTHEAST ON MARKET POINTE DR, TAKE THE 1ST RIGHT TO STAY ON MARKET POINTE DR, TAKE THE 1ST LEFT ONTO JOHNSON AVE S, TURN RIGHT ONTO MINNESOTA DR, TAKE THE 1ST RIGHT ONTO FRANCE AVE S, MERGE ONTO I-494 W, MERGE ONTO I-394 E/US-12 E VIA EXIT 19A TOWARD MINNEAPOLIS. TAKE THE CR-61/PLYMOUTH RD EXIT, EXIT 1B. TURN RIGHT ONTO PLYMOUTH RD.

VELOCITY

SITE NO. MNL01021
RIDGEPOINT WATER TOWER
FAP 10107422

ATT&T MOBILITY
SITE NAME: RIDGEPOINT WATER TOWER - FA# 10107422
WATER TANK OWNER: CITY OF MINNETONKA

SITE ADDRESS: 13001 WAYZATA BOULEVARD
MINNETONKA, MN 55305
OWNER: CITY OF MINNETONKA
APPLICANT: ATT&T MOBILITY
4300 MARKET POINTE DRIVE
BLOOMINGTON, MN 55435
LATITUDE (NAD 83): 44.9707'
LONGITUDE (NAD 83): -93.4433'
CURRENT USE: TELECOMMUNICATIONS FACILITY
PROPOSED USE: TELECOMMUNICATIONS FACILITY
JURISDICTION: HENNEPIN
COUNTY: HENNEPIN

SITE QUALIFICATION PARTICIPANTS

NAME: MARK ZAGAME
COMPANY: VELOCITEL
NUMBER: (770) 645-5900

NAME: TONY DIDONATO
COMPANY: VELOCITEL
NUMBER: (246) 709-7229

NAME: ED LASKOWSKI
COMPANY: VELOCITEL
NUMBER: (630) 888-1629

NAME: ED DEKOKER
COMPANY: ATT&T
NUMBER: (952) 856-9383

I HEREBY CERTIFY THAT THIS PLANS SPECIFICATION, OR REPORT WAS PREPARED BY ME OR UNDER MY SUPERVISION AND THAT I AM A LEGALLY LICENSED \nPROFESSIONAL ENGINEER UNDER THE LICENSING RULES OF THE STATE OF MINNESOTA.

REGISTRATION NO: 41534

DATE: 12/1/14

I DEKKER

NAME: WILLIAM D BURD
SIGNATURE: WILLIAM D BURD
DATE: 12/1/14

I HEREBY CERTIFY THAT THIS PLANS SPECIFICATION, OR REPORT WAS PREPARED BY ME OR UNDER MY SUPERVISION AND THAT I AM A LEGALLY LICENSED \nPROFESSIONAL ENGINEER UNDER THE LICENSING RULES OF THE STATE OF MINNESOTA.

REGISTRATION NO: 41534

DATE: 12/1/14

I DEKKER

NAME: WILLIAM D BURD
SIGNATURE: WILLIAM D BURD
DATE: 12/1/14
COATING SYSTEMS FOR TELECOMMUNICATION EQUIPMENT:

PART 1: GENERAL

1.01 SUMMARY
A. SECTION INCLUDES PAINTING AND REPAIR WORK ASSOCIATED WITH THE INSTALLATION OF ANTENNAS, COAXIAL CABLES, AND OTHER COMMON COMPONENTS WITH DIRECT ATTACHMENT TO WATER TANK FACILITIES.

1.02 REFERENCES
A. SOCIETY FOR PROTECTIVE COATINGS (SSPC): WWW.SSPC.ORG
1. VOLUME 1: GOOD PRACTICE
2. VOLUME 2: SYSTEMS AND SPECIFICATIONS

1.03 SUBMITTALS
A. PRODUCT DATA: SUBMIT DATA SHEET FOR EACH COATING SYSTEM.

PART 2: PRODUCTS

2.01 MATERIALS
A. MANUFACTURERS:
1. SHERWIN WILLIAMS COMPANY WWW.SHERWIN-WILLIAMS.COM
2. THE NEC: COMPANY WWW.THENEC.COM
3. X-1-H PRODUCTS WWW.X1HPRODUCTS.COM

PART 3: EXECUTION

3.01 EXAMINATION
A. VISUALLY EVALUATE SURFACE PREPARATION BY COMPARISON WITH PICTORIAL STANDARDS OF SSPC-VIS-1-80.

3.02 PREPARATION
A. REMOVE ALL SURFACE CONTAMINANTS IN ACCORDANCE WITH SSPC-S1 SOLVENT CLEANING.
B. CLEAN AND REMOVE ALL RUST, SLAG, WELD SPLATTER, MOLD SCARS, MILL SCALE, AND LOOSE PAINT.
C. PROTECT AREAS ADJACENT TO WELDING & OR DRILLING OPERATIONS TO PREVENT DAMAGE OF SURROUNDING INTACT PAINT SYSTEM.
D. FERRIC METAL: SSPC-S8 COMMERCIAL BLAST CLEANING
E. GALVANIZED STEEL: SSPC-S7 BRUSH OFF BLAST
F. ANTENNA COVERS, COAXIAL CABLE, NON-METALLIC SUBSTRATES AND PREVIOUSLY PAINTED SURFACES: SCARFY TO DISGLOSS. SSPC-S8 WITH A NON-HYDROCARBON SOLVENT.

3.03 APPLICATION
A. COATINGS SHALL BE APPLIED IN ACCORDANCE WITH MANUFACTURERS PRINTED INSTRUCTIONS.

B. SURFACES TO BE COATED SHALL BE CLEAN, DRY, AND FREE OF AIRBORNE DUST AND CONTAMINANTS AT THE TIME OF APPLICATION AND WHILE FILM IS FORMING.

C. FINISH COAT SHALL BE UNIFORM IN COLOR AND SHEEN WITHOUT STRAKES, LAPS, RUNS, SAGS OR MISSED AREAS.

D. SHOP PAINTING: TAPE-OFF (2-INCH MINIMUM) SURFACES THAT WILL BE IN THE HEAT-AFFECTED-ZONE DURING FIELD WELDING.

E. COMPONENT PAINTING
1. INTERIOR EXPOSED FERRUGINOUS METAL AND GALVANIZED STEEL:
   A. PRODUCT: SHERWIN WILLIAMS MACROPOLY 646 OR THE NEC SERIES 616
      1) NUMBER OF COATS: 2
      2) DRY FILM THICKNESS: 4.0-6.0 MILS (PER COAT)
      3) COLOR: BY OWNER
   B. EXTERIOR EXPOSED FERRIGINOUS METAL AND GALVANIZED STEEL:
      A. PRIMER: SHERWIN WILLIAMS MACROPOLY 646 OR THE NEC SERIES 616 OR 689
         1) NUMBER OF COATS: 1
         2) DRY FILM THICKNESS: 4.0-6.0 MILS
         3) COLOR: BY OWNER
      B. FINISH: SHERWIN WILLIAMS ACROLIN 218 OR THE NEC SERIES 10740/10750
         1) NUMBER OF COATS: 1
         2) DRY FILM THICKNESS: 2.0-3.0 MILS
         3) COLOR: BY OWNER

3. ANTENNA COVERS:
   A. PRIMER: SHERWIN WILLIAMS PRO-CRYL PRIMER
      1) NUMBER OF COATS: 1
      2) DRY FILM THICKNESS: 2.0-4.0 MILS
   B. FINISH: SHERWIN WILLIAMS SHUE-CRYL HPA
      1) NUMBER OF COATS: 1
      2) DRY FILM THICKNESS: 2.0-4.0 MILS
      3) COLOR: BY OWNER

4. COAXIAL CABLE
   A. PRIMER: X-1-H 1138
      1) NUMBER OF COATS: 1
      2) DRY FILM THICKNESS: 2.0-3.0 MILS
   B. FINISH: SHERWIN WILLIAMS SHUE-CRYL HPA
      1) NUMBER OF COATS: 1
      2) DRY FILM THICKNESS: 2.0-4.0 MILS
      3) COLOR: BY OWNER

DATE: 1/17/04

NAME: WILLIAM PANZ
SIGNATURE:

I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION, OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A LICENSED PROFESSIONAL ENGINEER UNDER THE LAW OF THE STATE OF MINNESOTA.
REGISTRATION NO: 411244

10250 VALLEY VIEW ROAD S 106
EDEN PRAIRE, MN 55344
952-894-1999 (FAX) 952-894-1006 (PAN)

4000 MARKET FORGE DRIVE
BLOOMINGTON, MN 55435

AT&T MOBILITY

SITE NO. MNL01021
RIDGEPOND WATER TOWER
FAE 10107422
11000 WAYZATA BOULEVARD
MINNEAPOLIS, MN 55435

1.01/12/04 REVISED PER COMMINS KI 932
1.01/12/04 REVISED PER COMMINS KI 932
2.01/12/04 REVISED PER COMMINS KI 932
3.01/12/04 REVISED PER COMMINS KI 932
3.01/12/04 REVISED PER COMMINS KI 932
4.01/12/04 REVISED PER COMMINS KI 932
5.01/12/04 REVISED PER COMMINS KI 932
6.01/12/04 REVISED PER COMMINS KI 932

PAINTING & COATING

DATE: 1/17/04

REVISIONS:

SOUTH-9

S/1

I JOB 2

DEPOT NUMBER:

QTY:

TOWN:

DESIGNER:

1

11
# Proposed Antenna Configuration and Cable Schedule

Supplied by AT&T Wireless, from RF Orders dated 01/3/2014, by Copy W Thomas

<table>
<thead>
<tr>
<th>SECTOR</th>
<th>POS</th>
<th>TECH</th>
<th>ANTENNA</th>
<th>AZIMUTH</th>
<th>TMA/RRU</th>
<th>DC SURGE AND DISTRIBUTION</th>
<th>CABLE TYPE</th>
<th>CABLE LENGTH</th>
<th>DOWNTILTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>1</td>
<td>LTE 700 B/C/AWS</td>
<td>HPA-65R-BUJ-H4 (N)</td>
<td>95' AGL</td>
<td>110°</td>
<td>(1) 90H LTE 700L P2 (X)</td>
<td>(1) DC2-48-60-0-8E (X)</td>
<td>(1) FIBER (0.40°) (X)</td>
<td>2.7' (E) O(M)</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>GSM</td>
<td>80010764 (XR)</td>
<td>110°</td>
<td>(1) TT10-SBPI11-001 (XR)</td>
<td>(1) FC12-PC6-10E (X)</td>
<td>(1) DC TRUNK (0.82°) (X)</td>
<td>0' (E) O(M)</td>
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<tr>
<td></td>
<td>3</td>
<td>UMTS</td>
<td>80010764 (XR)</td>
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<td>4</td>
<td>LTE 700 D/WCS</td>
<td>HPA-65R-BUJ-H4 (N)</td>
<td>95' AGL</td>
<td>210°</td>
<td>(1) 90H LTE 700L P2 (X)</td>
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</tbody>
</table>

* Includes safety factor of 20 ft. (10 ft. at both ends of cable run)

Contractor to verify RF data with AT&T Wireless Construction Manager and/or RF Engineer prior to installation.

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**NOTE:**
- (N) = New Install
- (X) = Existing
- (XR) = Existing/Reallocated
- (N2) = New/Phase II Install
- (E) = Electrical
- (M) = Mechanical

---

Antenna & Cable Configuration Details

Site No.: MNL01021

Ridgepoint Water Tower

FAP 1010742

1301 Wayzata Boulevard

Minneapolis, MN 55405

A-13

DowNTILTS

125° (N) 2.7’ (E) O(M)
125° (N) 2.7’ (E) O(M)
125° (N) 2.7’ (E) O(M)
125° (N) 2.7’ (E) O(M)
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125° (N) 2.7’ (E) O(M)
125° (N) 2.7’ (E) O(M)
125° (N) 2.7’ (E) O(M)
125° (N) 2.7’ (E) O(M)
NOTES:
- Ramos Strip will be used on vinyl white conduct is white with
  printed surface. Fitting sequence should include yellow warning
  between the printed surface and the galvanized warning.
- Proposed mounting pipes and all mounting hardware is to be galvanized
  and color matched in. All non-connector material, non mounting pipes, are to
  have welded end caps at both ends. Existing mounting pipes are to be
  color matched at both ends with rubber washers.
- Antennas, how exterior mounting pipes and exterior mounting brackets are
  to be spray painted to match the color of the tank (if any color).

PHASE I AWS RRH UNIT

WATER TANK MOUNT DETAIL

ANTENNA MOUNT DETAIL

ANTENNA/RRH ATTACHMENT

RRH MOUNT

SITE NO. MNL01021
RIDGEPOIN T WATER TOWER
FAA 10107420
13001 WATFORD BOULEVARD
MINNETONKA, MN 55343

MANUFACTURER: ALCATEL-LUCENT
MODEL: 9600-AWS
HEIGHT: 24.4'
WIDTH: 10.63'
DEPTH: 8.7'
WEIGHT: 55.4 lbs

MANUFACTURER: CCI
PART #: BSA RET 200
LENGTH: 8'
WIDTH: 5'
DEPTH: 3'
WEIGHT: 1.8 lbs

MANUFACTURER: CCI
PART #: IPA-DES-BU0-149
LENGTH: 48'
WIDTH: 14.8'
DEPTH: 9'
WEIGHT: 30 lbs

MANUFACTURER: CCI
PART #: IPA-DES-BU0-149
LENGTH: 48'
WIDTH: 14.8'
DEPTH: 9'
WEIGHT: 30 lbs

NOT USED
5

NOTE:
All exposed lampers and hybrid cables will be
provided with white jacketing or taped white.
Rubber drarnets are to be installed in all.
Exterior penetrations for cables and sealed
with silicon caulk.
Contractor to touch up existing antenna mounting
pipe, feeding with their concession
(shrink/taped) the city may request replacement.
GENERAL NOTES

1. INSPECTIONS
C. INSPECTION AGENCY: APPROVED BY THE LOCAL AND/OR STATE AGENCIES HAVING JURISDICTION AT THE PROJECT SITE.
D. CERTIFICATES: SUBMIT ALL REQUIRED INSPECTION CERTIFICATES.

