

PLEASE NOTE: At 5:00 p.m. Council will meet in a Study Session in Council Chambers, City Hall at 540 West Hills Circle. Council will review use of Civic Clerk. At 5:30 p.m. they will review/discuss the Prairie LaSalle Partners Concept. If time allows, there will be a general update on board and commission activities.



OWATONNA CITY COUNCIL MEETING

Tuesday, March 21, 2023 at 7:00 PM

Council Chambers, City Hall at 540 West Hills Circle

**Roll Call: Council Members Voss, Dotson, Burbank,
Boeke, Raney, Svenby & Schultz**

1. INTRODUCTORY ACTIONS: Call to Order; Roll Call and Pledge of Allegiance

- 1.1. Council Agenda
- 1.2. Public Hearing - Street Reconstruction Plan with Intent to Issue Bonds
 - 1.2.1. Resolution 24-23 - Approve Street Reconstruction Plan
- 1.3. Mayor Kuntz
 - 1.3.1. Proclamation - Business and Professional Women's Month

2. CONSENT AGENDA ITEMS

- 2.1. Minutes – Council Meeting – March 7, 2023
- 2.2. Boards and Commissions
 - 2.2.1. Minutes - Park Board Meeting - February 13, 2023
 - 2.2.2. Minutes - Airport Commission Meeting - March 2, 2023
 - 2.2.3. Letter of Resignation - Library Board Member - Christy Tryhus
- 2.3. Department Reports:
 - 2.3.1. Monthly Activity Reports - Police Department - February 2023
- 2.4. Licenses/Permits
 - 2.4.1. Temporary Liquor Permit - Knights of Columbus at Corky's Earlybird Softball Tournament - May 5-7, 2023
 - 2.4.2. Conduct Excluded Bingo - April 14, 2023 - Early Edition Rotary
 - 2.4.3. Retail Fireworks License - Walmart
 - 2.4.4. Retail Fireworks License - Walmart Tent
 - 2.4.5. Ice Cream Vendor License - Kona Ice
- 2.5. Miscellaneous
 - 2.5.1. 2023 Farm Land Agreements
 - 2.5.2. T-Hangar Lease Agreement - Charles Cain, Faribault MN
 - 2.5.3. Amendment to MnDOT Grant Agreement - One-Ton Utility Vehicle.

3. ACTION ITEMS

- 3.1. Finance Report
- 3.2. Ordinances
 - 3.2.1. Proposed Ordinance 23-05: Amend Chapter 35, Appendix A Fee Schedule: Sewer Rates, Charges and Fees - Residential Septage Tank Discharge Fee - Second/Final

Reading

3.2.2. Proposed Ordinance 23-06 Vacate Portion of Drainage and Utility Easements - 2807 Timber Ridge Dr NE

3.3. Resolutions:

3.3.1. Res 25-23 Interfund Loan - TIF District 19-1

3.3.2. Res 26-23 Development Agreement - Block 300 Owatonna LLC

3.3.3. Res 27-23 Behne Garage CUP

3.3.4. Res 28-23 Premise Permit for Lawful Gambling Activity - Divine Mercy Catholic School

3.3.5. Res 29-23: Labor Agreement - International Association of Fire Fighters, Local Union No.1920

3.4. Miscellaneous

3.4.1. Wage Adjustments - Paid on Call and Resident Firefighters

3.4.2. ICS Professional Services Agreement - Merrill Hall

3.4.3. Stormwater Facility Maintenance Easement Agreement - Steele County Humane Society

3.4.4. Compost Site Agreement - Ed's Backhoe Service

4. **STAFF REPORTS**

5. **PUBLIC COMMENTS:** (Please limit comments - 2 minutes and items not on the agenda.)

6. **COUNCIL COMMENT AND GENERAL INFORMATION**

7. **ADJOURN**

EXHIBIT A

NOTICE OF PUBLIC HEARING
STREET RECONSTRUCTION PLAN AND
NOTICE OF INTENT TO ISSUE
STREET RECONSTRUCTION BONDS

TO WHOM IT MAY CONCERN:

Notice is hereby given that the City Council of the City of Owatonna, Minnesota, will meet in Council Chambers at 540 West Hills Circle, Owatonna, Minnesota, at 7:00 p.m. on Tuesday, March 21, 2023, to consider.

- (1) the adoption of a five-year street reconstruction plan (the "Plan"); and
- (2) the proposed issuance of general obligation bonds (the "Bonds") to finance certain street reconstruction projects described in the Plan, all pursuant to Minnesota Statutes, Chapter 475.58, subdivision 3b. The maximum principal amount of the Bonds to be issued under the Plan is \$3,400,000. A draft copy of the Plan is on file with the City Clerk and is available for public inspection at City Hall during regular business hours.

All interested person may appear and be heard at the public hearing either orally or in writing or may file written comments with the City Clerk before the hearing.

If a petition requesting a vote on the issuance of the Bonds, signed by voters equal to 5% of the votes cast in the City in the last general election, is filed with the City Clerk within 30 days after the public hearing (i.e. April 20, 2023), the City may issue the Bonds only after obtaining approval of a majority of voters on the question at an election.

Dated: This 21st day of February 2023.

BY ORDER OF THE OWATONNA CITY COUNCIL

By: Kris M Busse
Kris M. Busse, City Administrator/City Clerk



Finance Department

DATE: March 21, 2023
TO: Mayor and City Council
FROM: Rhonda Moen, Finance Director
SUBJECT: Resolution 24-23 - Approve Street Reconstruction Plan

Purpose:

Approve a street reconstruction plan and to declare the City's intention to issue general obligation bonds to finance the cost of street reconstruction activities described in the Street Reconstruction Plan.

Background:

Annually, the City prepares a five-year capital improvement plan. Included as part of this plan are streets which the City intends to reconstruct. There are various financing options available to the City.

The City is adopting a five-year street reconstruction plan with the plan to issue street reconstruction bonds under Minnesota Statutes Section 475.58, subdivision 3b.

The projects are listed in the street reconstruction plan by year and more detail by project is included in the 2023-2027 Five Year CIP. The maximum planned has been set at \$3,400,000. The actual debt issued will more than likely be less, but until bids are received a final number is not known.

Budget Impact:

There will be a debt service levy related to the bonds that will be issued to finance the projects included in the street reconstruction plan.

Staff Recommendation:

Staff would recommend approval of Resolution 24-23 to approve this street reconstruction plan and with plan to issue street reconstruction bonds.

Attachments:

1. Resolution 24-23 Approve Street Reconstruction Plan
2. Street Reconstruction Plan 2023-2027

RESOLUTION NO. 24-23

A RESOLUTION APPROVING A STREET RECONSTRUCTION PLAN AND GIVING PRELIMINARY APPROVAL TO THE ISSUANCE OF STREET RECONSTRUCTION BONDS

BE IT RESOLVED by the City Council (the “Council”) of the City of Owatonna, Minnesota (the “City”) as follows:

Section 1. Background.

1.01. The City is authorized under Minnesota Statutes, Section 475.58, Subdivision 3b, as amended (the “Act”) to prepare a plan for reconstruction of streets in the City over the next five years, including a description of the street reconstruction to be financed, estimated costs, and any planned reconstruction of other streets in the City over the next five years. Pursuant to the Act, the City may issue general obligation bonds to finance the cost of street reconstruction activities described in the plan.

1.02. Before the approval of the Plan and the issuance of any general obligation bonds under the Act, the City is required to hold a public hearing on the plan and issuance of the bonds.

1.03. Pursuant to the Act, the City has caused to be prepared a Five-Year Street Reconstruction Plan (the “Plan”), which describes expected street reconstruction activities in the City for the years 2022 through 2026.

1.04. The City has determined that it is in its best interests to give preliminary approval to the issuance and sale of street reconstruction bonds pursuant to the Act in the maximum principal amount of \$3,400,000 (the “Bonds”), to finance a portion of the costs described in the Plan.

1.05. On this date, the Council held a public hearing on the Plan and the issuance of the Bonds, after publication in the City’s official newspaper of a notice of public hearing at least 10 days but no more than 28 days before the date of the public hearing.

Section 2. Plan Approved.

2.01. The Council finds that the Plan will improve the City’s street system, which serves the interests of the City as a whole.

2.02. The Plan is approved in the form on file in City Hall.

Section 3. Bonds Authorized.

3.01. The City hereby gives preliminary approval to the issuance of Bonds in the maximum principal amount of \$3,400,000, in order to finance street reconstruction activities described in the Plan, including costs of issuance of the Bonds, subject to further details regarding the sale of the Bonds to be set forth in a resolution to be considered by the City Council at a subsequent meeting.

3.02. If a petition requesting a vote on the issuance of the Bonds, signed by voters equal to 5% of the votes cast in the last municipal general election, is filed with the City Clerk within 30 days after the date of the public hearing, the City may issue the Bonds only after obtaining approval of a majority of voters voting on the question at an election.

3.03. City staff are authorized and directed to take all other actions necessary to carry out the intent of this resolution.

Passed and adopted this ____ day of _____, with the following vote:

Aye __; No __; Absent __.

Approved and signed this ____ day of _____, 2023.

Thomas A. Kuntz, Mayor

ATTEST:

Kris M. Busse, City Administrator/City Clerk

CITY OF OWATONNA, MINNESOTA
5-YEAR STREET RECONSTRUCTION PLAN

February 15, 2023

A. Background

In September 2022 the City Council held a study session for the purpose of reviewing the first year of the City's five year capital improvement needs. Included in those capital improvement needs are the City's street reconstruction projects. In order to provide financing for a portion of the cost of the street reconstruction projects described in the City's CIP, the City has determined to adopt this plan in accordance with Minnesota Statutes, Section 475.58, subd. 3b (the "Act").

B. Five-Year Street Reconstruction Plan

Following is a description of projected projects and estimated costs covering the five-year period from 2023 through 2027.

2023	School Street E	Main St to Partridge Ave SE	\$ 799,000
2023	Butternut Ave SW	Riverview PI SW to McKinley St SW	\$ 286,900
2023	Riverview PI SW	Butternut Ave SW to Circle	\$ 322,100
2023	Havana Road SAP	Truman to Smith	\$1,179,000
2023	18th St Roundabout	18th Street SE and CSAH 48	\$1,200,000
2023 Total			\$3,787,000

2024	Hillsdale St NW	Adams Ave to Riverside Ave NW	\$ 224,100
2024	McKinley St SW	Lilac Ave SW to Oak Ave S	\$1,744,000
2024	Anderson PI SW	McKinley St SW to Circle	\$ 191,800
2024	Redwood PI SW	Southview St SW to South End	\$ 432,800
2024	18th Street Trail SAP	Linn to Austin Road	\$ 145,000
2024	Main Street SAP	Oak to Grove	\$2,000,000
2024 Total			\$4,737,700

2025	Smith Avenue SAP	Havana Road to 18th Street SE	\$1,500,000
2025	Young Dr SW	Kim Ln SW to Leo Rudolph	\$ 86,600
2025	Riverwood Dr SW	Lemond SW to Riverwood SW	\$ 133,200
2025	Kim Ln SW	Jeffrey Ln SW to Lemond Rd SW	\$1,291,700
2025	ESC	East Side Corridor	\$1,000,000
2025	Kirk PI NE	Ridge Rd NE to Circle	\$ 181,900

2025	State Avenue SAP	Bridge to Glendale	\$ 701,100
			2025 Total \$4,894,500
2026	29th Avenue SAP	Bixby Road to Dane Road	\$2,500,000
2026	18th Street SE SAP	Austin Road to Cornerstone	\$2,400,000
2026	ESC	East Side Corridor	\$ 375,000
2026	18th Street Trail SAP	Austin Road to Cornerstone	\$ 125,000
			2026 Total \$5,400,000
2027	Cedar Avenue SAP	Maple Creek Bridge to 26th Street	\$2,400,000
2027	ESC	East Side Corridor	\$ 875,000
			2027 Total \$3,275,000

Note: Cost estimates include engineering, construction costs, and costs of bond issuance.

C. Bonds

The City may issue general obligation bonds pursuant to the Act to finance any street reconstruction costs described in this plan. The City currently plans to issue bonds in the maximum principal amount of \$ 3,400,000 to finance year 2023 reconstruction costs. If the City determines to issue additional bonds for future reconstruction costs describe in this plan, the City will revise this plan to identify the amount of such bonds after a public hearing in accordance with the Act.



Mayor Kuntz



Mayor's Proclamation

WHEREAS business women have made significant and increasing contributions to the growth and strength of Owatonna; and

WHEREAS the Owatonna Business Women, established in 1919, helps women build their careers and expand their skills; promote assistance to women volunteers in professional organizations, and support those who have leadership roles within our community; and

WHEREAS the Owatonna Business Women recognize and support women at all stages in their careers. This year the Lifetime Achievement Honoree is Mary Larson and the Young Careerist Honoree is Muna Mohamed; and

WHEREAS the 2023 Owatonna Woman of Achievement will be awarded during the annual Woman of Achievement Event on March 18th to a business professional who has distinguished herself in her career and community. Nominated for this honor are Jackie Berg, Erin Vieths, Mary Worke, Nicole Wacek and Rebecca Moore.

NOW THEREFORE I, Thomas A Kuntz, Mayor of the Great City of Owatonna, hereby proclaim the month of March 2023 as

BUSINESS AND PROFESSIONAL WOMEN'S MONTH

in the City of Owatonna and I urge all citizens to join in this salute to working women in our City.

Dated: March 18, 2023

By: _____
Thomas A. Kuntz, Mayor

Owatonna City Council Minutes – DRAFT COPY
March 7, 2023

Council President Schultz called the regular session of the Owatonna City Council to order on Tuesday, March 7, 2023, at 7:00 p.m. in Council Chambers at City Hall. Present were Council Members Raney, Svenby, Voss, Burbank, Boeke, Dotson and Schultz; Mayor Kuntz; Interim Public Works Director Murphy; Human Resources Director Thamert; Communications Manager Sheely, City Attorney Walbran; City Administrator Busse, and Administrative Specialist Clawson.

Council Agenda

Following the Pledge of Allegiance, Council President Schultz welcomed everyone to the meeting and advised Agenda Item 3.4.3 Social Media Policy has been removed from the agenda. Council Member Svenby made a motion to approve the agenda with this item removed, Council Member Boeke seconded the motion, all members present voted aye for approval.

Council President Schultz explained the process for the public hearings planned during this meeting. Two public hearings are planned with consideration of a resolution following after each.

Public Hearing – Havana Road Project

Interim Public Works Director Murphy commented the project proposed on Havana Road SE is a bituminous pavement reconstruction from Truman Avenue to Smith Avenue. This street section is deteriorating and in need of both pavement rehabilitation as well as utility (water, sanitary sewer and/or storm sewer) upgrade. The total cost is currently estimated at \$1,179,226.63; the total cost to be assessed is currently estimated at \$99,638.76 with nine property owners affected. Staff held a Neighborhood Meeting on March 1st week to discuss project details.

At 7:05 p.m., a public hearing was opened for comments on this proposed improvement project. With no comments heard, at 7:06 p.m., Council Member Raney made a motion to close the public hearing. Council Member Burbank seconded the motion, all members voted aye in approval.

Council Member Raney asked if any objections were heard during the Neighborhood Meeting, Murphy responded there were not any heard. Council Member Boeke asked what rate of assessment will be charged to the property owned by the school district within this project area, Murphy responded all proposed assessments were prepared in compliance with the city's assessment policy, properties will be assessed \$52.00/front footage.

Resolution 21-23 Authorize Plans and Specifications – Havana Road Project

With no additional comments, Council Member Dotson made a motion to approve Resolution 21-23 authorizing the improvement project proposed on Havana Road. Council Member Voss seconded the motion, all members voted aye in approval.

Public Hearing – 2023 Street and Utility Project

Interim Public Works Director Murphy advised the proposed 2023 Street and Utility Project will include these areas: McKinley Street SW from Oak Ave to Lilac Ave, Butternut Avenue SW from McKinley St to Riverview Place, Riverview Place SW from Butternut to the East cul-de-sac, and School Street E from Main St to Partridge Ave. The streets proposed for bituminous reconstruction have deteriorating bituminous pavements and are past being overlaid and also need utility (water, sanitary sewer and storm sewer) upgrades. The total cost is currently estimated at \$1,914,498; the total cost to be assessed is currently estimated at \$123,229.08. Approximately 31 property owners will be affected and were invited to the Neighborhood Meeting on March 1st week to discuss project details.

At 7:07 p.m., a public hearing was opened for comments on this proposed improvement project. Brad Ritter, 340 Riverview Place, commented he and his wife Allison are present with questions about the calculation of the preliminary assessment prepared on their property and why the proposed plan will narrow Butternut Avenue at the entrance into their cul-de-sac from 40 feet to 36 feet. He previously spoke with Interim Public Works Director Murphy about the city's assessment policy for properties within a cul-de-sac and advised a 30-foot setback is used to calculate the length of footage used for assessment calculation. Their Preliminary Assessment Notice was prepared based on 108 feet front footage, but his property has only 60 foot of street curb. There are five properties within their cul-de-sac, and all are similar in size, his next-door neighbor will be assessed an amount approximately one-third the amount they received and the neighbor across the street has more curb footage than his property but received a smaller Preliminary Assessment Notice because of the calculation used for corner lot assessments. He doesn't believe narrowing the street at the entrance into their cul-de-sac will help anything; there are frequently vehicles parked along the street and it is tight now at 40 feet wide.

Engineer Murphy commented that the plan to narrow the street wasn't just for uniformity, it is a low traffic area with minimal use from outside traffic. Decreasing the width of the street will lower the cost of the capital improvement and the on-going maintenance expense. This Preliminary Assessment was prepared per the City's Assessment Policy for a non-rectangular parcel. Council President Schultz commented assessments for some previous projects were prepared using an average cost for all property owners. Murphy commented final assessment amounts can be smaller than Preliminary Assessment amounts but not larger, if we modify this property's assessment, we would be reducing the total project assessment amount. Also, the average assessment calculation is not used for reconstruction projects.

Council Member Dotson commented he spoke with Mr. Ritter and reviewed map of his neighborhood during the Neighborhood Meeting last week, this lot isn't bigger than other lots and he believes it would be fair to consider an average assessment amount for this property. Murphy cautioned making this change because all properties would need to be reconsidered and the Preliminary Assessments were prepared using the current written assessment policy; changes should be made to the policy and not exceptions for individual parcels. Council Member Dotson asked if the policy could be changed prior to adopting this project's assessments or would a change not be eligible because the Preliminary Assessments Notices were sent. Council President Schultz asked if a Preliminary Assessment amount can be changed retroactively, Murphy commented all assessment amounts are finalized after the public hearing held after the project is completed and asked Council's additional questions be addressed to the city attorney.

Council Member Boeke commented that the policy appears to be unfair to this property owner and hopes this can be resolved. City Administrator Busse asked if the item should be tabled to the next meeting to allow additional time to consider alternate options. Murphy commented that a delay in ordering the project will also setback the project timeline. City Attorney Walbran added that the resolution proposed tonight for this project is to accept the report and order the project, it is not to finalize the property assessments. With no additional comments, at 7:18 pm Council Member Raney made a motion to close the public hearing, Council Member Boeke seconded the motion, all members voted aye in approval.

Council Member Raney commented that Butternut Place is in his ward, Ward 4. He was out of town last week and unable to attend the Neighborhood Meeting. He spoke with Mr. Murphy and Council Members Dotson and Boeke the next day after the meeting. He has asked to meet with Mr. and Mrs. Ritter to look at this area. Council Member Voss commented that the percentage of

the project costs eligible for assessment seems to have decreased over the years and suggested a review of the city's assessment policy.

Resolution 22-23 Authorize Plans and Specifications – 2023 Street and Utility Project

Council Member Raney made a motion to approve Resolution 22-23 authorizing the 2023 Street and Utility Project, Council Member Dotson seconded the motion, all members voted aye in approval.

Mayor Kuntz

Mayor Kuntz commented he will make comment later in this meeting.