2. HANDERS AND SUPPORTS
A. MATERIALS: ALL HANGERS, SUPPORTS, FASTENERS AND HARDWARE SHALL BE STAINLESS STEEL OR OF EQUIVALENT CORROSION RESISTANCE BY TREATMENT OR INHERENT PROPERTY, AND SHALL BE MANUFACTURED PRODUCTS DESIGNED FOR THE APPLICATION. PRODUCTS FOR OUTDOOR USE SHALL BE HOT DIP GALVANIZED.
B. TYPES: HANGERS, STRAPS, RISER SUPPORTS, CLAMPS, U-CHANNEL, THREADED RODS, ETC. AS INDICATED OR REQUIRED.
C. INSTALLATION: RIGIDLY SUPPORT AND SECURE ALL MATERIALS, MACHINERY AND EQUIPMENT TO BUILDING STRUCTURE USING HANGERS, SUPPORTS AND FASTENERS SUITABLE FOR THE USE. MATERIALS AND LOADS ENCOUNTERED. PROVIDE ALL NECESSARY HARDWARE. PROVIDE CONDUIT SUPPORTS AT MAXIMUM 5 FT. OC.
D. STRUCTURAL MEMBERS: DO NOT CUT, DRILL, OR WELD ANY STRUCTURAL MEMBER EXCEPT AS SPECIFICALLY APPROVED BY THE ENGINEER. E. MISCELLANEOUS SUPPORTS: PROVIDE ANY ADDITIONAL STRUCTURAL SUPPORT STEEL BRACKETS, ANGLES, FASTENERS AND HARDWARE AS REQUIRED TO SECURELY SUPPORT ELECTRICAL MATERIALS AND EQUIPMENT.
F. ONE HOLE STRAPS SHALL NOT BE USED FOR CONDUITS LARGER THAN 3/4 INCH.

3. ENCLOSURES
A. NEMA 3R
B. HOLES, SLEEVES AND OPENINGS: GENERAL: PROVIDE ALL HOLES, SLEEVES, AND OPENINGS REQUIRED FOR THE COMPLETION OF WORK AND RESTORE ALL SURFACES DAMAGED TO MATCH SURROUNDING SURFACES.
C. CUTTING AND PATCHING: GENERAL: PROVIDE ALl CUTTING, DRILLING AND PATCHING NECESSARY FOR ACCOMPLISHING THE WORK. THIS INCLUDES ANY AND ALL WORK NEEDED TO UNCOVER WORK TO PROVIDE FOR THE INSTALLATION OF ALL WORK. REMOVE AND REPLACE DETECTIVE WORK AND WORK NOT CONFORMING TO THE REQUIREMENTS OF THE CONTRACT DOCUMENTS.
D. REPAIRS: REPAIR ANY AND ALL DAMAGE TO WORK OF OTHER TRADES CAUSED BY CUTTING AND PATCHING OPERATIONS, USING SKILLED MECHANICS OF THE TRADES REQUIRED.
E. RACEWAY SYSTEMS: ALL ABOVE GRACE CONDUIT AND ALL CONDUIT ELBOWS SHALL BE RIGID GALVANIZED STEEL UNLESS NOTED OTHERWISE.

7. CONDUCTORS
USE 16# CONDUCTIVITY COPPER WITH TYPE MHW-2 INSULATION, 600 VOLT, COLOR CODED. USE SOLID CONDUCTORS FOR WIRE UP TO AND INCLUDING NO. 6 AWG, STRANDED CONDUCTORS FOR WIRE LARGER THAN NO. 6. USE PRESSURE-TYPE INSULATED TWIST-ON CONNECTORS FOR NO. 10 AWG AND SMALLER, SOLIDLESS MECHANICAL TERMINAL LUGS FOR NO. AWG AND LARGER.

10. GROUNDING SYSTEM
A. INSTALLATION: INSTALL AS REQUIRED PER SPECIFICATION. CONTRACTOR REPRESENTATIVE WILL INSPECT EXISTING WELDS AND CONDUCT RESISTOR TEST PRIOR TO BURIAL. MAXIMUM RESISTANCE ALLOWABLE IS 20 OHM. WHEN MORE THAN (4) ADDITIONAL GROUNDS ARE REQUIRED, VERIFY OHM LEVEL PRIOR TO CONSTRUCTION. USE CLEAN SAND AND CORRUGATED PIPE FOR BURIED GROUND CONDUCTORS.

11. CHECKOUT, TESTING AND ADJUSTING
A. CORRECTION/REPLACEMENT: AFTER TESTING BY CONTRACTOR, OWNER OR ENGINEER, CORRECT ANY DEFICIENCIES AND REPLACE MATERIALS AND EQUIPMENT SHOWN TO BE DEFECTIVE OR UNABLE TO PERFORM AT DESIGN OR RATED CAPACITY.
B. POWER CONDUCTORS: CONTRACTOR SHALL CONDUCT A CONTINUITY & INSULATION TEST ON CONDUCTORS BETWEEN SERVICE DISCONNECT SWITCH & POWER CABINET.
C. WHEN SITE POWER IS DERIVED FROM 3 PHASE SOURCE, LOAD READING WILL BE TAKEN AND RECORD TO MAINTAIN A BALANCED LOAD AT THE PRIMARY SOURCE. RECORDS SHALL BE TURNED IN TO THE OWNER'S REPRESENTATIVE.

RF NOTES
1. ACTUAL LENGTHS SHALL BE DETERMINED PER SITE CONDITION BY SUBCONTRACTOR.
2. THE DESIGN IS BASED ON RF DATA SHEETS, SIGNED AND APPROVED.
4. ALL SPECIFIED MATERIAL FOR EACH LOCATION (E.G. OUTDOORS-OCUPPIED, RECESS/UNDERFRAMES, RISER SHS, ETC.) SHALL BE APPROVED, LISTED OR LABELED AS REQUIRED BY THE NEC.
5. RADIO SIGNAL CABLE SHALL BE SUPPORTED AT MINIMUM OF EVERY THREE (3) FEET EXCEPT INSIDE MONOPOLAR OR LATTICE TOWERS WHERE CABLE AND CONNECTOR MANUFACTURER'S SUPPORT RECOMMENDATIONS SHALL BE FOLLOWED. RIF JUMPERS SHALL BE SUPPORTED AT A MAXIMUM OF TWO (2) FEET AND WITHIN 1/8 IN OF CONNECTOR. MANUFACTURER RECOMMENDED CABLE SUPPORT ACCESSORIES SHALL BE USED.
6. THE OUTDOOR CABLE SUPPORT SYSTEM SHALL BE PROVIDED WITH AN ICE SHIELD TO SUPPORT AND PROTECT ANTENNA CABLE RIGGING.
7. DRIP LOOPS SHALL BE REQUIRED ON ALL OUTSIDE CABLES. CABLES SHALL BE SLOPED AWAY FROM BUILDING OR OUTDOOR TBS CABINETS TO PREVENT WATER ENTERING THROUGH THE COAXIAL CABLE POINT.
8. ALL RIF GREENLINE AND JUMPER CONNECTORS SHALL BE 7/16 IN CABLE CONNECTORS THAT MEET NFPA 1406.
9. 7/16 IN CONNECTORS REQUIRE NO ADDITIONAL WEATHER PROOFING IN INDOOR APPLICATIONS IF INSTALLED AND TIGHTLY PROOFED. IN OUTDOOR APPLICATIONS, WEATHER PROOFING IS REQUIRED AND THE FOLLOWING PROCEDURE SHOULD BE FOLLOWED.
10. USING WEATHERPROOFING KIT APPROVED BY CABLE MANUFACTURER AND CONTRACTOR, START TAPE APPROXIMATELY 5 INCHES FROM THE CONNECTOR AND WRAP 2 INCHES TOWARDS THE CONNECTOR. THEN REVERSE THE TAPE SO THAT THE STICKY SIDE IS UP. TAKE OVER THE CONNECTOR OR SURGICAL ARRETOR UNTIL THREE TO FOUR (4) INCHES BEYOND THE CONNECTOR AND REVERSE AGAIN WITH THE STICKY SIDE DOWN FOR ANOTHER INCH OR TWO, AND THE BENT RUBBER AND FINISH WITH A FINAL LAYER OF TAPE.
11. ANTENNA AND COAX SHALL BE PAINTED, WHEN REQUIRED, BY THE LANDLORD OR AUTHORITY HAVING JURISDICTION IN ACCORDANCE WITH ANTENNA MANUFACTURERS' SURFACES PREPARATION AND PAINTING REQUIREMENTS.
12. CABLE SHIELDS, AND TOWER CONNECTORS SHALL BE GROUNDED AT THE TOP OF THE TOWER, WITHIN 10 FEET OF THEIR CONNECTORS, AND AT THE BOTTOM OF THE TOWER ABOUT 6 INCHES BEFORE THEY TURN TOWARDS THE FACILITY. THEY SHALL BE GROUNDED AT THE MIDPOINT OF THE TOWERS THAT ARE BETWEEN 100 FEET AND 200 FEET HIGH, AND AT INTERVALS OF 100 FEET OR LESS ON TOWERS THAT ARE HIGHER THAN 200 FEET.
13. APPROVED GROUNDING KITS, WHICH INCLUDE GROUNDING STRAPS, SHALL BE USED TO GROUND THE CABLE SHIELDS AND CONDUCTORS. THE GROUND CONDUCTORS FOR THE MTS AT THE TOP OF THE TOWER, AND IN THE MIDDLE OF THE TOWER, ARE BONDED DIRECTLY TO GROUND BAR OF TOWER.
14. ALL RADIO SIGNAL CABLE SHALL BE LABELED PER MARKET REQUIREMENTS.
15. ANTENNA FEED LINE SYSTEM SWEEP TESTS SHALL BE PERFORMED AND REPORTED IN ACCORDANCE WITH CARRIER REQUIREMENTS. CONTRACTOR WILL NOT ACCEPT A RADIO SIGNAL CABLE INSTALLATION WITH UNSATISFACTORY SWEEP TEST RESULTS. THERE SHALL ALSO BE A HARD COPY OF SWEEP TESTS AT SITE UPON COMPLETION OF SWEEP TEST.
ATTACHMENT 1

MEMORANDUM OF LEASE

Prepared by:
NAME
FIRM
FIRM ADDRESS
CITY, STATE ZIP

Return to:
NAME
FIRM
FIRM ADDRESS
CITY, STATE ZIP

Re: Cell Site # MNL01021; Cell Site Name: Ridgepoint WT (MN)
Fixed Asset Number: 10107422
State: Minnesota
County: Hennepin

MEMORANDUM
OF
LEASE

This Memorandum of Lease is entered into on this ____ day of ______________, 2015, by and between City of Minnetonka, a Minnesota municipal corporation, duly organized under the laws of the State of Minnesota and having a mailing address of 14600 Minnetonka Boulevard, Minnetonka, MN 55345 (“Landlord”) and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as successor in interest to AT&T Wireless Services of Minnesota, Inc., having a mailing address of 575 Morosgo Drive NE, Atlanta, Georgia 30324 (“Tenant”)

1. Landlord and Tenant entered into a Site Lease Agreement dated September 24, 2001, as amended by a certain First Amendment to Site Lease Agreement on April 1, 2002, as amended by a certain Second Amendment to Site Lease Agreement on May 9, 2002, as amended by a certain Third Amendment to Site Lease Agreement on November 12, 2002, which is inaccurately titled as the Second Amendment to Site Lease Agreement, due to a scrivener’s error, as amended by a certain Fourth Amendment to Site Lease Agreement on December 22, 2011 (collectively, the “Agreement”) for the purpose of installing, operating and maintaining a communications facility and other improvements at Landlord/Lessor/Licensor’s real property located in the City of Minnetonka, County of Hennepin, commonly known as 13001 Wayzata Boulevard. All of the foregoing are set forth in the Agreement/Lease-License.

2. Pursuant to a Fifth Amendment to Site Lease Agreement dated ____________, 2015, Landlord and Tenant agree to extend the term of the Agreement for one (1) additional term of sixty (60) months.
3. The portion of the land being leased to Tenant (the “Premises”) is described in Exhibit 1 annexed hereto.

4. This Memorandum of Lease is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Agreement, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this Memorandum of Lease and the provisions of the Agreement, the provisions of the Agreement shall control. The Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease as of the day and year first above written.

“LANDLORD”
City of Minnetonka
By: _______________________
Name: _______________________
Title: _______________________
Date: _______________________

By: _______________________
Name: _______________________
Title: _______________________
Date: _______________________

“TENANT”
New Cingular Wireless PCS, LLC
By: AT&T Mobility Corporation
Its: Manager
By: _______________________
Name: _______________________
Title: _______________________
Date: _______________________

A-21
TENANT ACKNOWLEDGEMENT

STATE OF __________________________) )ss:
COUNTY OF ________________________) )

On the _____ day of _______, 2015 before me personally appeared ___________________, and acknowledged under oath that he is the __________________________ of AT&T Mobility Corporation, a ____________ corporation and the manager of New Cingular Wireless PCS, LLC, a Delaware limited liability company, the Tenant named in the attached instrument, and as such was authorized to execute this instrument on behalf of the corporation and limited liability company.

Notary Public: __________________________
My Commission Expires: ____________________

LANDLORD ACKNOWLEDGEMENT

STATE OF MINNESOTA )
COUNTY OF HENNEPIN )

On the _____ day of _______, 2015 before me personally appeared Terry Schneider and acknowledged under oath that he is the mayor of City of Minnetonka, a Minnesota municipal corporation, the Landlord named in the attached instrument, and as such was authorized to execute this instrument on behalf of the corporation.

Notary Public: __________________________
My Commission Expires: ____________________

STATE OF MINNESOTA )
COUNTY OF HENNEPIN )

On the _____ day of _______, 2015 before me personally appeared Geralyn Barone and acknowledged under oath that she is the city manager of City of Minnetonka, a Minnesota municipal corporation, the Landlord named in the attached instrument, and as such was authorized to execute this instrument on behalf of the corporation.

Notary Public: __________________________
My Commission Expires: ____________________
Exhibit 1 to Memorandum of Lease

Premises

See attached sheets prepared by Velocital, comprised of thirteen pages, last revision date 12/17/2014
Brief Description  Orders for liquor license stipulations

Recommendation  Approve the orders

Background

The city council has an adopted schedule of presumptive penalties to be applied when certain liquor violations occur. Under the presumptive penalties schedule, liquor 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.