CONSENT AGENDA ITEMS

Council President Schultz explained council members review the Consent Agenda items prior to the meeting for approval in one motion. Consent Agenda items for this meeting include:

- Minutes – Council Meeting – February 21, 2023
- Minutes - OPU Commission Meeting - December 27, 2022
- Minutes - Airport Commission Meeting - February 9, 2023
- Minutes - Human Rights Commission Meeting - February 14, 2023
- Minutes - West Hills Commission Meeting - February 15, 2023
- Minutes - Library Board Meeting - February 21, 2023
- Minutes - Park and Recreation Board Meeting - January 9, 2023
- Minutes - Joint Powers Board Meeting - February 1, 2023
- Fire Department Monthly Dashboard and Activity Report - January 2023
- Building & Inspection Reports - February 2023
- Exempt Permit - Steele County Purple Ribbon Club - Raffle - August 20, 2023
- Marketing Agreement - The Public Country Club - TwinCitiesGolf

Council Member Voss made a motion to approve these Consent Agenda items, Council Member Dotson seconded the motion. Council Member Boeke asked if the Excluded Gambling Permit requested by the Claremont Area Chamber of Commerce is a one-time event, Administrative Specialist Clawson confirmed this permit is for a benefit planned at the VFW on April 22nd. With no additional comments, all members voted aye to approve these Consent Items.

Finance Report

Council Member Raney recapped payments made for amounts greater than \$20,000 during this period. The total amount of bills presented was \$660,991.05. Council Member Boeke made a motion to approve payment of all bills, Council Member Burbank seconded the motion, all members voted aye for approval.

Proposed Ordinance 23-05: Amend Septage Rates - Section 35 Appendix A - Fee

Interim Public Works Director Murphy presented Proposed Ordinance 23-05 to amend septage rates. The Residential Septic Tank Discharge Fee has not been revised since 1991. Since then, the cost to ensure the septage is appropriately treated has increased. Andrew Fischer, Wastewater Treatment Facility Manager, discussed the septic discharge fees with multiple municipalities in the surrounding area. The proposed increased rate is in line with many of those municipalities. The recommended rate adjustment would increase the fee from \$50 per load to a rate of \$100 per 1,000 gallons. Council Member Boeke asked who pays these fees; Murphy responded rural residents cleaning their septic or owners of portable toilets. Council Member Voss added this fee is not charged to individuals often seen dumping their camper reservoirs on

Sunday afternoons, Murphy confirmed that is not included for fee in the current city ordinance. With no additional comments, Council Member Raney made a motion to approve this first reading of Proposed Ordinance 23-05, Council Member Svenby seconded the motion. With a roll call vote, voting aye were Council Members Voss, Dotson, Burbank Boeke, Raney, Svenby and Schultz, there were no nay votes, the motion carried. The second/final reading of this proposed ordinance will be heard during the next Council Meeting on March 21st.

Resolution 23-23 Application to Conduct Off-Site Gambling - Claremont Area Chamber of Commerce

City Administrator Busse requested approval of Resolution 23-23 to approve the application received from the Claremont Area Chamber of Commerce to conduct Off-Site Gambling. They have been asked to participate in a benefit planned at the Owatonna VFW #3723 on April 22, 2023. This event was originally planned to be held in Claremont, but many have asked to participate, and a larger venue is needed. Council Member Dotson made a motion for approval, Council Member Voss seconded the motion, all members voted aye in approval.

On-Sale Liquor License with Sunday Sales and Tobacco License - Reggie's Brewhouse

City Administrator Busse requested approval of the applications received from Derek Skala on behalf of Ronnie's Sports Bar LLC for an On-Sale Liquor License with Sunday Sales and a Tobacco License. Ronnie's Sports Bar, LLC is in the process of purchasing Reggie's Brewhouse, located at 218 & 220 N Cedar Avenue. They plan to close this sale on March 20th and hope for a smooth transition of operations; insurance coverage has been applied for and are now waiting underwriting approval; Mr. Skala believes the policy will be issued within the next week. Staff recommends license approval to be effective March 20th contingent on receipt of the required Certificate of Liability Insurance. Council Member Dotson made a motion for approval, Council Member Voss seconded the motion, all members voted aye for approval.

Personnel Policy Revisions

Human Resources Director Thamert requested these revisions to the Personnel Policy effective March 1, 2023:

7.2 Paid Time Off (PTO) Policy

- Update language to reflect current practice of per pay period accruals.
- Front load the first eight pay period PTO accruals in the first year of eligible service. The annual accrual in year one remains 144.
- Change the maximum PTO accrual from 920 to 720 as of March 12, 2023. The elimination period of the City paid long term disability benefit was reduced from 180 to 90 days effective February 1, 2022. Adjusting the PTO maximum accrual aligns with this change.

7.3 Part-Time PTO

- Remove not applicable language. In accordance with 7.2 when a part-time employee moves to a full-time position, their PTO accrual is simply no longer prorated.

7.8 Medical Leave of Absence Without Pay

- Clarify language. All other leave balances must be exhausted before unpaid medical leave may be granted.

7.9 Personal Leave of Absence Without Pay

- Clarify language. All vacation and PTO balances must be exhausted before a personal leave of absence may be granted.

Council Member Boeke asked if when the PTO benefit is front loaded and an employee is paid this benefit but leaves employment prior to actually earning it, is it lost? Director Thamert explained there is language written into employee agreements about prorating the PTO benefit and if they request payment prior to earning it and then leave employment, there will be an adjustment made on their final paycheck.

Reducing the maximum number of PTO accrual hours does reduce the city's long-term liability but there will be a current expense of \$68,440. City Administrator Busse commented that she and Director Thamert met with the employees affected by this change. Council Member Raney made a motion to approve these policy revisions, Council Member Boeke seconded the motion, all members voted aye in approval.

Memorandum of Understanding – Engage Owatonna Committee

Communications Manager Sheely requested approval of a Memorandum of Understanding (MOU) with the Engage Owatonna Committee for use of community engagement platform as a two-way communication mechanism with members of the general public.

The Engage Owatonna Committee contracted with Granicus to pay \$5,000 annually, funding for the existing contract is covered by private fundraising. Representatives from the Owatonna Public Schools and the Owatonna Area Chamber of Commerce & Tourism have partnered with other committee members in the development and maintenance of the platform. The committee launched a community awareness campaign that included presentations at civic club meetings, churches, etc. As of December 2022, their platform had 1,571 registered users who agreed to the terms of using the site which includes a moderation policy.

The City's Comprehensive Communication Plan includes an action item to develop an online engagement platform to provide community members an opportunity to get information and share thoughts or concerns 24/7 from convenient, remote locations. The online platform will facilitate public consultation regarding projects and issues being considered by the City.

Last year, City staff assessed online engagement platforms. Five options commonly used by municipalities were evaluated and Granicus EngagementHQ (formerly called Bang the Table) was included. This platform is used locally as Engage Owatonna. This MOU is the complete agreement between the City of Owatonna and the Engage Owatonna Committee.

Council President Schultz commented this MOU was discussed in detail during the Study Session prior to this meeting. Council Member Raney thanked Sheely for the information received during the study session and also thanked her for pursuing this. There was discussion about the challenges of making this a valuable tool. Council Member Voss made a motion to approve this MOU, Council member Boeke seconded the motion, all members voted aye in approval.

STAFF COMMENTS

Interim Public Works Director Murphy commented that the consultant just posted a new video showing construction progress on the Wastewater Treatment Plant (WWTP). The video shows the Membrane BioReactor (MBR) building, and the fine screen building is now capped. Last week, he and City Administrator Busse met with the House Committee and today with the Senate to request passage of a bonding bill which includes funds for the City's WWTP. Senator Jasinski and Representative Peterson have been supporting our request, this would be a regional project as the City of Medford will connect with our new facility. The City of Medford is also requesting state funds for their part of the project.

Human Resource Director Thamert welcomed new police officer Matthew Tomsche, he just began his duties this week. There are a lot of temporary seasonal positions open, currently staff is focusing on the positions available at the Brooktree Golf Course. The Culture Team is planning an employee appreciation event on April 20th and also finalizing our Purpose Statement and Core Values.

Communications Manager Sheely gave a brief recap of activity on some recent social media posts on social media. The Fire Department reached over 24,000 people with a recent post about recently hiring five new fire fighters. This post also received 1,300 reactions, 126 made comments and it was shared twenty-three times. The Police Department posted a picture of a suspect in a case involving a stolen gun; their social media post reached 30,000+ people and did assist in solving the case. Recent postings that have received attention include the posting about the Morehouse Skate Ice Rink, this was viewed 10,000+ times. There was a lot of activity on posts

about using the Park and Rec Trails and the Snow Sculpture Contest. Participating in social media does meet one of the key goals of our key Focus Areas: Customer Focused Government for Efficient Effective Government.

PUBLIC COMMENTS

Annie Harmon commented she has been a member of the Engage Owatonna taskforce for about two years. She is excited the City will now also be participating on the platform and she welcomed the City. Anticipate community engagement will elevate the website and increase interaction within the community.

MAYOR AND COUNCIL COMMENT AND GENERAL INFORMATION

Mayor Kuntz commented that the application for various board and commission members is now online with application deadline date of March 31st. Looking to fill spots on the Airport Commission, Human Rights Commission, Library Board, Utility Commission, Shade Tree, Fire Civil Service and Fire Board of Appeals and Park and Rec Board.

Council Member Voss congratulated Mr. and Mrs. Skala on their new business venture, Reggie's Brewhouse.

Council Member Boeke asked anyone walking your dog on the City's trails, be mindful to pick up after your dog if needed.

Council Member Raney commented the matter of plumbing costs double billed to some property owners in the North Cedar Streetscape Project has not been resolved; he hopes this will be done within the next two weeks. Yesterday, Robert "Bob" Beussman, who previously served as New Ulm's mayor and was also previous President of the Highway 14 Partnership, passed away. I am the current President of the Highway 14 Partnership and Bob was a great mentor for me. He worked tirelessly for years to get the Highway 14 project going.

Council President Schultz commented the next meeting will be the last meeting in the current council chambers. There will be a groundbreaking event here on April 4th at 4:30 pm and then the Council Meeting will be held in the Gainey Room at the Library.