The following establishments are in violation of selling intoxicating liquor to a person who was under 21 years of age:

- Big Thrill Factory
- Haskell’s
- Jimmy’s Food and Cocktails
- Sheraton Minneapolis West Hotel

Presumptive penalties are defined in city council policy 6.2 and are based on the type of liquor license, number of violations over a three year period, and participation in the Best Practices Program (see pages A1-A2). As the council is aware, the city offers the Best Practice Program. The program’s purpose is to encourage liquor license holders to voluntarily undertake practices and provide additional training that will help avoid sales to underage buyers. Stipulation forms were sent to the licensees. The licensees have returned the stipulations forms agreeing to the penalties listed below:

<table>
<thead>
<tr>
<th>Establishment &amp; Type of License</th>
<th>Licensee</th>
<th>Date of Violation</th>
<th>Offense</th>
<th>Fine</th>
<th>Participant in Best Practices Program</th>
</tr>
</thead>
<tbody>
<tr>
<td>Big Thrill Factory 15585 State Highway 7 (On-Sale Wine &amp; 3.2% Malt Beverage)</td>
<td>Big Thrill Factory LLC</td>
<td>October 29, 2014</td>
<td>2nd Violation</td>
<td>$700 &amp; 3 days suspension</td>
<td>No</td>
</tr>
<tr>
<td>Haskell’s 12900 Wayzata Blvd (Off-Sale)</td>
<td>Haskell’s, Inc.</td>
<td>October 28, 2014</td>
<td>1st Violation</td>
<td>$750 No suspension</td>
<td>No</td>
</tr>
<tr>
<td>Jimmy’s Food and Cocktails 11000 Red Circle Dr (On-Sale Intoxicating)</td>
<td>Jimmy’s, LLC</td>
<td>October 14, 2014</td>
<td>1st Violation</td>
<td>$500 No suspension</td>
<td>Yes</td>
</tr>
<tr>
<td>Sheraton Minneapolis West Hotel 12201 Ridgedale Dr (On-Sale Intoxicating)</td>
<td>Minnetonka MN Hotel Ltd Partnership</td>
<td>October 28, 2014</td>
<td>1st Violation</td>
<td>$500 &amp; 1 day suspension</td>
<td>No</td>
</tr>
</tbody>
</table>
**Big Thrill Factory**

This was the second violation for Big Thrill Factory. The following information was received from Darrell Blomberg, General Manager of Big Thrill Factory, regarding this violation.

“I had hoped to hand deliver it to you so I could also share with you what we have done to improve our responsible alcohol service. Unfortunately, we learned the hard way we needed to be more aggressive with a number of items, I am confident in our methods and practices as of this writing and believe I have the management team in place to continue to improve.

- As you know, we signed up immediately after our first violation to participate in the training/best practices test program through the University of Minnesota called Enhanced Alcohol Risk Management (eARM) which provides useful resources for Alcohol Training Programs and execution. Unfortunately, we were randomly drawn into the group that did not receive any training from the program leaders, but we were eventually granted access to their website containing those “tools” and best practices.
  - We were finally granted access to the site on 10/10/2014 and began to use the resources provided to update our existing Alcohol Training Program
- Our compliance check and subsequent failure occurred on 10/29/2014.
- We Scan Software (Age verification) had been purchased and was installed on our POS system 11/4/2014 and training commenced immediately.
- We continue to improve our training and follow up programs monthly.

I sincerely believe that we will not be in violation next year.”

**Recommendation**

Staff recommends the city council adopt a motion issuing the enclosed Findings of Fact, Conclusion, and Orders for Big Thrill Factory, Haskell’s, Jimmy’s, and the Sheraton Hotel. (See pages A3-A11).

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

Originated by:
- Kathy Leervig, Community Development Coordinator
Exhibit A

Presumptive Penalties

The following are the presumptive penalties for the offenses listed.

Revocation on the first violation for the following types of offenses:

- Commission of a felony related to the licensed activity
- Sale of alcoholic beverages while license is under suspension

The following chart applies to these violations, to be counted over a three-year period:

- Sale to underage person
- Sale after/before hours
- Consumption after hours
- Illegal gambling, prostitution, adult entertainment on premises
- Sale to obviously intoxicated person
- Sale of liquor that is not permitted by the license

<table>
<thead>
<tr>
<th>License Type</th>
<th>1st Violation</th>
<th>2nd Violation</th>
<th>3rd Violation</th>
<th>4th Violation</th>
</tr>
</thead>
<tbody>
<tr>
<td>On-sale, full</td>
<td>$500 + 1 day</td>
<td>$1000 + 3 days</td>
<td>$2000 + 10 days</td>
<td>Revocation</td>
</tr>
<tr>
<td></td>
<td>suspension</td>
<td>suspension</td>
<td>suspension</td>
<td></td>
</tr>
<tr>
<td>Off-sale, full</td>
<td>$750</td>
<td>$1500 + 1 day</td>
<td>$2000 + 6 days</td>
<td>Revocation</td>
</tr>
<tr>
<td></td>
<td>suspension</td>
<td>suspension</td>
<td>suspension</td>
<td></td>
</tr>
<tr>
<td>On-sale, 3.2 &amp; beer/wine</td>
<td>$350 + 1 day</td>
<td>$700 + 3 days</td>
<td>$1500 + 10 days</td>
<td>Revocation</td>
</tr>
<tr>
<td></td>
<td>suspension</td>
<td>suspension</td>
<td>suspension</td>
<td></td>
</tr>
<tr>
<td>Off-sale, 3.2</td>
<td>$250 + 1 day</td>
<td>$500 + 3 days</td>
<td>$1000 + 10 days</td>
<td>Revocation</td>
</tr>
<tr>
<td></td>
<td>suspension</td>
<td>suspension</td>
<td>suspension</td>
<td></td>
</tr>
<tr>
<td>On-sale, taproom or Off-sale, brewery (growlers)</td>
<td>$350 + 1 day</td>
<td>$700 + 3 days</td>
<td>$1500 + 10 days</td>
<td>Revocation</td>
</tr>
<tr>
<td></td>
<td>suspension</td>
<td>suspension</td>
<td>suspension</td>
<td></td>
</tr>
</tbody>
</table>
For establishments in the Best Practices Program:

<table>
<thead>
<tr>
<th>License Type</th>
<th>1st Violation</th>
<th>2nd Violation</th>
<th>3rd Violation</th>
<th>4th Violation</th>
<th>5th Violation</th>
</tr>
</thead>
<tbody>
<tr>
<td>On-sale, full</td>
<td>$500</td>
<td>$500 + 1 day suspension</td>
<td>$1000 + 3 days suspension</td>
<td>$2000 + 10 days suspension</td>
<td>Revocation</td>
</tr>
<tr>
<td>Off-sale, full</td>
<td>$350</td>
<td>$750</td>
<td>$1500 + 1 day suspension</td>
<td>$2000 + 6 days suspension</td>
<td>Revocation</td>
</tr>
<tr>
<td>On-sale, 3.2 &amp; beer/wine</td>
<td>$350</td>
<td>$350 + 1 day suspension</td>
<td>$700 + 3 days suspension</td>
<td>$1500 + 10 days suspension</td>
<td>Revocation</td>
</tr>
<tr>
<td>Off-sale, 3.2</td>
<td>$250</td>
<td>$250 + 1 day suspension</td>
<td>$500 + 3 days suspension</td>
<td>$1000 + 6 days suspension</td>
<td>Revocation</td>
</tr>
<tr>
<td>On-sale, taproom or Off-sale, brewery (growlers)</td>
<td>$350</td>
<td>$350 + 1 day suspension</td>
<td>$700 + 3 days suspension</td>
<td>$1500 + 10 days suspension</td>
<td>Revocation</td>
</tr>
</tbody>
</table>
In the Matter of:

The Liquor License of
Big Thrill Factory, LLC

FINDINGS OF FACT, CONCLUSION, AND ORDER

Pursuant to a Stipulation executed by Julie Wischnack, Community Development Director for the city of Minnetonka, and Barry Zelickson, owner of Big Thrill Factory, the city council makes the following:

FINDINGS OF FACT

1. The licensee captioned above holds an On-sale Wine and On-Sale 3.2% Malt Beverage liquor license issued by the city council on December 15, 2014, and conducts its licensed activity at 17585 State Highway 7 within the city.

2. Pursuant to Minn. Stat. § 340A.503, Subd. 2(1) and Minnetonka City Code §600.75(1), no person may sell liquor to a minor, who is under the age of 21.

3. On October 29, 2014, Jasmine Green, a person employed by the above-captioned licensee, sold intoxicating liquor to a person who was under 21 years old.
CONCLUSION

1. The liquor licensee sold an alcoholic beverage to an underage person on October 29, 2014, in violation of Minn. Stat. § 340A.503, Subd. 2(1) and Minnetonka City Code §600.75(1).

ORDER

IT IS HEREBY ORDERED, pursuant to Minn. Stat. §340A.415 and Minnetonka City Code §600.080 and Council Policy 6.2, that the licensee captioned above is subject to the following sanctions:

(1) a $700 civil penalty , and

(2) suspension of the license for three days, on dates to be selected by city staff.

By order of the city council of the City of Minnetonka, Minnesota, April 20, 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 April 20, 2015.

____________________________________
David E. Maeda, City Clerk
BEFORE THE CITY COUNCIL
CITY OF MINNETONKA, MINNESOTA

In the Matter of:
The Liquor License of Haskell’s, Inc.

FINDINGS OF FACT, CONCLUSION, AND ORDER

Pursuant to a Stipulation executed by Julie Wischnack, Community Development Director for the city of Minnetonka, and John F Farrell, Jr., CEO of Haskell’s, the city council makes the following:

FINDINGS OF FACT

1. The licensee captioned above holds an Off-sale Intoxicating liquor license issued by the city council on December 15, 2014, and conducts its licensed activity at 12900 Wayzata Boulevard within the city.

2. Pursuant to Minn. Stat. § 340A.503, Subd. 2(1) and Minnetonka City Code §600.75(1), no person may sell liquor to a minor, who is under the age of 21.

3. On October 28, 2014, Bre’Anne Johnson, a person employed by the above-captioned licensee, sold intoxicating liquor to a person who was under 21 years old.
CONCLUSION

1. The liquor licensee sold an alcoholic beverage to an underage person on October 28, 2014, in violation of Minn. Stat. § 340A.503, Subd. 2(1) and Minnetonka City Code §600.75(1).

ORDER

IT IS HEREBY ORDERED, pursuant to Minn. Stat. §340A.415 and Minnetonka City Code §600.080 and Council Policy 6.2, that the licensee captioned above is subject to the following sanctions:

(1) a $750 civil penalty and no suspension date

By order of the city council of the City of Minnetonka, Minnesota, April 20, 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 April 20, 2015.

______________________________
David E. Maeda, City Clerk
BEFORE THE CITY COUNCIL
CITY OF MINNETONKA, MINNESOTA

In the Matter of:

The Liquor License of
Jimmy’s LLC

FINDINGS OF FACT, CONCLUSION, AND ORDER

Pursuant to a Stipulation executed by Julie Wischnack, Community Development Director for the city of Minnetonka, and Michael J. Jennings, owner of Jimmy’s Food and Cocktails, the city council makes the following:

FINDINGS OF FACT

1. The licensee captioned above holds an On-sale Intoxicating and Sunday On-sale liquor license issued by the city council on December 15, 2014, and conducts its licensed activity at 11000 Red Circle Drive within the city.

2. Pursuant to Minn. Stat. § 340A.503, Subd. 2(1) and Minnetonka City Code §600.75(1), no person may sell liquor to a minor, who is under the age of 21.

3. On October 14, 2014, Jacqueline Bauer, a person employed by the above-captioned licensee, sold intoxicating liquor to a person who was under 21 years old.
CONCLUSION

1. The liquor licensee sold an alcoholic beverage to an underage person on October 14, 2014, in violation of Minn. Stat. § 340A.503, Subd. 2(1) and Minnetonka City Code §600.75(1).

ORDER

IT IS HEREBY ORDERED, pursuant to Minn. Stat. §340A.415 and Minnetonka City Code §600.080 and Council Policy 6.2, that the licensee captioned above is subject to the following sanctions:

(1) a $500 civil penalty and no suspension date

By order of the city council of the City of Minnetonka, Minnesota, April 20, 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 April 20, 2015.

____________________________________
David E. Maeda, City Clerk
BEFORE THE CITY COUNCIL
CITY OF MINNETONKA, MINNESOTA

In the Matter of:

The Liquor License of
Minnetonka MN Hotel LTD Partnership
DBA Sheraton Minneapolis West Hotel

FINDINGS OF FACT,
CONCLUSION,
AND ORDER

Pursuant to a Stipulation executed by Julie Wischnack, Community Development Director for the city of Minnetonka, and Minnetonka MN Hotel LTD Partnership DBA Sheraton Minneapolis West Hotel, the city council makes the following:

FINDINGS OF FACT

1. The licensee captioned above holds an On-sale Intoxicating and Sunday On-sale liquor license issued by the city council on December 15, 2014, and conducts its licensed activity at 12201 Ridgedale Drive within the city.

2. Pursuant to Minn. Stat. § 340A.503, Subd. 2(1) and Minnetonka City Code §600.75(1), no person may sell liquor to a minor, who is under the age of 21.

3. On October 28, 2014, Steven Bartle, a person employed by the above-captioned licensee, sold intoxicating liquor to a person who was under 21 years old.
CONCLUSION

1. The liquor licensee sold an alcoholic beverage to an underage person on October 28, 2014, in violation of Minn. Stat. § 340A.503, Subd. 2(1) and Minnetonka City Code §600.75(1).

ORDER

IT IS HEREBY ORDERED, pursuant to Minn. Stat. §340A.415 and Minnetonka City Code §600.080 and Council Policy 6.2, that the licensee captioned above is subject to the following sanctions:

(1) a $500 civil penalty, and

(2) suspension of the license for one day, on a date to be selected by city staff.

By order of the city council of the City of Minnetonka, Minnesota, April 20, 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 April 20, 2015.
David E. Maeda, City Clerk
City Council Agenda Item #10D
Meeting of April 20, 2015

Brief Description
Resolution approving preliminary and final plats for Congregation Hill, a three-lot subdivision at 2051 Meeting Street

Recommendation
Adopt the resolution approving the request

Proposal

The property owner is proposing to subdivide the property at 2051 Meeting Street. The proposed subdivision would create three single-family residential lots. The existing house would be removed and three new houses would be constructed. The proposed lots would share a private driveway from Meeting Street, and would meet all city standards. The proposal requires review of preliminary and final plats.

Planning Commission Hearing

The planning commission considered the request on April 9, 2015. The staff report from that meeting is attached and various plans and documents describing the proposed project may be found on pages A1-A10. City staff had additional conversations with the applicant about tree preservation since the planning commission report was distributed. The applicant and staff have agreed upon additional tree preservation that may be possible depending on the individual home designs. In addition, the applicant has agreed to provide additional conservation easement on the east and west sides of the development to provide long term preservation of the steep slope and wooded areas. (See page A7.)