Adjournment

At 7:52 p.m., Council Member Raney made a motion to adjourn, Council Member Dotson seconded the motion and with no objection, the meeting ended.
Respectfully submitted,

Jeanette Clawson, Administrative Specialist



Board - Commission Minutes

**MINUTES - UNAPPROVED
OWATONNA PARK AND RECREATION
REGULAR PARK BOARD MEETING
FEBRUARY 13, 2023
4:30 PM**

Members Present:

Chair: Jon Thiel

Vice Chair: Gina McGuire

Board Members: Tyler Cochran, Sara Baird, Kara Perry

Members Absent: Greg Posch, Jonathan Douglas

Staff Present:

Jenna Tuma, Parks, Recreation and Facilities Director

Eric Anderson: Recreation Manager

Tricia Fisher: Administrative Specialist

Dani Licht: Recreation Supervisor

Kurt Stangler, Recreation Supervisor

MJ Knudson: Recreation Specialist

Council Member: none

LOCATION: City Hall, Council Chambers

OPENING BUSINESS

A. Call to Order at 4:30 pm

B. Roll Call:

APPROVAL OF THE AGENDA

Motion by Gina McGuire, to approve the February 13, 2023, Park Board Meeting Agenda and second by Tyler Cochran. All members voted aye.

APPROVAL OF THE JANUARY 9, 2023, MINUTES

Motion by Tyler Cochran to approve the January 9, 2023, Park Board Meeting Minutes and second by Sara Baird. All members voted aye.

PERSONS WISHING TO APPEAR

Gary Jones – a resident who lives nearby Mineral Springs Park expressed his concerns with the deer management program, specifically with Mineral Springs Park. He asked for it to be considered removed from the hunt area for park user safety or increase the communications to warn users of the activity. Signs should be in multi-languages.

NEW BUSINESS

- a. Jenna Tuma welcomed and introduced the new Recreation Supervisor at Brooktree Golf Course, Kurt Stangler. Today is Kurt's first day in his new position

at the City of Owatonna. Kurt comes with over 20 years of experience in the golf world, and he was very excited when he saw this opportunity at Brooktree Golf Course. He is also a huge Kansas City Chiefs fan, so he was really excited after their super bowl win last night.

- b. Matt Hokanson, Tennis Pro, gave an update on Tennis and Pickleball Center
- U10 academy – age 4-18, established 228 kids since they started.
 - 147 kids under the age of 12. Retention rate is 70-80%
 - 6 tennis courts, 4 pickleball courts
 - Hosted 12 tournaments for kids since late October
 - Currently open 7 days a week, there are 81 players and most are under age 10
 - His goal is to be at 300 after this year, and the ultimate goal would be 500
 - Pickleball Mondays is very popular with between 20-30 people
 - Winter walking has been a great way to utilize the space in the early mornings at the facility

Jon Thiel asked how it is going now that we have pickleball and tennis sharing the same facility. Matt commented it has gotten a lot busier, with the combined membership of Tennis and Pickleball, consistent pricing, and equal opportunities for both groups.

Eric Anderson added that all junior classes are in the evenings, so indoor walking would not work later in the day.

Matt is currently a professional pickleball registry certified coach, he is in the top 90%, and will compete soon and if he does well, he will be in the top 90% player.

c. Deer Management Program discussion

MJ gave an update on the program:

- The City applies by end of April with the DNR
- Archery applications open in August, and the deadline is usually in September
- The stands are pre-determined by park staff
- 17 locations, one hunter per seven-acre standard (DNR)
- Two seasons, each about 4 weeks
- This year, after being contacted by Mr. Jones, park staff added additional signs to the locations.
- In addition to the DNR standards, the Parks & Recreation requires each person take a proficiency test, this is not required by the DNR but we choose to make it mandatory as an added safety requirement.

There have been several communities in surrounding areas that have added the deer management program and have called to gain knowledge and information from us.

Last year 32 deer were taken (2022) with 16 hunters.

Gina asked if the application goes in each year and Council reviews it, and MJ commented it is council directed.

Jenna stated we hope to continue with past practices, but we always open to feedback, and Gary provided us with good feedback. The signs are only in English right now, staff will look to adjust for the upcoming season. Tyler mentioned offering citizens education regarding which alternative plants you could plant that would not attract the deer to their yards.

d.

- The joint Park Board meeting with Faribault will be held on Wednesday, April 26 at 6 p.m. and it will begin with a tour and meeting will follow.
- The March Park Board meeting will cover the Master Plan update.

OLD BUSINESS

a. United Way Learning Trail

Jenna will follow up with them this week, and since the master plan is in 90% completed, so she doesn't see any reasons why we couldn't do this.

b. Corky's Early Bird Tournament donation 2022

MJ: reported stats from the budget for the project lights, currently there is \$63,195 and this started around 2016. The 2022 donation was in the amount of \$13,100 and went into that account. In 2021 they took \$10,000 and donated it to We All Play. The cost of the light project is probably around \$700,000 to one million so they will continue to make contributions.

PARK PERMITS

a. Buecksler Park – February 11, neighborhood glow sledding

- a. This event was held this past Saturday, there were tons of people there, and the neighborhood came together. Parks, Recreation and Facilities department provided fire pits and firewood. Buecksler skating has been a huge success for the first year.

MEMORIALS AND DONATIONS

a. Patricia Freed, bench – Dartt's Park

b. Gary Joachim, bench – NAEP at 26th Street (waiting to get the verbiage)

MJ is starting to get benches in, the one they ordered is on its way!

SENIOR DATE

- a. Eric commented they are working on getting the first floor in order and opening the bottom door at the West Hills Social Commons. We are shortening staffed hours and the first coffee talk was held by Thomas.

6. COMMUNICATIONS

a. Director's Report

- Jenna gave an update that the department heads and Council will be meeting to work on a long-term strategic plan and identify what the priorities are.
- There will be a groundbreaking event held on April 4 for the Council Chambers remodel project.
- Staff are working with Public Department to pilot a parks services officer program to address some of the issues in the parks and trails. The role will be customer service focused.
- The City wants to be an employer of choice, staff are working on internal culture and striving for a positive work place.
- Be on the lookout for the 2023 Spring & Summer Activity Guide that is mailed out this week.

b. Staff report:

- Eric Anderson commented there was a great turnout on the rescheduled Winter Weekend Out events, the temps were warmer.
- The department continues to evaluate Winter Weekend Out as a whole, and if you have any ideas, we would appreciate hearing them.
- We are excited to have Kurt. Aaron's crew is working hard on the Brooktree bar project and it is going to look great.
- We reorganized a bit internally and hired three Recreation Facility Assistants after position opened up. One starts today, one next week and the other one will be starting soon.
- MJ reported facilities is using See Click Fix internally right now.
- There are job opening for full-time and part-time maintenance workers.

c. Board Member Report

Gina McGuire: Took her son snowshoeing, and they had a great time!

Tyler Cochran: Went on his first snowshoeing excursion on winter weekend out, and it was good.

Announcements

- In the News
 1. Weekly Owatonna People's Press articles:
<http://ci.owatonna.mn.us/Blog.aspx?CID=3>

2. Owatonna Live Straight Talk [Straight Talk
\(owatonnalive.com\)](https://www.owatonnalive.com)
- Actions Requested from past meetings

ADJOURNMENT:

Motion by Sara Baird, and second Kara Perry to adjourn the Park Board Meeting at 6:00 p.m. All members present voted aye.

The next board meeting is March 13, 2023, at 4:30 p.m. at Council Chambers.

Airport Commission Meeting Minutes
March 2, 2023 – Owatonna Degner Regional Airport
“DRAFT”

1. Call to Order

Chairman Lindee called the meeting of the Airport Commission to order at 5:00 PM.

2. Roll Call

Attending

James Keltgen	Commissioner
Justin Lindee	Commissioner
Angie Lipelt	Vice Chair
Tim McManimon	Commissioner
Paula Snitker	Commissioner
Matt Thurnau	Chair
Sharon West	Commissioner
Dave Beaver	Airport Manager
Troy Klecker	Community Development Director

Visitors

Ron Roetzel	Bolton and Menk
Nick Grahek	Bolton and Menk

3. Approval of Agenda

Commissioner Keltgen made a motion to approve the agenda and Commissioner Lindee seconded the motion. The motion was approved.

4. Minutes

Commissioner West made a motion to approve the minutes from the February 9, 2023 Airport Commission meeting and Commissioner Snitker seconded the motion. The motion was approved.

5. Action Items

Chairman Reports

Chairman Thurnau welcomed everyone to the meeting. There were no further chairman reports.

Staff Reports

Airport Manager Beaver reported on airport activities and presented the combined aviation fuel volumes dispensed year to date. There was a brief discussion on flight training activities and business aircraft arrivals. Mr. Beaver provided an update on a number of maintenance items including service on the Automated Weather Observation System (AWOS), approach lights, and annual fuel system filter change and inspection.

There was also a brief discussion on new systems being implemented that will help improve staff efficiencies with asset management and maintenance requests. Mr. Beaver also updated the Commission on a number of upcoming City Council items including farm land leases and a new T-hangar agreement.

Regarding the acquisition of the new airport one ton utility vehicle, Mr. Beaver explained that the grant was approved for the equipment in September of 2021 and the truck was ordered at that time. Mr. Beaver reported that the vehicle is now in but due to lead times on the attachments there has been cost increases. Mr. Beaver explained that a grant amendment agreement has been received from MnDOT Aeronautics to help offset the cost increases.

Security Fencing Project Update

Mr. Beaver explained that the preliminary project submittals for the project including the grant funding request has been submitted to the Federal Aviation Administration. It is anticipated that the project will utilize available federal funding. There was a brief discussion on the project including proposed layout, gate locations and types, and access control.

T-Hangar Project Update

Airport Manager Beaver introduced Ron Roetzel with Bolton and Menk to provide an update on the T-Hangar project. Mr. Roetzel reported that the contractor has now installed the new individual hangar service doors under warranty. In addition, the new locksets and cores are installed and now compatible with the City of Owatonna key system. Mr. Roetzel explained that they are continuing to work with the contractor to resolve the issue with an additional application of curing compound applied on the concrete floor by the contractor as well as a required application of a concrete sealant. Mr. Roetzel reported that pay estimate number four on the project has been reviewed with recommendation for payment to the contractor. There was a brief discussion regarding these items.

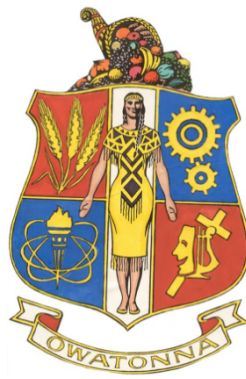
For other business, Chairman Thurnau reminded commission members about the upcoming expiration of member terms and to encourage those interested in serving on the Airport Commission to apply using the application available on the City of Owatonna website.

6. Adjournment

The Airport Commission meeting was adjourned at 5:40 PM.

THE CITY OF

Office of City Administrator
Kris M. Busse



OWATONNA

540 West Hills Circle
Owatonna, MN 55060-4794
Ph. (507) 774-7340
FAX: (507) 444-4394

DATE: March 16, 2023
TO: Mayor and City Council
FROM: Mark Blando, Library Director
SUBJECT: Christy Tryhus resignation from Library Board

Purpose:

To accept the resignation of Christy Tryhus from the Owatonna Public Library Board.

Background:

Christy Tryhus has been a valuable member of the Library Board over the past 6+ years. Due to new responsibilities at her employer she will be unable to continue serving on the board. She has submitted her resignation via email to Library Director Mark Blando.

Budget Impact:

None

Staff Recommendation:

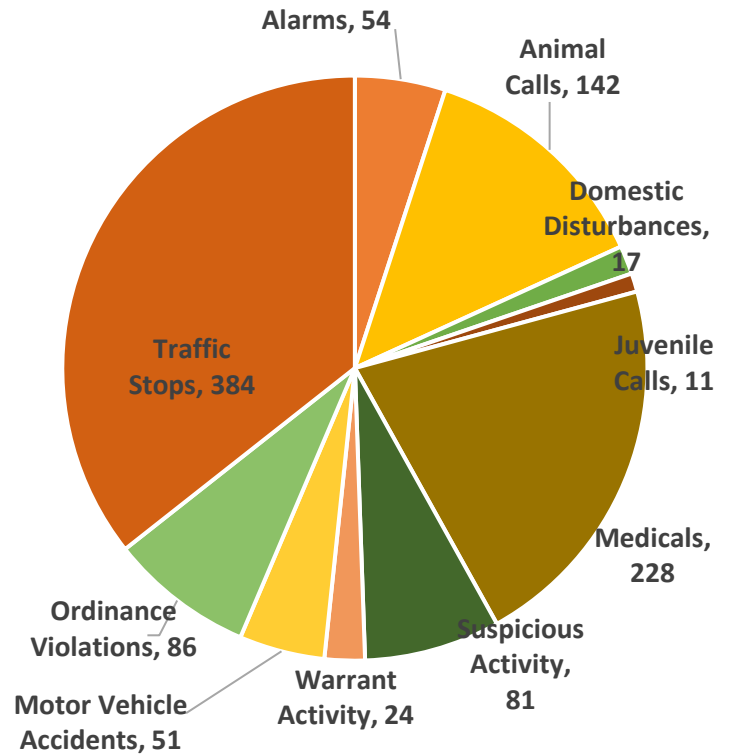
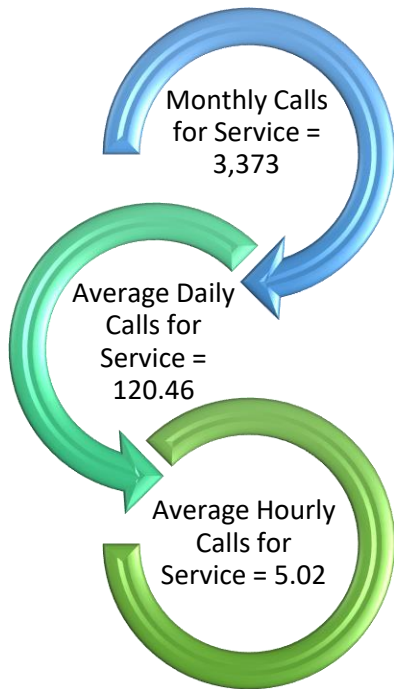
Staff recommends accepting Christy Tryhus' resignation and thanking her for her years of service to the board.



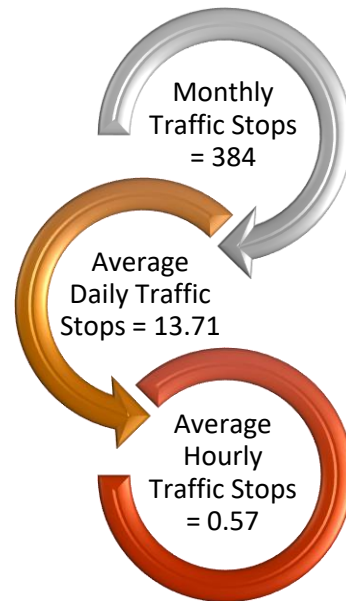
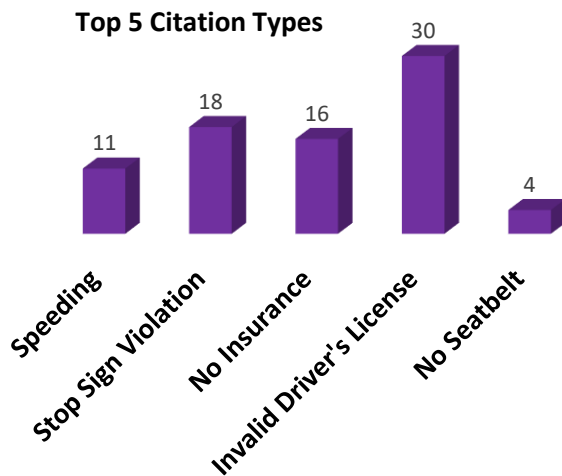
Department Reports

OWATONNA POLICE DEPARTMENT

February 2023



In the month of February 2023, the Owatonna Police Department answered 3,373 calls for service, including 384 traffic stops, 54 alarms, 17 domestic disturbances, 142 animal calls, 11 juvenile calls, 228 medical calls, 81 suspicious activity calls, 24 warrants, 86 ordinance violations, and 51 motor vehicle accidents.



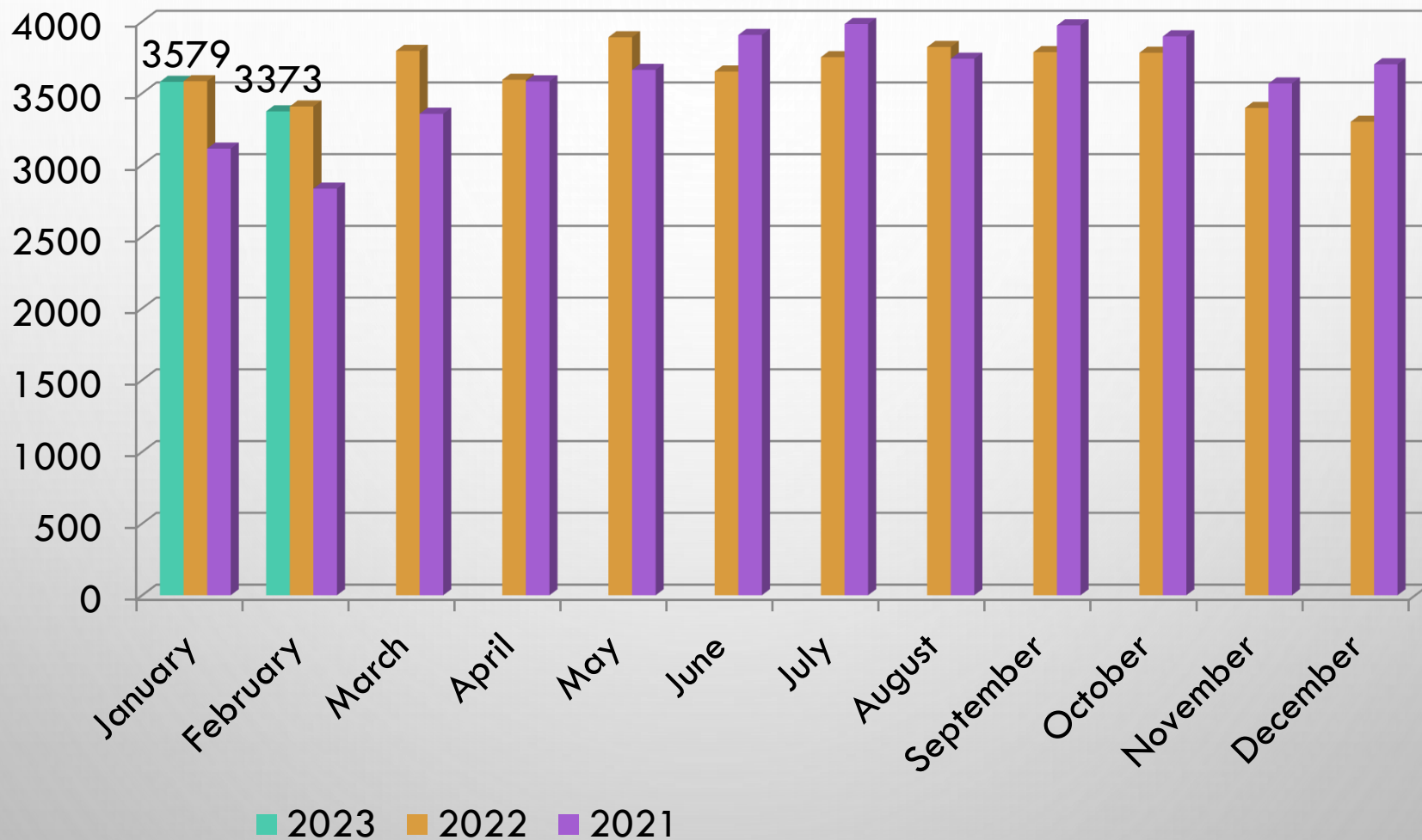
The Owatonna Police Department issued a total of 122 citations and 302 warnings in February. The top 5 citation types include speeding, stop sign violations, no insurance, invalid driver's license, and no seatbelt.