At that meeting, a public hearing was opened to take comment. Two residents appeared at the public hearing. Their comments included clarification of the project location, and general support for the subdivision. Following the public hearing, the commission asked questions and discussed the proposal. The planning commission noted that there are a lot of nice trees on the property, and they appreciated the attention given to preserve as many of the trees as possible. The planning commission supported the plans, including the additional tree preservation and conservation easements there were discussed.

Planning Commission Recommendation

On a 5-0 vote, the commission recommended that the city council approve the proposal as recommended by city staff, with the additional conditions related to tree preservation and conservation easements. Meeting minutes may be found on pages A20-A21.
Since Planning Commission Hearing

The applicant has submitted revised plans for the project. The revised plans include the additional tree preservation and conservation easements that were discussed at the planning commission meeting. The revised grading plan would preserve five additional high priority trees and four significant trees. The plans also show the additional conservation easements on the east and west sides of the site. (See page A7.)

City staff is recommending an additional condition of approval which would require that the existing house and detached garage be demolished prior to filing of the plat. This is necessary since the existing house would cross over the new lot lines. The condition has been added to the resolution.

Staff Recommendation

Recommend the city council adopt the resolution on pages A11-A19 approving the request, as recommended by the planning commission. The resolution is updated with the additional conditions related to tree preservation and conservation easements reflected in the revised plans, as well as demolition of the house.

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

Originator:  Jeff Thomson, Planner
Brief Description: Preliminary and final plats for Congregation Hill, a three-lot subdivision at 2051 Meeting Street

Recommendation: Recommend the city council approve the request

Proposal

The applicant is proposing to subdivide the property at 2051 Meeting Street. The proposed subdivision would create three single-family residential lots. The existing house would be removed and three new houses would be constructed. The proposed lots would share a private driveway from Meeting Street, and would meet all city standards. The proposal requires review of preliminary and final plats. (See pages A1-A10.)

Site Features

The site currently contains a single-family home and detached garage that were constructed in 1965. There was previously a swimming pool and pool house located on the southwest side of property, but they were demolished in 2012. The site is 4.1 acres in total size, and includes the following natural resources:

- **Wetland:** There is a large, openwater wetland located on the east side of the lot extending to the north and east towards Interstate 494. The wetland is classified as a manage one wetland in the city’s inventory. The wetland is also part of the city’s 100-year stormwater area, and is classified as floodplain. (See page A1.)

- **Topography:** The lot has two areas of steep slopes. Generally, the existing house sits at the highest part of the lot. The east side of the propety, adjacent to the wetland, contains a wooded slope with a grade of 23 to 26 percent. There is also a wooded slope on the front of the property along Meeting Street. The grade of this area is 21 to 23 percent. (See page A9.)

- **Trees:** There is an mesic oak forest on the east side of the property, generally located on the upland slope of the wetland. The west side of the site also contains a heavily treed area. This area is not part of the woodland preservation area because it is disconnected from the larger forest area. However, the area contains many high priority and significant trees. The remaining part of the lot near the existing house consists of mowed turf area with a scattering of individual high priority and significant trees. (See page A9.)
Proposed Lots

The applicant is proposing to subdivide the property into three, single-family residential lots. The lots would range in size from 1.2 to 1.6 acres, and would have buildable areas between 13,000 and 18,000 square feet. The proposed lots would meet all of the city’s minimum zoning ordinance requirements.

All of the lots would be served by a single private driveway which would be constructed from Meeting Street. The driveway access would be on the far southern part of the subdivision and would extend north to serve each of the new homes. The applicant is proposing a shared driveway in order to avoid the grading and tree loss that would occur if separate driveways were provided directly to Meeting Street. (See page A3.)

Utilities

There are existing water and sanitary sewer services stubbed to the south property line of proposed Lot 3. The new house would utilize these existing utility services. The northerly lots, Lots 1 and 2, would require an extension of a public sanitary sewer main in Meeting Street, since the existing sanitary sewer line terminates near the south end of the subject property. The new sanitary sewer line would be directionally drilled on the east side of the street, within existing right-of-way. There is an existing public water main in Meeting Street. New services would be provided to Lots 1 and 2 through a single utility trench for both lots. The grading impacts associated digging this trench would result in removal of 4 to 5 trees. However, the utility services have been located and planned to minimize impacts to the slope and trees. (See page A5.)

Grading, Drainage and Stormwater

Initial grading would be required in order to install the shared driveway. As a condition of approval, each of the home sites would need to be custom graded during individual home construction. Stormwater management would be provided by three separate rain gardens on each of the lots. Stormwater runoff from the homes would be directed to the rain gardens. The driveway would have an infiltration trench to direct runoff to the southerly rain garden on Lot 3. Engineering staff has reviewed the preliminary plans and determined that they would comply with the city’s water resources management requirements. (See page A6.)

Tree Preservation

There is 0.75 acres of woodland preservation area on the property. The woodland preservation area connects to a larger mesic oak forest to the north that is about 18 acres in total size. The proposed subdivision would result in removal of less than 10 percent of the woodland preservation area. Outside of the woodland preservation area, there are 79 high priority and 83 significant trees. Of the 79 high priority trees, 22 would be removed.
The proposed subdivision would comply with the city’s tree preservation ordinance. As each of the lots would exceed one acre in size, the city’s maximum tree removal requirements do not apply. However, the subdivision would still result in removal of less than 25 percent of the woodland preservation area and less than 35 percent of the site’s high priority trees. (See pages A9-A10.)

**Staff Analysis**

Staff finds that the applicant’s proposal is reasonable:

- The proposed plans would minimize the impacts to the natural resources on the site. The use of a shared driveway would reduce the grading and tree removal that is necessary for providing access to each of the lots. The utility services have been located to reduce and minimize impacts to the steep slopes and trees along Meeting Street. In addition, the homes would be located to avoid impacts to the steep slopes, woodland preservation area, and areas of high quality trees.

- The proposed lots would meet all minimum lot standards, and the subdivision would meet all zoning and subdivision regulations.

**Staff Recommendation**

Recommend the city council adopt the resolution on pages A11-A18 which grants preliminary and final plat approval to Congregation Hill, a three lot subdivision at 2051 Meeting Street.

Originator: Jeff Thomson, Associate Planner
Through: Susan Thomas, Principal Planner
Supporting Information

Project No. 15004.15a
Property 2051 Meeting Street
Applicant Frank A. Donaldson

Proposal Requirements

The application requires the following:

- **Preliminary plat**: The proposed subdivision of the property requires preliminary plat review to subdivide the property into 3 lots.

- **Final plat**: The applicant is requesting concurrent review of the final plat with the preliminary plat application.

Approving Body

The planning commission makes a recommendation to the city council, which has final authority to approve or deny the request.

Surrounding Land Uses

All surrounding land uses are single family homes, zoned R-1 and guided for low density residential uses.

Planning

Guide Plan designation: Low density residential
Zoning: R-1/Low density residential

Lot Standards

The proposed plat would meet all minimum standards:

<table>
<thead>
<tr>
<th>Lot Area</th>
<th>Lot Area</th>
<th>Lot Width at Right-of-Way</th>
<th>Lot Width at Setback</th>
<th>Lot Depth</th>
<th>Buildable Area</th>
</tr>
</thead>
<tbody>
<tr>
<td>Required</td>
<td>22,000 sq.ft.</td>
<td>80 ft.</td>
<td>110 ft.</td>
<td>125 ft.</td>
<td>3,500 sq.ft.</td>
</tr>
<tr>
<td>Lot 1</td>
<td>69,051 sq. ft.</td>
<td>245 ft.</td>
<td>200+ ft.</td>
<td>400+ ft.</td>
<td>16,818 sq. ft.</td>
</tr>
<tr>
<td>Lot 2</td>
<td>52,848 sq. ft.</td>
<td>141 ft.</td>
<td>125 ft.</td>
<td>400+ ft.</td>
<td>18,248 sq. ft.</td>
</tr>
<tr>
<td>Lot 3</td>
<td>57,853 sq. ft.</td>
<td>210 ft.</td>
<td>180+ ft.</td>
<td>370 ft.</td>
<td>13,727 sq. ft.</td>
</tr>
</tbody>
</table>

Natural Resources

Best management practices must be followed during the course of site preparation and construction activities. This would include installation and maintenance of a temporary rock driveway, erosion control, tree and wetland protection fencing. As a
condition of approval the applicant must submit a construction management plan detailing these management practices.

<table>
<thead>
<tr>
<th>Neighborhood Comments</th>
<th>The city sent notices to 65 area property owners and received no comments.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deadline for Decision</td>
<td>April 20, 2015</td>
</tr>
</tbody>
</table>
Location Map

Project: Congregation Hill
Address: 2051 Meeting St
(15004.15a)
Notes:
2051 Meeting Street
PID: 09-117-22-11-0002
Area: 4.16 acres 161,058 sf
3 Single Family Lots
Density: 3/4, 16 = 0.72 unvac
Zoning: R-1
22,000 sf
110
15,000 sf
90'
FYSB - 30'
SYSB - 10" Min 30' Total
RYSB 40'
Min Lot Depth - 125'
DISCLAIMER: This drawing is not a legally recorded plat or an accurate survey. It is intended to be only an approximate representation of information from various government offices and other sources. It should not be used for a purpose that requires exact measurement or precision. People who use this drawing do so at their own risk. The City of Minnetonka is not responsible for any inaccuracies contained in the drawing. The City of Minnetonka provides no warranty, express or implied, about the correctness of the information.

18 acres of WPA (estimated)

0.75 acres of WPA on property

0.07 acres of WPA on property to be impacted (9%)
Resolution No. 2015-

Resolution approving the preliminary and final plat of Congregation Hill at 2051 Meeting Street

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

Section 1. Background.

1.01 Frank A Donaldson III has requested preliminary and final plat approval for Congregation Hill, a three-lot subdivision at 2051 Meeting Street. (Project 15004.15a)

1.02 The property is legally described as follows:

Tract B, Registered Land Survey Number 0205, according to the recorded plat thereof, Hennepin County, Minnesota

1.03 On April 9, 2015, the planning commission held a hearing on the proposed plat. The applicant was provided the opportunity to present information to the commission. The commission considered all of the comments received and the staff report, which are incorporated by reference into this resolution. The commission recommended that the city council grant preliminary and final plat approval.

Section 2. General Standards.

2.01 City Code §400.030 outlines general design requirements for residential subdivisions. These standards are incorporated by reference into this resolution.

Section 3. Findings.

3.01 The proposed preliminary and final plats meet the design requirements as outlined in City Code §400.030.

4.01 The above-described preliminary and final plat is hereby approved, subject to the following conditions:

1. Subject to staff approval, Congregation Hill must be developed and maintained in substantial conformance with the following plans, except as modified by the conditions below:
   - Site plan dated April 14, 2015
   - Grading plan dated April 14, 2015
   - Utility plan dated April 14, 2015
   - Tree preservation plan dated April 14, 2015

2. Prior to release of the final plat for recording:
   a) This resolution must be recorded with Hennepin County.
   b) The following must be submitted to the city:
      1) A final plat drawing that clearly illustrates the following:
         a. A minimum 10-foot wide drainage and utility easements adjacent to the public right-of-way and minimum 7-foot wide drainage and utility easements along all other lot lines.
         b. Utility easements over existing or proposed public utilities, as determined by the city engineer.
         c. Drainage and utility easements over wetlands, floodplains, and stormwater management facilities, as determined by the city engineer.
      2) Documents for the city attorney’s review and approval. These documents must be prepared by an attorney knowledgeable in the area of real estate.
         a. Title evidence that current within thirty days before release of the final plat.
         b. Conservation easements over (1) the 25-foot wetland buffer, (2) the steep slope and wooded area upland of the wetland buffer and extending
generally to the proposed easterly grading limit, and (3) the steep slope and wooded area generally located on the west side of the proposed shared driveway. The easement must include a drawing of the easement area. The easement may allow removal of hazard, diseased, or invasive species.

c. A private driveway easement between the public right-of-way and Lots 1 and 2. The easement must state the maintenance responsibilities of each owner, including maintenance of the infiltration trench.

d. A Contract for Residential Development (or Developers Agreement) if the applicant or developer is constructing any public improvements. This agreement must guarantee that the developer will complete all public improvements and meet all city requirements.

e. Private utility easement between Lots 1 and 2 for any portion of private utility services that cross over the shared property line. Alternatively, the common lot line can be adjusted on the final plat.

3) Two sets of mylars for city signatures.

4) An electronic CAD file of the plat in microstation or DXF.

c) Pay park dedication fee of $10,000.

d) Pay pending hook-up fees.

e) The existing house and detached garage must be demolished.

3. A grading permit is required for construction of the utilities and private driveway. Unless authorized by appropriate staff, no site work may begin until a complete grading permit application has been submitted, reviewed by staff, and approved.

a) The following must be submitted for the grading permit to be considered complete.

1) Evidence of filing the final plat at Hennepin County and copies of all recorded easements and documents as
required in section 4.01(2)(b)(2) of this resolution.

2) An electronic PDF copy of all required plans and specifications.

3) Three full size sets of construction drawings and sets of project specifications.

4) Final site, grading, drainage, utility, landscape, and tree mitigation plans, and a stormwater pollution prevention plan (SWPPP) for staff approval.
   a. The private driveway and associated grading must minimize impacts to the oak trees located on the northern two lots, identified on the tree preservation plan as 320, 321, 345, 346, 347, and 348.
   b. Preliminary grading is allowed for construction of the utilities and private driveway only. Each of the home sites and rain gardens must be custom graded at the time of individual home construction.
   c. Final utility plan must locate utilities to minimize impact to any significant or high-priority trees.
   d. The existing private storm drainage system on the site must be removed.
   e. The existing driveway access must be removed.
   f. Final landscaping and tree mitigation plans must meet minimum landscaping and mitigation requirements as outlined in ordinance. However, at the sole discretion of natural resources staff, mitigation may be adjusted based on site conditions.

5) Individual letters of credit or cash escrow for 125% of a bid cost or 150% of an estimated cost to construct driveway and utility improvements, comply with grading permit, tree mitigation requirements, and to restore the site. One itemized letter of credit is permissible, if approved by staff. The city will not fully release the letters of credit or cash escrow until: (1) as-built drawings have been submitted; (2) a letter certifying
that the utilities have been completed according to the plans approved by the city has been submitted; (3) vegetated ground cover has been established; and (4) required landscaping or vegetation has survived one full growing season.

6) A construction management plan. The plan must be in a city approved format and must outline minimum site management practices and penalties for non-compliance.

7) A copy of the approved MPCA NPDES permit.

8) Evidence of closure/capping of any existing wells, septic systems, and removal of any existing fuel oil tanks.

9) All required administration and engineering fees.

10) Cash escrow in an amount to be determined by city staff. This escrow must be accompanied by a document prepared by the city attorney and signed by the builder and property owner. Through this document the builder and property owner will acknowledge:

   • The property will be brought into compliance within 48 hours of notification of a violation of the construction management plan, other conditions of approval, or city code standards; and

   • If compliance is not achieved, the city will use any or all of the escrow dollars to correct any erosion and/or grading problems.

b) Prior to issuance of the grading permit:

1) The wetland boundary must be formally approved by the city through the Wetland Conservation Act process.

2) Install a temporary rock driveway, erosion control, tree and wetland protection fencing and any other measures identified on the SWPPP for staff inspection. These items must be maintained throughout the course of construction.

c) Permits may be required from other outside agencies
including, Hennepin County, the Minnehaha Creek Watershed District, and the MPCA. It is the applicant’s and property owner’s responsibility to obtain any necessary permits.

4. Prior to issuance of a building permit for the first new house within the development, submit the following documents:

a) A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance.

b) Proof of subdivision registration and transfer of NPDES permit.

c) An electronic CAD file or certified as-built drawings for public infrastructure in microstation or DXF and PDF format.

5. Prior to issuance of a building permit for any of the lots within the development:

a) Submit the following items for staff review and approval:

1) A construction management plan. This plan must be in a city approved format and outline minimum site management practices and penalties for non-compliance. If the builder is the same entity doing grading work on the site, the construction management plan submitted at the time of grading permit may fulfill this requirement.

2) A stormwater maintenance agreement for rain gardens and infiltration trench. Protection should be provided at the drain tile outlets to ensure there is no erosion on the slopes.

3) Each lot must be custom graded at the time of home construction. The final grading and tree preservation plan for each lot must:

   a. Be in substantial conformance with grading plan dated April 14, 2015 and tree preservation plan dated April 14, 2015.

   b. Minimize grading within the wetland buffer, woodland preservation, and steep slope areas.

   c. Show sewer and water services to minimize impact to any significant or high-priority trees.
d. Minimize tree removal and grading on the east side of the lots to protect trees identified in the tree inventory as 239, 240, 241, 244, 247, 396, 397, and 398.

4) A tree mitigation plan. The plan must meet minimum mitigation requirements as outlined in ordinance. However, at the sole discretion of staff, mitigation may be decreased.

5) Cash escrow in an amount to be determined by city staff. This escrow must be accompanied by a document prepared by the city attorney and signed by the builder and property owner. Through this document the builder and property owner will acknowledge:

- The property will be brought into compliance within 48 hours of notification of a violation of the construction management plan, other conditions of approval, or city code standards; and

- If compliance is not achieved, the city will use any or all of the escrow dollars to correct any erosion and/or grading problems.

If the builder is the same entity doing grading work on the site, the cash escrow submitted at the time of grading permit may fulfill this requirement.

e. Install a temporary rock driveway, erosion control, tree and wetland protection fencing and any other measures identified on the SWPPP for staff inspection. These items must be maintained throughout the course of construction.

b) Install heavy duty fencing, which may include chain-link fencing, at the conservation easement. This fencing must be maintained throughout the course of construction.

c) Submit all required hook-up fees.

6. All lots and structures within the development are subject to the all R-1 zoning standards. In addition:

a) Minimum floor elevation is 968.0.
b) All lots within the development must meet all minimum access requirements as outlined in Minnesota State Fire Code Section 503. These access requirements include road dimension, surface, and grade standards. If access requirements are not met, houses must be protected with a 13D automatic fire sprinkler system or an approved alternative system.

7. The city may require installation and maintenance of signs which delineate the edge of any required conservation easement. This signage is subject to the review and approval of city staff.

8. During construction, the streets must be kept free of debris and sediment.

9. The property owner is responsible for replacing any required landscaping that dies.

10. The final plat must be filed within one year of final plat approval.

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 resolution:

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

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by
the City Council of the City of Minnetonka, Minnesota, at a duly authorized meeting held on April 20, 2015.

David E. Maeda, City Clerk
8. Public Hearings

A. Preliminary and final plat for Congregation Hill, a three-lot subdivision, at 2051 Meeting Street.

Chair Kirk introduced the proposal and called for the staff report.

Thomson reported. He recommended approval of the application based on the findings and subject to the conditions listed in the staff report.

In response to Calvert’s question, Thomson explained that tree removal would not impact the woodland preservation area number. Colleran added that once the final plan would be submitted, then staff would learn the total amount of tree loss. There could be 7 additional high-priority trees that could be saved. As it is now, the proposal would remove 22 high-priority trees.

Bill Coffman, of Gonyea Homes and representative of the land owner, Frank Donaldson, concurred with staff’s recommendation. He was available to answer questions.

The public hearing was opened.

Gang Zhange, 14780 Summer Oaks Drive, asked staff to point out his residence on the map in relation to the proposed development. He learned that his residence is much further away from the proposed site than he previously thought.

Bill Baron, 2081 Meeting Street, was happy with the way the proposal would be laid out with the high-priority trees. He is happy with the proposed plan.

Commissioner Calvert stated that there are great trees on the property, so please save as many trees as possible.

No additional testimony was submitted and the hearing was closed.

**Calvert moved, second by Knight, to recommend that the city council adopt the resolution on pages A11-A18 of the staff report with modifications provided in the change memo dated April 9, 2015 which grants preliminary and final plat approvals to Congregation Hill, a three-lot subdivision, at 2051 Meeting Street.**
Magney, Odland, Calvert, Knight, and Kirk voted yes. O'Connell and Rettew were absent. Motion carried.

Chair Kirk stated that the item is tentatively scheduled to be reviewed by the city council at its April 20, 2015 meeting.
Brief Description  Resolution approving the amended and restated Joint Powers Agreement with the St. Paul Port Authority for the PACE Program

Recommendation  Adopt the resolution approving the amended and restated Joint Powers Agreement

Background

In July 2014, the city council approved a Joint Powers Agreement with the St. Paul Port Authority to offer the Property Assessed Clean Energy (PACE) program to Minnetonka businesses. PACE allows for the voluntary creation of programs by local governments to help commercial, industrial, and multi-family property owners finance renewable energy and energy efficiency improvements. Examples of types of improvements covered under PACE include: building-related energy efficiency improvements (such as lighting retrofits and HVAC system upgrades), renewable energy systems attached to or near a building (such as solar or geothermal), and electric vehicle charging infrastructure.

Revised Agreement

At the request of the St. Paul Port Authority, the city is being asked to consider an amended and restated Joint Powers Agreement (pages A1-A7). The Port Authority is seeking to amend the agreement to ensure that it reflects the PACE program they have developed and the funding sources that may finance a project.

Recommendation

The city attorney has reviewed the agreement and finds amendments acceptable. Staff recommends the city council adopt the resolution on pages A8-A9 which approves the amended and restated joint powers agreement.

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

Originated by:
  Elise Durbin, AICP, Community Development Supervisor
AMENDED AND RESTATED JOINT POWERS AGREEMENT

This Agreement, made and entered into as of the 7th day of August, 2014, by and between the Port Authority of the City of Saint Paul (the "Port Authority"), a body corporate and politic, and the City of Minnetonka, Minnesota, a municipal corporation (the "City"), provides as follows:

WHEREAS, the Port Authority has been engaged in governmental programs for providing financing in the City of Saint Paul and in other areas of the State of Minnesota (the "State") by making loans evidenced by various financing leases and loan agreements, and in the process of operating these programs the Port Authority has developed a high degree of financial expertise and strength; and

WHEREAS, Minnesota Statutes, Sections 216C.435 and 216C.436 and Chapter 429 (and 471.59 collectively the "Act") authorize the City to provide for the financing of the acquisition and construction or installation of energy efficiency and conservation improvements (the "Improvements") on properties Cost Effective Energy Improvements" as defined in the Act or "Improvements") on Qualifying Real Properties" as defined in the Act (the "Properties" or "Property") located within the boundaries of the City through the use of special assessments; and

WHEREAS, the Act authorizes the City to designate a local government unit other than the City to implement the program under the Act on behalf of the City; and

WHEREAS, the City has identified one or more projects within the boundaries of the City that will result in Improvements in need of financing, and has adopted its Resolution No. 2014-075 (a copy of which is attached hereto as Exhibit A) to designate the Port Authority to implement and administer a program on behalf of the City to finance such Improvements; and

WHEREAS, the Port Authority has created a program under the Act known as the Property Assessed Clean Energy Program ("PACE OF MN") for purposes of implementing and administering the activities described in the Act, and the Port Authority is willing to implement and administer that program on behalf of the City as requested herein; and

WHEREAS, the City has expressed a desire to make energy improvement financing programs of the kind managed by the Port Authority available for improvements of eligible properties within its boundaries, including but not limited to the Energy Savings Partnership, Trillion BTU (within the portion of the City served by Xcel Energy) and PACE OF MN, and a joint powers agreement is required between the City and the Port Authority in the case of PACE OF MN authority; and

WHEREAS, the Improvements will serve citizens of the City of Saint Paul and the City of Minnetonka, as well as Ramsey and Hennepin Counties and the State of Minnesota.

NOW THEREFORE, in consideration of the mutual covenants herein made, the parties to this Agreement hereby agree as follows:

1. The Port Authority shall exercise the powers of the Act on behalf of the City by utilizing to provide financing for Improvements located within the boundaries of the City.
Except as otherwise provided in this Joint Powers Agreement, the Port Authority shall be solely responsible for the implementation and administration of PACE OF MN and the financing of the Improvements.

2. In connection with its implementation and administration of PACE OF MN, and its financing of the Improvements located within the boundaries of the City, it is anticipated that the Port Authority will enter into various agreements with persons wishing to obtain financing for Improvements located within the boundaries of the City as well as with sources of financing for such Improvements (collectively the "Program Documents").

3. The Port Authority will may and is permitted to charge fees for its implementation and administration of PACE OF MN, which fee will be described in, and payable under, the Program Documents.

4. The Port Authority will have the sole duty and responsibility to comply with or enforce covenants and agreements contained in the Program Documents. This power shall specifically include the responsibility for monitoring and enforcing compliance with the provisions of the Program Documents.

5. The source of funds Either the Port Authority or a lending institution (the "Lender") will use its own financial resources or a taxable special assessment revenue bond(s) (the "Bond(s)") issued by the Port Authority in favor of a designated lending institution (the "Lender") will be used to finance the improvements. Regardless of the financing mechanism, the Lender will advance funds under the Program Documents to be paid from levied special assessments. Thereafter, the Lender will advance funds under the Program Documents to the Port Authority.

6. The Loan(s) or Bond(s) shall be a special/limited obligation of the Port Authority, payable solely from special assessments levied by the City as provided herein. The Loan(s) or Bond(s) and interest thereon shall not constitute nor give rise to a general indebtedness or pecuniary liability, or a general or moral obligation, or a pledge or loan of credit of the Port Authority, the City, the City of Saint Paul or the State of Minnesota, within the meaning of any constitutional or statutory provision. To that end, the Port Authority hereby agrees to indemnify and hold harmless the City from and against any claims or losses arising out of the failure of the Port Authority to provide for the payment of principal of, and the interest or any premium on the Loan(s) or Bond(s), from special assessment payments actually paid to the Port Authority by the City. This indemnity shall not, however, be construed to relate to any claims or losses which might arise by virtue of the exercise, by the City, of its governmental powers in connection with the Project, or by virtue of the failure of the City to levy and collect special assessments with respect to the Improvements or promptly remit such special assessment payments to the Port Authority as provided in the Program Documents.

7. As and for its contribution to the financing of the Improvements, and as provided in the Act, the City shall impose and collect special assessments necessary to pay debt service on that portion of the Loan(s) or Bond(s) attributable to the Improvements located within the boundaries of the City. Evidence that the City has imposed such special assessments is a precondition to the Port Authority's obligation to provide financing to any Improvements located within the boundaries of the City in accordance with the following process:

A. The Port shall provide to City an application from an Applicant under the Program which includes the following documentation:
1) A copy of the Application containing the legal name of the Applicant, its legal status, its legal address, a description of the Project, the cost of the Improvements, the total amount to be assessed against the Property and the address, legal description and tax identification code for the Property upon which the Improvements are to be constructed or installed.

2) A statement from the Port that the proposed Project as described in the Application qualifies under the requirements of the Act and the P01 Authority.

3) A fully-executed copy of the Applicant's Petition and Assessment Agreement suitable for evidencing, and recording if necessary, Applicant's agreement to be assessed for the amount of the Improvements.

B. Upon receipt of the documentation described in Subparagraph A above, City agrees that it will levy an assessment against the Property for the amount to be assessed as set forth in Section 7.A. above.

C. Evidence that the City has imposed such special assessments is a precondition to the Port Authority’s obligation to provide financing to any Improvements located within the boundaries of the City.

D. In the event that, after the City levies an assessment against the Property for the costs of the Improvements and related costs as provided for in Subparagraph B above, the Port does not fund the cost of the Improvements as contemplated by this Agreement, the Port shall promptly notify City that it has not and will not fund the costs of the Improvements under the Program and City shall thereafter inform the County Auditor to remove the subject assessment from the Property.

6. Once the City has imposed special assessments to finance improvements located within the boundaries of the City, the City shall collect and transfer all collections of the assessments received by it upon receipt to the Port Authority for application to the payment of the applicable Loan(s) or Bond(s). The City will take all actions permitted by law to recover the recovery of the assessments, including without limitation, reinstating the outstanding balance of assessments when the land returns to private ownership, in accordance with Minn. Stat. Section 429.071, Subd. 4. The City acknowledges that the Lender is a third-party beneficiary of the City's covenants herein with respect to the imposition, collection and transfer of special assessments described herein.

9. Unless otherwise provided by concurrent action of the Port Authority and the City, this Agreement shall terminate upon a 30-day's advanced written termination notice to the other Joint Powers Agreement partner or upon the retirement or defeasance of all Loan(s) or Bond(s), whichever is later; and notwithstanding any other provisions, this Agreement may not be terminated in advance of such retirement or defeasance.