OWATONNA CRIME DATA

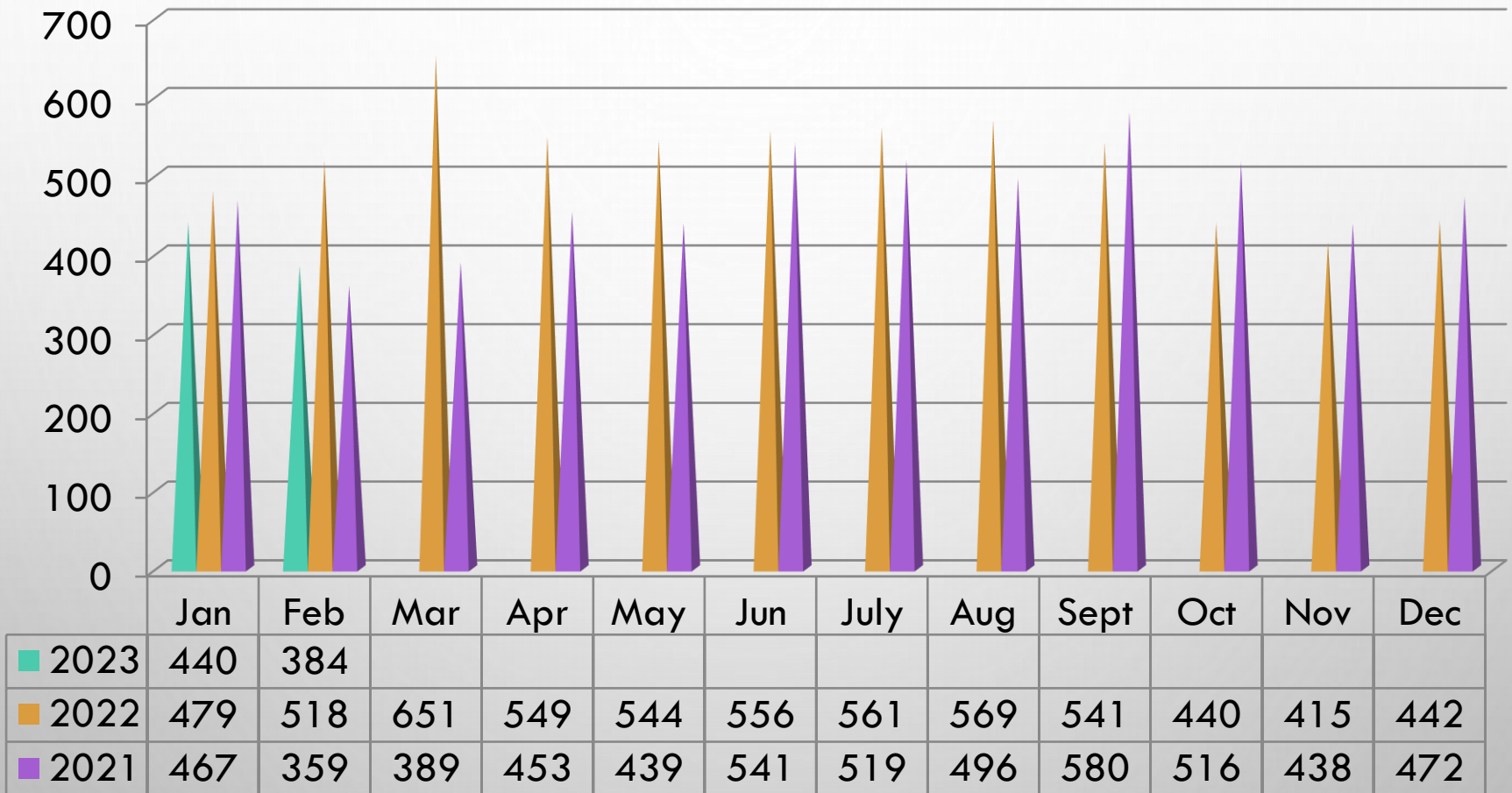
FEBRUARY 2023



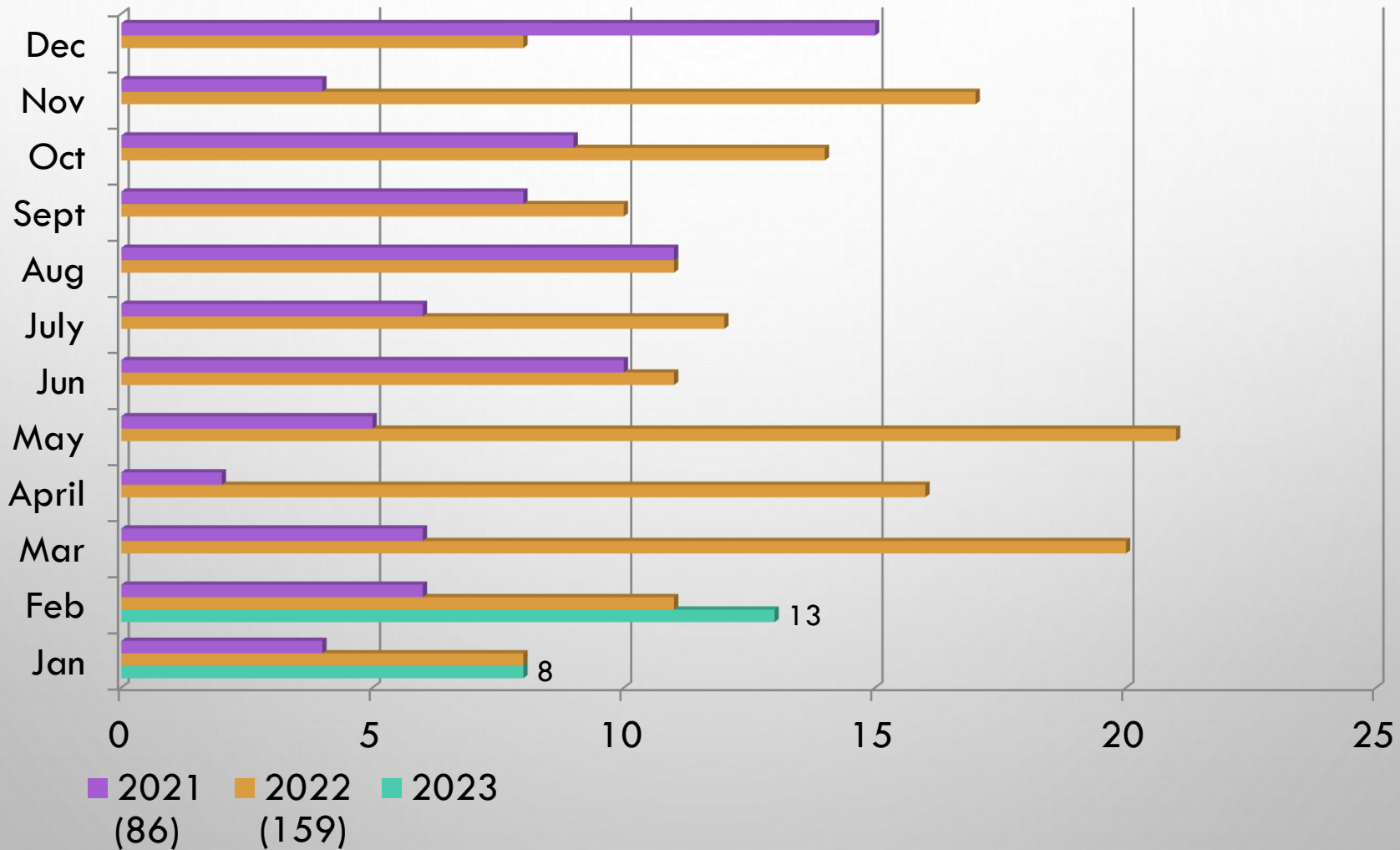
TOTAL EVENTS



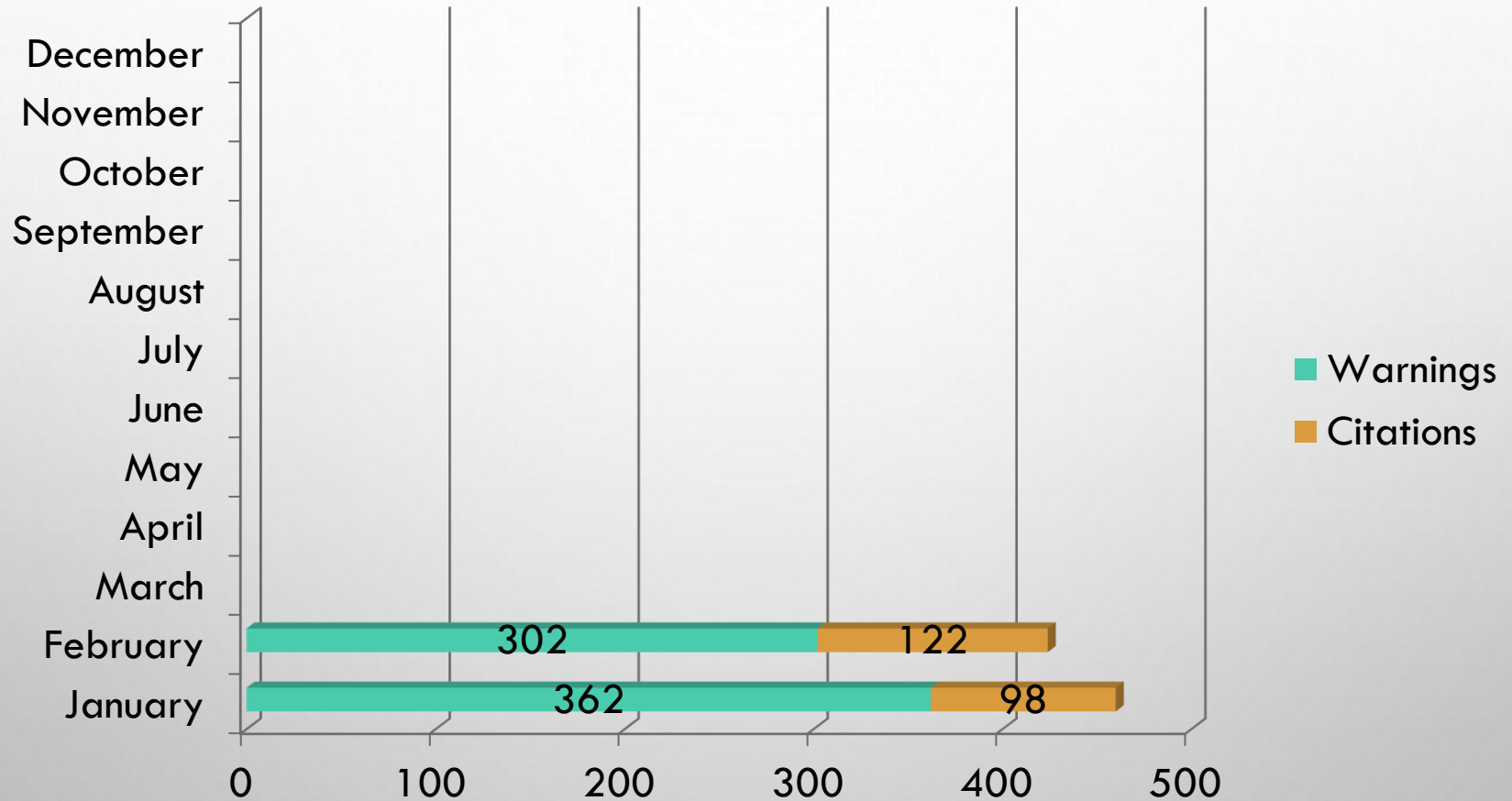
TRAFFIC STOPS



DWI



CITATIONS & WARNINGS



GROUP A CRIMES

NIBRS Transition occurred 08/2020, 3-year data trend not available		2023
Kidnapping/Abduction	1	
Rape	0	
Sodomy	0	
Sexual Assault with an object	1	
Fondling	3	
Robbery	1	
Aggravated Assault	2	
Simple Assault	18	
Intimidation (Assault)	8	
Arson	0	
Burglary/Breaking & Entering	1	
Pocket-Picking	0	
Purse Snatching	0	
Shoplifting	15	
Theft From Building	6	
Theft From Motor Vehicle	2	
Theft of Motor Vehicle Parts or Accessories	2	
All Other Larceny	5	
Motor Vehicle Theft	2	
Counterfeiting/Forgery	3	
False Pretenses/Swindle/Confidence Game	1	
Credit Card/Automated Teller Machine Fraud	0	
Welfare Fraud	0	
Wire Fraud	0	
Identity Theft	5	
Stolen Property Offenses	0	
Destruction/Damage/Vandalism of Property	6	
Drug/Narcotic Violations	10	
Drug Equipment Violations	4	
Pornography/Obscene Material	0	
Bribery	0	
Weapon Law Violations	1	
Human Trafficking, Commercial Sex Acts	0	
Animal Cruelty	0	
TOTAL	97	

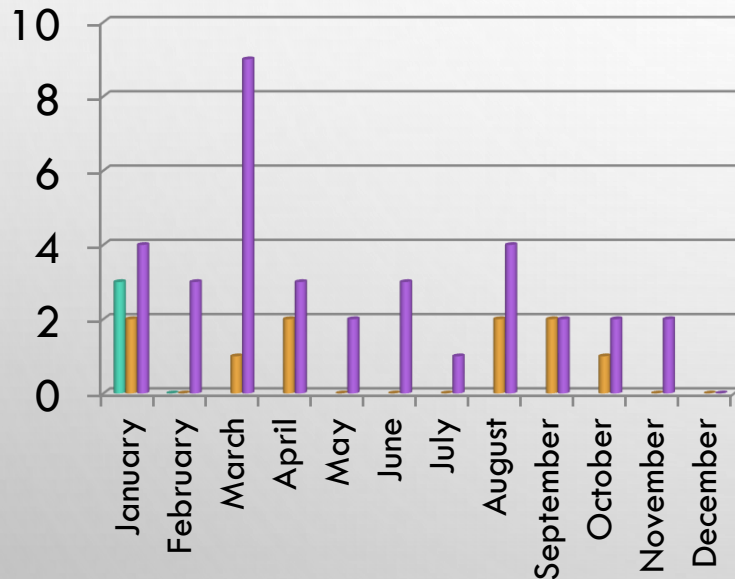
GROUP B CRIMES

NIBRS Transition occurred 08/2020, 3-year data trend not available	2023
Curfew/Loitering/Vagrancy Violations	1
Disorderly Conduct	3
Driving Under the Influence	26
Family Offenses, Nonviolent	1
Liquor Law Violations	2
Trespass of Real Property	1
All Other Offenses	17
TOTAL	51

DISORDERLY & NUISANCE VIOLATIONS

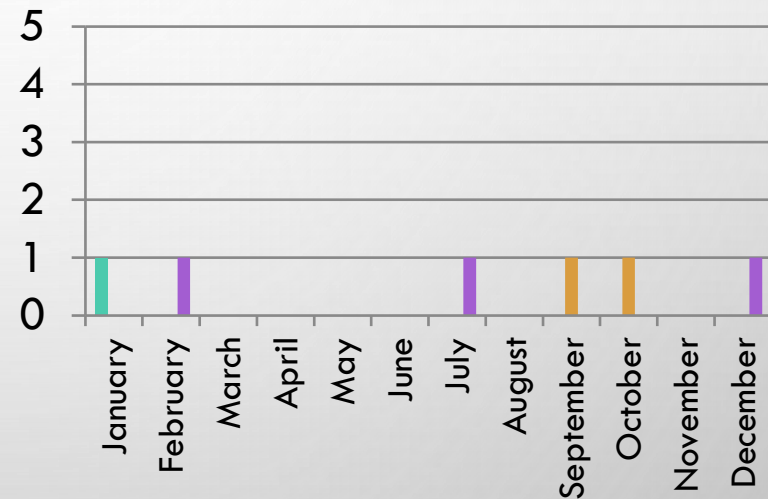
DISORDERLY VIOLATIONS

2023 2022 2021

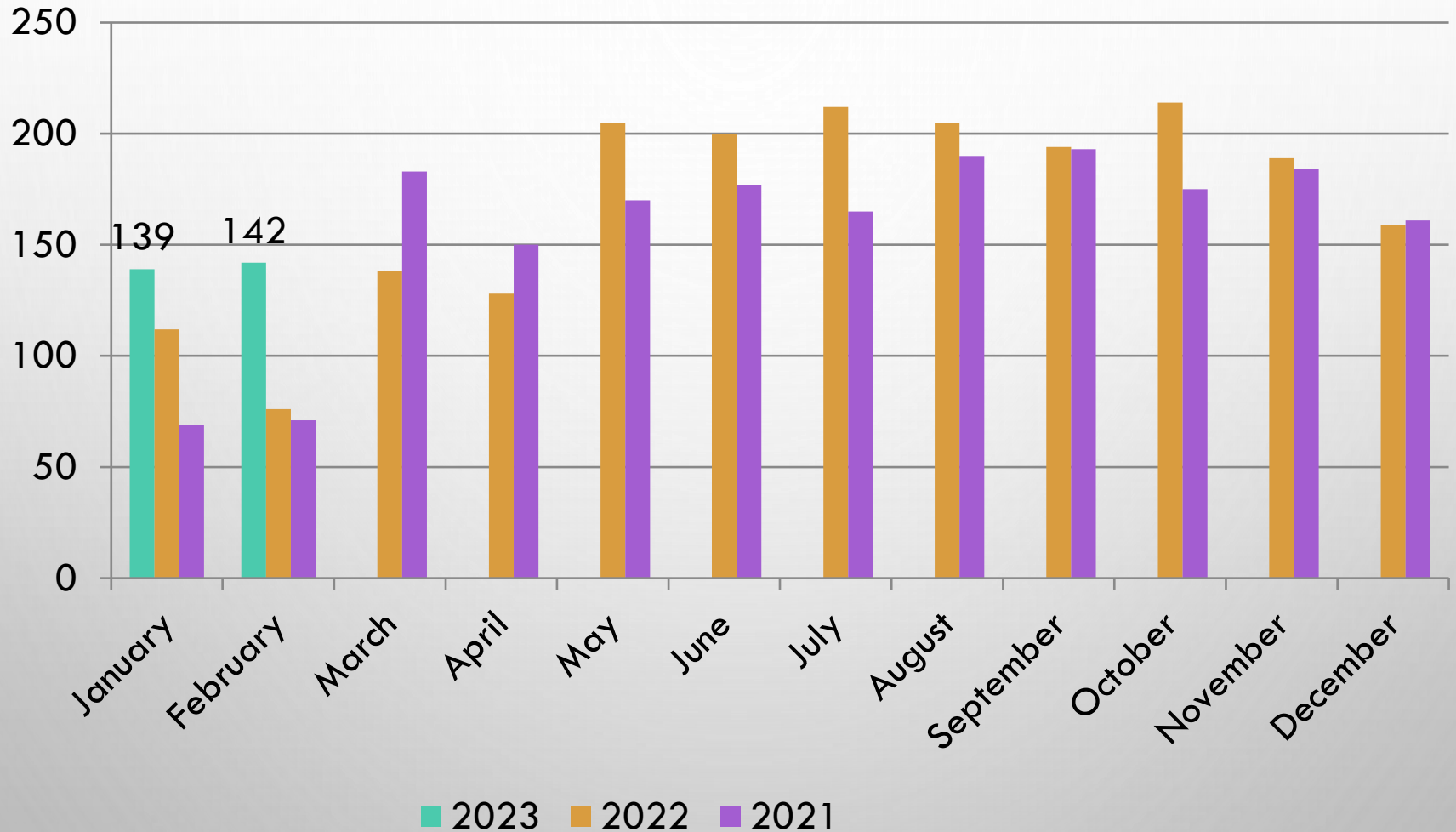


NUISANCE VIOLATIONS

2023 2022 2021



ANIMAL CONTROL CALLS





Licenses - Permits



Minnesota Department of Public Safety
Alcohol and Gambling Enforcement Division
445 Minnesota Street, Suite 1600, St. Paul, MN 55101
651-201-7507 TTY 651-282-6555