10. This Agreement may be amended by the Port Authority and the City, at any time, by an instrument executed by both of them. No amendment hereof may be entered into by the Port Authority or the City may not amend this Agreement, however, if the effect of such the amendment would impair the rights of the holder of the Loan(s) or Bond(s), unless such the holder has consented to such the agreement.________
11. This Agreement may be executed in any number of counterparts, each of which when taken together shall constitute a single agreement.

[Remainder of page intentionally left blank]
IN WITNESS WHEREOF, the Port Authority and the City have caused this Agreement to be executed on their behalf, by their duly authorized officers, as of the day and year first above written.

PORT AUTHORITY OF THE
CITY OF SAINT PAUL

By: ________________________________
   Its: President

By: ________________________________
   Its: Chief Financial Officer

CITY OF MINNETONKA, MINNESOTA

By: ________________________________
   Its: Mayor

By: ________________________________
   Its: City Manager
EXHIBIT A
Resolution No. 2014-075

Resolution designating the Port Authority to implement and administer a project assessed clean energy improvement financing on behalf of the city, and providing for the imposition of special assessments as needed in connection with that program

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

Section 1. Background.

1.01. The Port Authority of the City of Saint Paul (the "Port Authority") has established the Property Assessed Clean Energy Program ("PACE OF MN") to finance the acquisition and construction or installation of energy efficiency and conservation improvements (the "Improvements"), on properties located throughout the State of Minnesota through the use of special assessments pursuant to Minnesota Statutes Sections 216C.435 and 216C.436 and Chapter 429 (the "Act").

1.02. The City anticipates receiving one or more applications and petitions for Special Assessments from owners of property located in the City desiring to participate in and receive financing pursuant to the Act.

1.03. In order to finance the Improvements, the City hereby determines that it is beneficial to participate in PACE OF MN, and to designate the Port Authority as the implementor and administrator of that program on behalf of the City for purposes of financing Improvements located within the City.

1.04. The City understands that the Port Authority will issue its PACE OF MN special assessment revenue bond(s) to finance the Improvements, and that the sole security for the bond(s) will be special assessments imposed by the other cities participating in PACE OF MN.

1.05. To facilitate and encourage the financing of Improvements located within the City, the City covenants to levy assessments for said Improvements on the property so benefitted, in accordance with the Application and Petition for Special Assessments received from the owner(s) of the Property and approved by the Port Authority. The interest rate on the Special Assessments shall be the interest rate on the Bond(s).

1.06. After imposition of the special assessments, the City shall collect such assessments and remit them to the Port Authority for use in the repayment of the Bond(s). The City will take all actions permitted by law to recover the assessments, including without limitation, reinstating the outstanding balance of assessments when the land returns to private ownership, in accordance with Minn. Stat. Section 429.071, Subd. 4.
Section 2. Council Action.

2.01. The Minnetonka city council hereby authorizes the mayor and city manager to enter into a joint powers agreement with the St. Paul Port Authority to implement and administer a project assessed clean energy improvement financing program on behalf of the city of Minnetonka.

2.02. The Minnetonka city council further authorizes the imposition of special assessments as needed in connection with this program.

Adopted by the City Council of the City of Minnetonka, Minnesota, on July 21, 2014.

Terry Schneider, Mayor

Attest:

David E. Maeda, City Clerk

Action on this resolution:

Motion for adoption: Acomb
Seconded by: Wagner
Voted in favor of: Allendorf, Acomb, Wiersum, Bergstedt, Wagner, Ellingson, Schneider
Voted against:
Abstained:
Absent:
Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a meeting held on July 21, 2014.

David E. Maeda, City Clerk
Resolution No. 2015-

Resolution amending and replacing Resolution 2014-075 which approved participation in the property assessed clean energy program with the Port Authority

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

Section 1. Background.

1.01. The Port Authority of the City of Saint Paul (the "Port Authority") has established the Property Assessed Clean Energy Program ("PACE OF MN") to finance the acquisition and construction or installation of energy efficiency and conservation improvements (the “Improvements”), on properties located throughout the State of Minnesota through the use of special assessments pursuant to Minnesota Statutes Sections 216C.435 and 216C.436 and Chapter 429 (the “Act”).

1.02. The City anticipates receiving one or more applications and petitions for Special Assessments from owners of property located in the City desiring to participate in and receive financing pursuant to the Act.

1.03. In order to finance the Improvements, the City hereby determines that it is beneficial to participate in PACE OF MN, and to designate the Port Authority as the implementor and administrator of that program on behalf of the City for purposes of financing Improvements located within the City.

1.04. The City understands that the Port Authority will issue its PACE OF MN special assessment revenue bond(s) to finance the Improvements, and that the sole security for the bond(s) will be special assessments imposed by the other cities participating in PACE OF MN.

1.05. To facilitate and encourage the financing of Improvements located within the City, the City covenants to levy assessments for said Improvements on the property so benefitted, in accordance with the Application and Petition for Special Assessments received from the owner(s) of the Property and approved by the Port Authority. The interest rate on the Special Assessments shall be the interest rate on the Bond(s).

1.06. After imposition of the special assessments, the City shall collect such assessments and remit them to the Port Authority for use in the repayment of the Bond(s). The City will take all actions permitted by law to recover the assessments, including without limitation, reinstating the outstanding balance of assessments when the land returns to private ownership, in accordance with Minn. Stat. Section 429.071, Subd. 4.

1.07. The city originally approved the agreement on July 21, 2014.
Section 2. Council Action.

2.01. The Minnetonka city council hereby authorizes the mayor and city manager to enter into a joint powers agreement with the St. Paul Port Authority to implement and administer a project assessed clean energy improvement financing program on behalf of the city of Minnetonka.

2.02. The Minnetonka city council further authorizes the imposition of special assessments as needed in connection with this program.

2.03 This resolution replaces Resolution 2014-075.

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 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 April 20, 2015.

______________________________
David E. Maeda, City Clerk
Brief Description: Resolution for the Excelsior Boulevard Pond Outlet

Recommended Action: Adopt the resolution

Background

On November 23, 2003, council received a petition from the property owners at 15915 Excelsior Boulevard, All Saints Lutheran Church, for installation of storm sewer to eliminate periodic flooding of their parking lot. Drainage from adjacent properties and from Excelsior Boulevard currently flows to a land-locked low spot on the east side of the church property. The project was added to the city’s Capital Improvements Program (CIP) several years ago when funds became available for this project.

Proposed Improvements

The project proposes to eliminate flooding in the parking lot at 15915 Excelsior Boulevard by expanding an existing pond to provide additional flood storage, and by providing a permanent piped outlet. The existing pond will be expanded by removing nine parking stalls on the east side of the property, and by grading the area adjacent to the parking lot. This loss of parking spaces will not impact the parking requirements of the church. While the grading limits were selected to minimize impacts to the property, a few significant trees will still need to be removed. The piped outlet will likely only drain water from this area during significant rain events, and will be routed along the south side of Excelsior Boulevard from the pond east to Wing Lake Drive. The majority of this outlet is proposed to be directionally drilled as opposed to open cut, to minimize property and tree impacts. The outlet will be connected to an existing storm sewer system within Wing Lake Drive, just north of Excelsior Boulevard, where it will ultimately discharge to Wing Lake.

Public Involvement

A public informational meeting for the project was held on April 14, 2015 for residents in the project area. Staff presented a layout of the pond expansion and new storm sewer system, and discussed project details. Although residents had questions regarding the potential impacts to the water quality of Wing Lake, they were generally supportive of the project. As a part of the project design, impacts to the water quality of Wing Lake were reviewed and it was determined that due to the small volume of additional water potentially routed to Wing Lake, no impacts would occur.
Prior to the public meeting, city staff met with church officials to explain the project in greater detail and answer questions. Church officials are still very supportive of the project.

**Estimated Project Cost and Funding**

The total estimated construction cost, including engineering, administration, and contingency is $340,000. The budget amount for the project is shown below and is included in the 2015 – 2019 CIP. The CIP may need to be amended at the time of bid award to reflect additional funds needed based on the actual bids received. The fund balance in the Storm Water Fund can support additional costs.

<table>
<thead>
<tr>
<th></th>
<th>Budget Amount</th>
<th>Proposed Funding</th>
<th>Expense</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction Costs w/ Contingencies, Engineering, and Indirect costs</td>
<td></td>
<td>$340,000</td>
<td>$340,000</td>
</tr>
<tr>
<td>Storm Water Utility Fund</td>
<td>$290,000</td>
<td>$340,000</td>
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<tr>
<td><strong>Total Budget</strong></td>
<td>$290,000</td>
<td>$340,000</td>
<td>$340,000</td>
</tr>
</tbody>
</table>

All necessary easements for this project will be donated by the church at no cost to the city.

**Schedule**

If the recommended action is approved by council, staff is planning to have council consider awarding the contract in June. Construction would then likely begin in mid to late summer.

**Recommendation**

Adopt the attached resolution accepting plans and specifications and authorizing the advertisement for bids for the Excelsior Boulevard Pond Outlet Project No. 15602.

Submitted through:
  Geralyn Barone, City Manager
  Lee Gustafson, Director of Engineering

Originated by:
  Will Manchester, Assistant City Engineer
BE IT RESOLVED by the City Council of the City of Minnetonka, Minnesota as follows:

Section 1. Background.

1.01. Plans and specifications have been prepared by and/or under the direction of the city engineer who is a Licensed Professional Engineer in the State of Minnesota for the Excelsior Boulevard Pond Outlet at All Saints Lutheran Church.

1.02. The plans and specifications for the construction of the aforementioned project have been presented to the city council for approval.

Section 2. Council Action.

2.01. The plans and specifications, copies of which are on file in the engineering department, are hereby accepted upon the recommendation of the city engineer.

2.02. The city clerk shall prepare and cause to be inserted in the official newspaper an advertisement for bids for the making of such improvements under such approved plans and specifications. The advertisement shall specify the work to be done, shall state that bids will be opened and read aloud at 10:00 a.m., local time, on May 6, 2015, in the Council Chambers at the Minnetonka city hall, and that no bids will be considered unless sealed and filed with the clerk and accompanied by a cash deposit, cashier's check, bid bond or certified check made payable to the city clerk for five (5) percent of the amount of the bid.

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 RESOLUTION:

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

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a duly authorized meeting held on April 20, 2015.

__________________________________________
David E. Maeda, City Clerk
Excelsior Blvd Improvements

- Proposed Storm Sewer
- Existing Storm Sewer
City Council Agenda Item #12A
Meeting of April 20, 2015

Brief Description  Ordinance rezoning the “Music Barn” properties at 5740 and 5750 Shady Oak Road from R-1, low-density residential, to PUD, planned unit development.

Recommendation  Introduce the ordinance and refer it to the planning commission

Background

In 2014 the city council conducted concept plan review for redevelopment of what has come to be known as the “Music Barn” properties. The plan contemplated construction of a four-story, rental apartment building. The building’s 38 affordable units, were to be served by both surface and underground parking. Given the combined size of the properties, the concept development would have been classified as high-density residential. (See pages A1–A10.)

During review of the concept, the council generally expressed:

- A medium-density development consistent with the existing medium-density designation would be preferred to the concept high-density.
- If the barn were to remain, the apartment building should be designed in a complimentary style.
- The site’s natural resources should be carefully considered.
- The proposed affordability was appropriate.

Proposal

Shelter Corporation has now submitted formal applications and plans for redevelopment of the properties. The plans reflect many of the council’s 2014 comments. As submitted, the barn building would remain on the property and would be integrated into a new, three-story, 27-unit apartment building. The building would be served by both a surface parking lot and underground parking. As with the concept plan, all of the buildings units would meet the Metropolitan Council’s affordable housing guidelines. At 11.8-units per acre, the proposed development would be classified as medium-density residential. (See pages A12–A29.)

The proposal requires:

- **Rezoning.** The subject properties are currently zoned R-1, low-density residential. The applicant requests rezoning to PUD.
• **Master Development Plan.** By city code, review and approval of a master development plan is required in conjunction with a rezoning to PUD.

• **Site and Building Plan Review.** By city code, site and building plan review is required for construction of any multi-family residential building.

**Staff Comment**

The purpose of introducing an ordinance is to give the city council the opportunity to review a new application before referring it to the planning commission for a recommendation. Introducing an ordinance does not constitute an approval. The planning commission public hearing on the proposal is tentatively set for May 7, 2015.

Based on preliminary review, staff has identified three issues that will be particularly analyzed as the formal review continues:

• **Site and Building Design.** Site design and building appearance relative to Shady Oak Road will be evaluated.

• **Natural Resources.** Consistency with the city’s ordinances pertaining to tree protection and steep slopes will be considered.

• **Tax Increment Pooling dollars.** TIF pooling dollars have been requested for the project. The Economic Development Advisory Committee will consider the contract on April 30, 2015.

**Staff Recommendation**

1. Introduce the ordinance on pages A33–A36 and refer it to the planning commission.

2. Approve or modify the proposed notification area on page A31.

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

Project: Music Barn Apartments
Applicant: Community Housing Corp of America, Shelter Corp.
Address: 5740 & 5750 Shady Oak Rd
(09002.15a)
2014 CONCEPT PLAN
Wiersum clarified that Lucid Brewing currently was not proposing being open on Sunday. Wischner indicated that was correct.

Schneider opened the public hearing at 7:04 p.m. No one spoke.

Wagner moved, Acomb seconded a motion to continue the public hearing to May 19, 2014. All voted “yes.” Motion carried.

14. Other Business:

A. Concept plan for redevelopment of the properties located at 5740 and 5750 Shady Oak Road, commonly referred to as “The Music Barn”

Wischer gave the staff report.

Wiersum noted that some of the residents’ letters referenced Section 8 housing. He asked if this would be a Section 8 property and for basic information about Section 8 properties. Wischner said it was a difficult program to describe. There was a voucher program, where a certain number of vouchers would be accepted for the project site. In this case the developer indicated they would accept vouchers but not for every unit. Wiersum said some of the communications had a certain tone. He asked what the median value was for a typical home in Minnetonka. Wischner said the median value was $224,000. Wiersum said this meant half of the homes in Minnetonka were above that value and half were below.

Jay Jensen with Shelter Corporation said his company was working on trying to come up with a project that best fit with the neighborhood and retained the character of the barn. He showed a project the company did in Oakdale where there were neighbor concerns about their property values being ruined. What happened was across the street from the project single family homes that went for more than $300,000 were built. Those homes quickly sold. Shelter Corporation had done a lot of affordable housing around the metropolitan area. It also does senior housing. Neighbors often voice concerns before the project is built but afterward they comment about how nice the project turned out. He said a fear of change caused concerns.