**APPLICATION AND PERMIT FOR A 1 DAY
TO 4 DAY TEMPORARY ON-SALE LIQUOR LICENSE**

Name of organization Knights of Columbus		Date of organization January 1, 1904	Tax exempt number 9760494
Organization Address (No PO Boxes) 820 S Elm	City Owatonna	State MN	Zip Code 55060
Name of person making application Mark Cunningham		Business phone 507-451-6103	Home phone 507-676-2638
Date(s) of event Friday, May 5 - Sunday, May 7, 2023	Type of organization ☐ Microdistillery ☐ Small Brewer ☒ Club ☐ Charitable ☐ Religious ☐ Other non-profit		
Organization officer's name Dustin Reese	City Owatonna	State MN	Zip Code 55060
Organization officer's name David Lax	City Owatonna	State MN	Zip Code 55060
Organization officer's name Joel Elbert	City Owatonna	State MN	Zip Code 55060

Location where permit will be used. If an outdoor area, describe.
Steele County Fairground Ball Diamonds

If the applicant will contract for intoxicating liquor service give the name and address of the liquor license providing the service.
no

If the applicant will carry liquor liability insurance please provide the carrier's name and amount of coverage.
Club carried insurance with Insurance Advisors, \$1,000,000/incident

APPROVAL

APPLICATION MUST BE APPROVED BY CITY OR COUNTY BEFORE SUBMITTING TO ALCOHOL AND GAMBLING ENFORCEMENT

City of Owatonna	Date Approved
City or County approving the license	May 5, 2023, May 6, 2023 & May 7, 2023
\$50.00	Permit Date
Fee Amount	
Event in conjunction with a community festival ☐ Yes ☒ No	Jeanette.clawson@ci.owatonna.mn.us
26,386	City or County E-mail Address
Current population of city	

Please Print Name of City Clerk or County Official _____ Signature City Clerk or County Official _____

CLERKS NOTICE: Submit this form to Alcohol and Gambling Enforcement Division 30 days prior to event
No Temp Applications faxed or mailed. Only emailed.