Jensen said there would be about 38 units with one underground parking stall per unit. The rents would run between $850 and $1,000 per month. His company own some project based Section 8 housing that requires a specific HUD contract. Those contracts haven’t been available since the late 1980’s. The cost per unit would be $240,000. He said they were trying to build something that fits in well with the community that years from now
people would say it was good the barn was preserved. The timing was an
application would be submitted to the Minnesota Housing Finance Agency
in June. If everything went well construction would begin about a year
from now and would take about a year to build. A traffic study would be
conducted to show people there would not be any detriment to traffic on
Shady Oak Road.

Julia Landa, 5632 Sanibel Drive, said a lot of information presented was
different than the information Jensen provided previously. She looked at
other buildings Shelter Corporation had built. If past practice was followed
the parking would not be totally underneath the building. This would add
an additional 10 feet to the height of the building. Living across the street,
this would block the skyline. She said the associations in the area had
spent a lot of money to maintain and beautify their property. The space
across the street was used. The current traffic was bad enough and
adding any additional would be a problem. She believed there were site
issues including no northbound access, the shallow setback, and the
impact on the wetland. There was no public transportation in the
immediate area. There were also no crosswalks in the immediate area.
The closest access to Lone Lake Park from the proposed building would
be through the cemetery. The closest shopping area was a bar and
restaurant, a liquor store, a doughnut shop, and a hair salon. She showed
pictures of another Shelter Corporation development and said no one
would consider the development a well-managed or well cared for
property. She said the project didn’t meet the criteria for the area in the
comprehensive guide plan. She hoped the project was not a done deal
given the city’s relationship with Shelter Corporation.

Jacque Carlson, 5602 Bimini Drive, said there was a discussion of the
plan at the last association meeting on March 31. Pretty much everyone in
attendance was strongly opposed to the plan. She said she was most
concerned about the historic value of the property. The house had been
left in the condition it was when the Dvorak sisters left the house. A
boutique organization had used the property for a couple of sales. She
noted all the gravestones were historic and along with the old farm it was
all part of the historic area. The Minnesota Historic Society had been
contacted about the property and was not interested. She said the
property should be of local value historically. There was not a lack of
apartments in the area. Downtown Hopkins was composed of mostly
antique stores and apartment buildings. She was concerned about the
added traffic. She wasn’t sure who owned Lone Lake Park located behind
the property. She questioned why the property couldn’t be added to the
recreation area.
Matthew Rubel, 5630 Sanibel Drive, asked the city and developer to consider a building plan similar in structure and organization as the Beachside one and two neighborhoods.

Kris Soleta, 5656 Sanibel Drive, said her biggest concern was the size of the building and the density. Thirty-eight units was way out of line with the rest of the neighborhood. A four story building would not fit in with the neighborhood. She also had a concern that the units would be rental compared to home ownership. There was no other rental in the area. The neighbors were not afraid of development or change but would like good development and change. The plan would not enhance the neighborhood or property values. There were other options like townhome developments. She agreed with Carlson that there was a lot of historic value to the property. Low income housing was not the only possibility for the site.

Mary Armstrong, 5634 Sanibel Drive, said the building was like a whale with minnows all around it. She said everything in the area fit in well together. This building would be like a cactus in the middle of a bunch of daisies. The building would block out the trees on the hill behind it. She knew something would go on the property but hopefully it would be something that fit in with the neighborhood.

Michelle Desaulniers, 5603 Sanibel Drive, said she looked through the comp plan that said "...make sure affordable housing is distributed throughout the entire community to prevent concentration in one particular area of the city." She realized Hopkins was not Minnetonka but this area of the city was practically in Hopkins where there were other affordable housing units in the vicinity. She differed with the developer’s comment that there wasn’t a lot of workforce housing in the southwest corridor. She would like new housing to be owner occupied. She said the building would either need to be set into the hill or close to the street. Lone Lake Park would be a long way away so there would be safety issues for any children that wanted to play in the park. She questioned how close the city was in reaching the Met Council’s affordable housing goals.

David Kirsch, 5664 Sanibel Drive, said he was a landscape architect in business for over 40 years. He said it was an injustice for Shelter Corporation to show something that didn’t really show anything. For the city to even consider a project of this nature the developer should at least show schematic grading plans to indicate the elevations of the buildings and what would remain of the existing site. He questioned where any green space would be as well as any onsite on grade parking. He questioned if a building of this size would be able to accommodate one
parking space per unit underground. Something of much less density would be more appropriate.

Schneider said the lack of detail was not unusual for a concept plan review although this plan had a little less detail than usual.

Ellingson asked what use would be made of the barn. Jensen said on a preliminary basis the thought was to have a community room in the barn as well as an office for the onsite manager, and maybe a unit. The barn had unique characteristics inside and was something worth preserving and incorporating into the project. Ellingson said there was concern about the height of the building. He asked if a three story building could be built and still allow the project work. Jensen said that would be looked at. One idea was extending one end of the building further. Ellingson asked how much tree loss might occur. Jensen said he was meeting with the architect and civil engineer after getting comments about the concept. Topographical studies had been done so the challenges with the elevation were known.

Schneider said there was a difference between a four story building and a four and a half story building. Most of the underground parking garages were not fully recessed. He asked if the assumption should be some elevation of the first level to accommodate a semi-recessed garage. Jensen said the thought was to have the garage be fully underground. He agreed the elevations are such that the slope going away would present a challenge. Work was being done to try to get the height to be no taller than the barn. If this meant a three story building had to be done, then that would be what would be brought back. Schneider said the city usually requires for a one underground parking space per unit arrangement that there also be some parking for guests and deliveries. The most units that could be built for mid-density zoning would be 27. He said a potential discussion point was whether the city would want to deviate from that number. Preserving the barn was a great idea but he would shy away from getting the whole area designated as a historic area. This barn had been renovated a number of times and had probably lost a lot of its historic value. He noted the city owned Lone Lake Park and the cemetery. He encouraged Shelter Corporation to look at some reduction to determine if the proposal would get to mid-density. He was generally supportive of the affordable housing element.

Wagner said the mass of the building should be looked at. He was concerned with parking on the site if the ratio was one space per unit. He noted one of the comments was there was no real bus service on the road but that would change in four years if the light rail goes through. There likely be a lot of feeder buses but there was a gap in the interim
associated with transit in the area. The council would have to discuss this. The council tended to want to put affordable housing into transit corridor areas so there was access. This had to be considered. In general he was not adverse to the concept and there was some benefit to keeping the barn. He didn’t want to see the barn be an afterthought to the development that looked like it was accidentally leftover. As far as the comments about affordable housing goals for both Hopkins and Minnetonka he noted planning exercises had been done for many years to identify targets and where the affordable housing would be located. The areas usually were around village centers and areas that had transit potential.

Acomb said when she first looked at the plan there were a few things that caught her attention. One was there are not a lot of services, including transit, in the area. Things could change but she was nervous that they weren’t currently available. She was concerned about the impacts to the woodland preservation area. The number of units likely would not have a huge impact on traffic but she thought it would be somewhat cumbersome not to be able to turn north and this could lead to problems on the nearby streets. She also was concerned with the size of the building.

Allendorf said the term neighborhood was one the council tried to stay away from because it becomes controversial. He said Beachside was a neighborhood and he thought the plan clashed with the neighborhood. A lot of work needed to be done with the architecture to make sure it didn’t scream at the neighbors to the east how different it was. It didn’t need to match but it also didn’t have to clash. The architecture also had to respect the barn. The barn was unique and almost out of place with anything new but this didn’t mean the architecture couldn’t respect the barn. Several people said they weren’t against development but they were against this development. He said people needed to realize whatever would go on the site when it was developed would create some traffic. A traffic study would be used to determine that a development would not adversely affect the neighbors. Whatever traffic from this project would not be to the north. He thought the massing was too great and if something went on the site it had to have good architecture. He said affordability was wonderful and was what the city wanted to do. This wasn’t necessarily a “Section 8” project but rather a project that fit in with other areas of the city and he wasn’t concerned this was an apartment project rather than a homeownership project.

Wiersum agreed with Allendorf about respecting the barn. He didn’t think retaining the barn would make a bad project good. The barn was incidental to the project. There had to be a good project and then saving the barn would the icing on the cake. The site was challenging. It was not
a big site. The plan would require a zoning change and that was always more challenging than if a zoning change was not required. He suggested the developer look at if he could make the project fit with the existing zoning. This would make the path for approval easier. This would mean the size and the density would go down. Wiersum also agreed with Allendorf that architectural creativity would be needed to ensure the project didn’t clash with the area. He didn’t think he could support the plan as drawn but the developer was not proposing it as drawn. He said people spend a lot of time thinking about where they live, next and past houses, and where their kids were going to live. The number of younger people interested in owning homes has decreased. Renting is a different ballgame than it was ten years ago. A quality rental project made a lot of sense for the city, potentially at this site. This could fill a niche.

Bergstedt said he heard general agreement that something would be done on the site. It likely would never be a park. There was no historical designation for the barn. With the current traffic amounts on Shady Oak Road, whatever went on the property would not impact the overall traffic. Site specific issues would have to be addressed but to not approve a project based on traffic did not make sense. Whatever was built whether it was owner occupied or rental housing, affordable housing, the key thing was a quality development. If the barn could be maintained and tied in with everything that would make sense but a quality development trumped everything else. He was concerned about having children living in the site because it was not easily accessible to Lone Lake Park and there was a lot of traffic. Potentially senior housing or something that wouldn’t have a bunch of young people running around might make sense. He agreed it was a very sensitive site representing what was best about Minnetonka. There were slopes, trees and a close proximity to park land. When he looked at the proposed intensity to try to figure out parking, grading, tree preservation and all the things that make the city special he was concerned if this density could allow that to happen. He said at first look 38 units looked way too intense and he didn’t want to see a typical four story apartment building. The type of architecture and creativity would make the difference.

Ellingson asked the maximum number of units possible on the site under the comprehensive guide plan. Wischnack said the maximum was 27 units. Ellingson noted this would then require not just a zoning change but a guide plan change as well.

Schneider agreed not having the ability to turn north was a challenge for the site. There was the potential with the removal of trees that an access road north of the median could happen. He wasn’t sure if this was good or
bad but was worth looking at. He said having an appropriately designed project that fit better in the area was a higher priority than saving the barn.

Ellingson asked what percentage of the units would be considered affordable. Jensen said all the units would be in the $800 to $1,000 per month range so all would be technically affordable but not low income. Ellingson asked if there was a limit to the number eligible for Section 8 vouchers. Jensen said the company generally tried to keep the number between 10 percent to 20 percent for any building.

Schneider said one of the comments was about a cozy relationship existing between Shelter Corporation and the city. He said there were Shelter owned projects in the city but there was no special relationship. He noted the company had a good reputation for doing this type of project.

Schneider called a recess at 8:16 p.m.

C. Ordinance amending the city charter regarding purchasing

Schneider called the meeting back to order at 8:24 p.m.

City Attorney Corrine Heine gave the staff report.

Wagner moved, Bergstedt seconded a motion to adopt Ordinance No. 2014-12. All voted “yes.” Motion carried.

Allendorf was excused at 8:27 p.m.

B. Preliminary plat, with lot width at right-of-way variance, at 12701 and 12689 Lake Street Extension and an unaddressed parcel

Wischnack gave the staff report.

Wagner asked for confirmation that the three lots directly to the west were off of a private drive and not a public street. Wischnack indicated that was correct.

Wiersum said the staff report noted the city had a lot of property that fronts major thoroughfares. He asked if the city had ever enabled frontage along one of the major thoroughfares where there was no access to the roads as was being proposed for this development for the basis for a setback measurement. Wischnack said there were situations where they might be frontage on two different roads and maybe one road was not accessible because it was in a slope area or wetland or something like that. As far as a freeway she was not aware of a similar situation. She pointed to the
January 29, 2015

Julie Wischnack  
Community Development Director  
City of Minnetonka  
14600 Minnetonka Boulevard  
Minnetonka, Minnesota 55345

Subject: Music Barn rezoning

Dear Julie,

Since we presented our concept plan last spring to our neighbors, the Planning Commission and the City Council, we have refined our plan based upon many of the comments that we received into a specific proposal. The changes that have been made are as follows:

- Reduced the number of units from 38 to 27 (a reduction of almost 30%) to be consistent with the Comprehensive Plan
- Reduced the number of stories from four to three
- Created an exterior design that complements the barn and fits well within the neighborhood
- Worked to preserve as many trees as possible including the 22 inch wide walnut tree located near the current Music Barn sign.
- Have 2 parking spaces per unit, half of them underground
- Moved the Shady Oak Road garage access north to allow access from both directions and to keep the small amount of traffic on Shady Oak Road

Our request is to rezone the property from R-1 zoning to a PUD. Attached are all of the design and engineering items that are required for a rezoning and a master development plan.

The 27 apartment units consist of the following unit composition:

<table>
<thead>
<tr>
<th>Bedrooms</th>
<th># of units</th>
<th>Size (sq. ft.)</th>
<th>Bathrooms</th>
<th>Rent</th>
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<tr>
<td>2</td>
<td>18</td>
<td>1036 to 1100</td>
<td>2</td>
<td>$725 to $825</td>
</tr>
<tr>
<td>3</td>
<td>9</td>
<td>1292 to 1346</td>
<td>2</td>
<td>$950</td>
</tr>
</tbody>
</table>
The units will feature full kitchens, large closets and washer/dryers. An underground parking space is included with each unit.

The Music Barn will be an asset for Minnetonka providing more affordable housing to Minnetonka residents. We will be marketing the units to adjacent businesses for their employees and, have already talked to United Health Care who is moving thousands of jobs to the neighborhood.

Thank you for your consideration of this application.

Sincerely,

Jay Jensen
Principal
Music Barn Mixed Income Apartments
Minnetonka, MN
Music Barn Apartments
5740/5750 Shady Oak Road
#09002.15a
1) The following remarks reference items in Schedule B, Part II - Exceptions of the herein referenced Title Commitment:

Range 22, Hennepin County, Minnesota, described as follows:

Parcel 1: Point of beginning. Northeast Quarter, 996.01 feet; thence North 1 degree 19 minutes 39 seconds West 388.02 feet; thence North 86 degrees 20 minutes 14 seconds East 12.59 feet, which point is issued by Commercial Partners Title, LLC as agent for Old Republic National Title Insurance Company, File No. 38949, dated August 12, 2014.

Parcel 2a) Along the southeasterly line of Parcel 1, a retaining wall crosses the subject property, apparently without an easement.

Parcel 2b) Along the northerly line of Parcel 2, a metal fence and a retaining wall cross into the subject property, apparently without an easement.

Parcel 2c) A small easement for electric service runs from a utility pole to a TurboMax gate within Parcel 2. This easement may be subject to recordation for the benefit of the property owner of Parcel 2.

This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2011 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Survey. The property depicted on this survey and the easements of record shown hereon are the same as the property and the easements described in the Commitment for Title Insurance issued by Commercial Partners Title, LLC as agent for Old Republic National Title Insurance Company, File No. 38949, dated August 12, 2014.

I hereby certify that this survey, plan or report was prepared in accordance with the Minimum Standard Detail Requirements for ALTA/ACSM Land Title Survey. These CADD files are instruments of the Consultant professional services for Community Housing Corporation of America, Inc. and were prepared for this project. These CADD files were prepared solely for use with this project. These CADD files were prepared for this project.

I am a duly Licensed Land Surveyor under the laws of Minnesota.

Henry D. Nelson - PLS
Hennepin County Surveyor
612.397.3283
HenryD.Nelson@county.hennepin.mn.us

This Survey and Designation is for use solely with respect to this project. These CADD files are prepared by the Consultant for this project for Community Housing Corporation of America, Inc. and are instruments of the Consultant professional services for Community Housing Corporation of America, Inc. These CADD files were prepared solely for use with this project. These CADD files were prepared for this project.
1. All disturbed areas and the adjacent margins of areas of topsoil and sod on or near the disturbed area shall be recovered by the contractor. The contractor shall recover disturbed areas in a healthy manner.

2. The contractor shall take all precautions necessary to avoid property damage to adjacent properties during the construction phase of this project. The contractor shall fend for any damage to adjacent properties occurring during the construction phase of this project.

3. The contractor shall be responsible for providing and maintaining traffic control devices such as barricades, warning signs, directional signs, flags, and lights to control the amount of traffic through necessary. Placement of those devices shall be approved by the engineer in advance. Traffic control devices shall be approved by the engineer prior to placement on the work covering the appropriate engineer's department. Traffic control devices must also meet the requirements of the city.

4. The contractor shall install all temporary drainage systems, including placement of all storm and gravity drainage systems. The placement of all storm and gravity drainage systems shall be prior to the paved areas being poured. The contractor shall also provide temporary drainage systems for all storm and gravity drainage systems that are required in the work area, including temporary drainage systems for all storm and gravity drainage systems required by the city.

5. The duty of the engineer of the developer to conduct construction review of the contractor's performance is not intended to include review of the adequacy of the contractor's safety measures or the start of the construction plan.

6. Property abutting or adjoining the work. The contractor shall check for necessary utilities that are in the area.

7. Erosion and sedimentation control works shall be established and in accordance with water pollution control, best management practices, city requirements, and the details shown on sheet C8-1 of the project plan.

8. All utilities, including storm and gravity drainage, shall be performed per the requirements of the city. The contractor shall be responsible for all private and public utilities required by the city.

9. All erosion and sedimentation control works shall be established and in accordance with water pollution control, best management practices, city requirements, and the details shown on sheet C8-1 of the project plan.

10. All erosion and sedimentation control works shall be performed per the requirements of the city. The contractor shall be responsible for all private and public utilities required by the city. The contractor shall be responsible for all private and public utilities required by the city.

11. The contractor shall be responsible for performing all private and public utilities required by the city. The contractor shall be responsible for all private and public utilities required by the city.

12. The contractor shall be responsible for performing all private and public utilities required by the city. The contractor shall be responsible for all private and public utilities required by the city.

13. The contractor shall be responsible for performing all private and public utilities required by the city. The contractor shall be responsible for all private and public utilities required by the city.

14. The contractor shall be responsible for performing all private and public utilities required by the city. The contractor shall be responsible for all private and public utilities required by the city.

15. The contractor shall be responsible for performing all private and public utilities required by the city. The contractor shall be responsible for all private and public utilities required by the city.

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18. The contractor shall be responsible for performing all private and public utilities required by the city. The contractor shall be responsible for all private and public utilities required by the city.

19. The contractor shall be responsible for performing all private and public utilities required by the city. The contractor shall be responsible for all private and public utilities required by the city.
SWPPP NOTES:

1. Project Name: Music Barn Apartments
2. Address: 5740/5750 Shady Oak Road
3. Contact Person: [Name]
4. Phone: [Number]
5. Fax: [Number]
6. Email: [Email]
7. Contractor: [Name]
8. File: [File]
9. Date: [Date]
10. Section: 09002.15a

11. A. ALL STORMWATER MANAGEMENT MATERIALS MUST BE PROTECTED UNTIL ALL SOURCES OF POTENTIAL EROSION ARE STABILIZED.
12. B. TEMPORARY STORMWATER MANAGEMENT MATERIALS MAY BE REMOVED IF THE TEMPORARY STORMWATER MANAGEMENT SYSTEMS ARE CONSUMED OR DAMAGED BY WIND OR WATER.
13. C. SEDIMENT REMOVED FROM SURFACE WATERS WITHIN (7) SEVEN DAYS OF DISCOVERY.
14. D. SOIL REMOVED OR ALTERED BY OTHERS WITHOUT WRITTEN APPROVAL OF THE OWNER AND THE SWPPP OPERATOR.
15. E. PROVIDE COPIES OF EROSION INSPECTION RESULTS TO CITY ENGINEER FOR ALL EVENTS OVER 24 HOUR RAIN EVENT.
16. F. OWNERS AND OPERATORS MUST NOTIFY THE MPCA OF ALL DISCHARGES TO SURFACE WATERS WITHIN 24 HOURS OF DISCOVERY.
17. G. THE PROJECT MAY BE SUSPENDED OR REVERTED TO PRE-CONSTRUCTION UNTIL PROPER CORRECTIVE ACTION HAS BEEN TAKEN.
18. H. JOHN J. ST. MARTIN - PE

WARNING:

THE CONTRACTOR SHALL BE RESPONSIBLE FOR CALLING FOR LOCATIONS OF ALL EVIDENCE LINES, HEAT PIPES, UTILITIES, ETC. WITHIN [DISTANCE] OF THE SITE LIMITS. THESE CADD FILES ARE INSTRUMENTS OF THE CONTRACTOR'S PROFESSIONAL SERVICES AGREEMENT.

Music Barn Apartments
5740/5750 Shady Oak Road
Minnetonka, MN 55343
5750 Shady Oak Road
City Submittal - 10.09.2024

Stromwater Pollution Prevention Plan

1. PROJECT NAME: Music Barn Apartments
2. ADDRESS: 5740/5750 Shady Oak Road
3. CONTROLLING AGENCY: City of Minnetonka
4. PROJECT MANAGER: [Name]
5. PHONE: [Number]
6. FAX: [Number]
7. CONTRACTOR: [Name]
8. PHONE: [Number]
9. FILE: [File]
10. DATE: [Date]
11. SECTION: 09002.15a

12. A. A Plant List with Soil Specification is to be Submitted to the MPCA for review and approval prior to commencing construction.
13. B. A Maintenance Plan is to be Submitted to the MPCA for review and approval prior to commencing construction.
14. C. A Stormwater Pollution Prevention Plan is to be Submitted to the MPCA for review and approval prior to commencing construction.

STORMWATER POLLUTION PREVENTION PLAN

C3-2
UTILITY PLAN NOTES

1. All sanitary sewer, storm sewer and water services shall be furnished and installed per the requirements of the specifications, the City and the Standard Utilities Specification of the City Engineers Association of Minnesota, 1999 edition.

2. All construction for small facility contractor's own use shall be performed for the requirements of the City, the City Department of Engineering and Construction Inspection Department and the construction engineer shall be notified at least 48 hours prior to any work interrupting public utilities.

3. The contractor shall notify Gopher State One Call at 651-454-0002 at least 48 hours prior to performing any excavation or underground work.

4. The contractor for small facility contractor's own use shall be responsible for calling for locations of all existing utilities. They shall cooperate with all utility companies in maintaining their service and/or relocation of lines.

5. The contractor shall contact Gopher State One Call at least 48 hours in advance for the locations of all underground wires, cables, conduits, pipes, manholes, valves or other buried structures before digging. The contractor shall repair or replace the above when damaged during construction at no cost to the owner.
WARNING:
THE CONTRACTOR SHALL BE RESPONSIBLE FOR CALLING FOR LOCATIONS OF ALL EXISTING UTILITIES. THEY SHALL COOPERATE WITH ALL UTILITY COMPANIES IN MAINTAINING THEIR SERVICE AND / OR RELOCATION OF LINES.
THE CONTRACTOR SHALL CONTACT GOPHER STATE ONE CALL AT 651-454-0002 AT LEAST 48 HOURS IN ADVANCE FOR THE LOCATIONS OF ALL UNDERGROUND WIRES, CABLES, CONDUITS, PIPES, MANHOLES, VALVES OR OTHER BURIED STRUCTURES BEFORE DIGGING. THE CONTRACTOR SHALL REPAIR OR REPLACE THE ABOVE WHEN DAMAGED DURING CONSTRUCTION AT NO COST TO THE OWNER.

MJS
DDL
09/26/14

14420

LANDSCAPE PLAN

DATE
DRAWN BY
CHECKED BY
PROJECT NUMBER

2104 4th Avenue S.
Suite B
Minneapolis, MN 55404
tel: (612) 879-6000
fax: (612) 879-6666
www.kaaswilson.com

Music Barn Apartments
Community Housing Corporation of America
5750 Shady Oak Road
Minnetonka, MN 55343

Landscape Architecture     Environmental Planning     Civil Engineering     Land Surveying

Music Barn Apartments
5740/5750 Shady Oak Road
#09002.15a

City Submittal - 09.26.2014

A26

A26

L1-1

Copyright Kaas Wilson Architects
EXISTING
NATURAL CONDITIONS

Legend

Streets
Parcels
Natural Communities

DESCRIPTION

Floodplain forest
Lowland hardwood forest
Maple-basswood forest
Oak forest mesic subtype
Oak woodland-brushland
Willow swamp

SUBJECT PROPERTIES

Music Barn Apartments
5740/5750 Shady Oak Road
#09002.15a
REQUIRED 400 FT NOTIFICATION AREA

A30

Music Barn Apartments
5740/5750 Shady Oak Road
#09002.15a
ORDINANCE
Ordinance No. 2015-

Ordinance rezoning the existing properties at 5740 and 5750 Shady Oak Road from R-1 to PUD and adopting a master development plan

The City Of Minnetonka Ordains:

Section 1.

1.01 The properties at 5740 and 5750 Shady Oak Road are hereby rezoned from R-1, low-density residential, to PUD, planned unit development.

1.02 The properties are legally described in EXHIBIT A.

Section 2.

2.01 This ordinance is based on the following findings:

1. The rezoning would result in the provision affordable housing, providing a public benefit.

2. The rezoning would be consistent with the intent of the zoning ordinance and of the comprehensive guide plan.

3. The rezoning would be consistent with the public health, safety, and welfare.

Section 3.

3.01 Approval is subject to the following conditions:

1. The site must be developed and maintained in substantial conformance with the following plans:

   a) Grading plan dated September 26, 2014
   b) Utility plan dated September 26, 2014
c) Landscape plan dated September 26, 2014  
d) Building elevations received March 31, 2015  

The above plans are hereby adopted as the master development plan for The Music Barn Apartments.

2. Development must further comply with all conditions as outlined in City Council Resolution No. 2015-XXX, adopted by the Minnetonka City Council on ____________, 2015.

Section 4. A violation of this ordinance is subject to the penalties and provisions of Chapter XIII of the city code.

Section 5. This ordinance is effective immediately.

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

__________________________________________  
Terry Schneider, Mayor  
ATTEST:  

__________________________________________  
David E. Maeda, City Clerk  

ACTION ON THIS ORDINANCE:  

Date of introduction: April 20, 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 ____________, 2015.

________________________________________
David E. Maeda, City Clerk

Date:
EXHIBIT A

Parcel 1:
That part of the East 30.00 acres of the Southeast Quarter of the Northeast Quarter of Section 35, Township 117, Range 22, Hennepin County, Minnesota, described as follows:

Commencing at the Southeast corner of said Southeast Quarter of the Northeast Quarter; thence on an assumed bearing of South 87 degrees 06 minutes 28 seconds West along the South line of said Southeast Quarter of the Northeast Quarter a distance of 972.80 feet; thence North 2 degrees 53 minutes 46 seconds West a distance of 448.09 feet; said last described line if extended would intersect the North line of said Southeast Quarter of the Northeast Quarter at a point 1006.65 feet West of the Northeast corner of said Northwest Quarter of the Northeast Quarter; thence North 87 degrees 06 minutes 28 seconds East a distance of 972.80 feet to the point of beginning of the land to be described; thence South 25 degrees 34 minutes 09 seconds East a distance of 160.00 feet; thence North 63 degrees 25 minutes 51 seconds East a distance of 238.65 feet to the Southwesterly right of way line of County Road Number 61; thence Northwesterly along said right of way line to its intersection with a line bearing North 63 degrees 25 minutes 51 seconds East to the point of beginning; thence South 63 degrees 25 minutes 51 seconds West to the point of beginning.

Hennepin County, Minnesota
Abstract Property

Parcel 2:
That part of the East 30 acres of the Southeast Quarter of the Northeast Quarter of Section 35, Township 117, Range 22, Hennepin County, Minnesota, described as follows:

Commencing at the East Quarter corner of Section 35; thence South 87 degrees 06 minutes 28 seconds West, assumed bearing, along the South line of said Southeast Quarter of the Northeast Quarter, 996.01 feet; thence North 1 degree 19 minutes 39 seconds West 398.02 feet; thence North 86 degrees 20 minutes 14 seconds East 12.99 feet, which point is marked by a Judicial Landmark; thence South 2 degrees 53 minutes 46 seconds East, along the last described line, 492.23 feet; thence North 87 degrees 06 minutes 28 seconds East 97.56 feet; thence North 63 degrees 25 minutes 51 seconds East 186.14 feet to the Southwesterly right-of-way line of County Road 61 (also known as Shady Oak Road); thence North 34 degrees 36 minutes 25 seconds West, along said right of way, 243.72 feet; thence North 35 degrees 23 minutes 15 seconds West, along said right of way, 173.57 feet, to its intersection with a line which bears North 50 degrees 09 minutes 52 seconds East from the point of beginning; thence South 50 degrees 09 minutes 52 seconds West, along said line, 42.72 feet to the point of beginning.

Hennepin County, Minnesota
Abstract Property