ONE SUBMISSION PER EMAIL, APPLICATION ONLY.

**PLEASE PROVIDE A VALID E-MAIL ADDRESS FOR THE CITY/COUNTY AS ALL TEMPORARY
PERMIT APPROVALS WILL BE SENT BACK VIA EMAIL. E-MAIL THE APPLICATION SIGNED BY
CITY/COUNTY TO AGE.TEMPORARYAPPLICATION@STATE.MN.US**

LG240B Application to Conduct Excluded Bingo**No Fee****ORGANIZATION INFORMATION**

Organization Name: Early Edition Rotary Previous Gambling Permit Number: B-94946-22-002
 Minnesota Tax ID Number, if any: _____ Federal Employer ID Number (FEIN), if any: 91-2079541
 Mailing Address: P.O. Box 394
 City: Owatonna State: MN Zip: 55060 County: Steele
 Name of Chief Executive Officer (CEO): Greg Lenz, President of Early Edition Rotary
 CEO Daytime Phone: _____ CEO Email: _____
 (permit will be emailed to this email address unless otherwise indicated below)
 Email permit to (if other than the CEO): rguthier@owatonna.org

NONPROFIT STATUS

Type of Nonprofit Organization (check one):

☐ Fraternal ☐ Religious ☐ Veterans ☒ Other Nonprofit Organization

Rotary Clubs are 501c4**Attach a copy of at least one of the following showing proof of nonprofit status:**

(DO NOT attach a sales tax exempt status or federal employer ID number, as they are not proof of nonprofit status.)

☒ **Current calendar year Certificate of Good Standing** Rotary International District #5960
 Don't have a copy? This certificate must be obtained each year from:
 MN Secretary of State, Business Services Division
 60 Empire Drive, Suite 100
 St. Paul, MN 55103 #2472309-2
 Secretary of State website, phone numbers:
www.sos.state.mn.us
 651-296-2803, or toll free 1-877-551-6767

☐ **Internal Revenue Service-IRS income tax exemption 501(c) letter in your organization's name**
 Don't have a copy? Obtain a copy of your federal income tax exempt letter by having an organization officer contact the IRS at 877-829-5500.

☐ **Internal Revenue Service-Affiliate of national, statewide, or international parent nonprofit organization (charter)**
 If your organization falls under a parent organization, attach copies of both of the following:
 1. IRS letter showing your parent organization is a nonprofit 501(c) organization with a group ruling; and
 2. the charter or letter from your parent organization recognizing your organization as a subordinate.

EXCLUDED BINGO ACTIVITYHas your organization held a bingo event in the current calendar year? ☐ Yes ☒ No

If yes, list the dates when bingo was conducted: _____

The proposed bingo event will be:

☒ one of four or fewer bingo events held this year. Dates: Friday, April 14, 2023
-OR-
☐ conducted on up to 12 consecutive days in connection with a:

☐ county fair Dates: _____

☐ civic celebration Dates: _____

☐ Minnesota State Fair Dates: _____

Person in charge of bingo event: Darren Roemhildt Daytime Phone: 507-451-7580Name of premises where bingo will be conducted: Eagles Club Aerie 1791Premises street address: 141 East Rose StreetCity: Owatonna If township, township name: _____ County: Steele

LG240B Application to Conduct Excluded Bingo

11/17
Page 2 of 2

LOCAL UNIT OF GOVERNMENT ACKNOWLEDGMENT (required before submitting application to the Minnesota Gambling Control Board)

CITY APPROVAL for a gambling premises located within city limits

On behalf of the city, I approve this application for excluded bingo activity at the premises located within the city's jurisdiction.

Print City Name: Owatonna

Signature of City Personnel: [Signature]
Title: Admin Spec Date: 3/3/2023

**The city or county must sign before
submitting application to the
Gambling Control Board.**

COUNTY APPROVAL for a gambling premises located in a township

On behalf of the county, I approve this application for excluded bingo activity at the premises located within the county's jurisdiction.

Print County Name: N/A

Signature of County Personnel: _____
Title: _____ Date: _____

TOWNSHIP (if required by the county)

On behalf of the township, I acknowledge that the organization is applying for excluded bingo activity within the township limits. (A township has no statutory authority to approve or deny an application, per Minnesota Statutes, Section 349.213.)

Print Township Name: _____

Signature of Township Officer: _____

Title: _____ Date: _____

CHIEF EXECUTIVE OFFICER'S SIGNATURE (required)

The information provided in this application is complete and accurate to the best of my knowledge.

Chief Executive Officer's Signature: [Signature] Date: 2/27/23
(Signature must be CEO's signature; designee may not sign)

Print Name: Gregory Lenz

MAIL OR FAX APPLICATION & ATTACHMENTS

Mail or fax application and a copy of your proof of nonprofit status to:

Minnesota Gambling Control Board
1711 West County Road B, Suite 300 South
Roseville, MN 55113
Fax: 651-639-4032

An excluded bingo permit will be mailed to your organization. Your organization must keep its bingo records for 3-1/2 years.

Questions?

Call a Licensing Specialist at 651-539-1900.

Bingo hard cards and bingo number selection devices may be borrowed from another organization authorized to conduct bingo. Otherwise, bingo hard cards, bingo paper, and bingo number selection devices must be obtained from a distributor licensed by the Minnesota Gambling Control Board. To find a licensed distributor, go to www.mn.gov/gcb and click on **Distributors** under the **LIST OF LICENSEES** tab, or call 651-539-1900.

This form will be made available in alternative format (i.e. large print, braille) upon request.

Data privacy notice: The information requested on this form (and any attachments) will be used by the Gambling Control Board (Board) to determine your organization's qualifications to be involved in lawful gambling activities in Minnesota. Your organization has the right to refuse to supply the information; however, if your organization refuses to supply this information, the Board may not be able to determine your organization's qualifications and, as a consequence, may refuse to issue a permit. If your organization supplies the information requested, the Board

will be able to process the application. Your organization's name and address will be public information when received by the Board. All other information provided will be private data about your organization until the Board issues the permit. When the Board issues the permit, all information provided will become public. If the Board does not issue a permit, all information provided remains private, with the exception of your organization's name and address which will remain public. Private data about your organization are available to Board

members, Board staff whose work requires access to the information; Minnesota's Department of Public Safety; Attorney General; Commissioners of Administration, Minnesota Management & Budget, and Revenue; Legislative Auditor, national and international gambling regulatory agencies; anyone pursuant to court order; other individuals and agencies specifically authorized by state or federal law to have access to the information; individuals and agencies for which law or legal order authorizes a new use or sharing of information after this notice was given; and anyone with your written consent.

An equal opportunity employer

Business Record Details »

Minnesota Business Name

Rotary International District 5960, Inc.**Business Type**

Nonprofit Corporation (Domestic)

MN Statute

317A

File Number

2472309-2

Home Jurisdiction

Minnesota

Filing Date

08/16/2007

Status

Active / In Good Standing

Renewal Due Date

12/31/2023

Registered Office Address1700 West Hwy 36
Suite 820
St Paul, MN 55113
USA**Registered Agent(s)**

Roy A Sjoberg

PresidentPaul Perez
1700 West Hwy 36
Roseville, MN 55113
USA

Filing History

Filing History

Select the item(s) you would like to order: Order Selected Copies

☐	Filing Date	Filing	Effective Date
☐	08/16/2007	Original Filing - Nonprofit Corporation (Domestic)	
	08/16/2007	Nonprofit Corporation (Domestic) Business Name (Business Name: Rotary International District 5960, Inc.)	
☐	12/08/2008	Registered Office and/or Agent - Nonprofit Corporation (Domestic)	



DATE: March 21, 2023
TO: Mayor and City Council
FROM: Ed Hoffman, Fire Chief
SUBJECT: Retail Fireworks License - Walmart

Purpose:

Standard retail fireworks license for Walmart for 2023

Background:

This is a standard retail fireworks license application for Walmart for 2023.

Section 111.03. License Required.

No person shall keep for retail sale or wholesale distribution, sell at retail or wholesale, or otherwise supply or furnish as part of a commercial transaction any permitted consumer fireworks without first having obtained a current license hereunder, paid the required license fee and conspicuously posted the license on the licensed premises.

Section 111.04. License Fee; Term of License.

(A) The annual license fee shall be in the amount duly established by the Council from time to time. The license fee shall cover the administrative and enforcement costs, including the conduct of unannounced compliance checks, inspections by the Fire Chief, inspections by the Police Department or other city department, as well as sampling and testing of the merchandise to ascertain chemical content. Full payment of the required license fee shall accompany the application.

(E) The annual license expires December 31 of each year.

Budget Impact:

Revenue generated for the license is \$100.00.

Staff Recommendation:

Recommend approval of the retail fireworks license.

Attachments:

1. Walmart Fireworks Packet 2023
2. Walmart Fireworks License 2023



Owatonna Fire Department

107 West Main Street
Owatonna, Minnesota 55060-2913

Michael Johnson
Fire Chief
(507) 444-2454

FIREWORKS DEALER'S LICENSE APPLICATION

SECTION 420

1992 ORDINANCE CODE OF OWATONNA

Name of Applicant WALMART #982

Circle One: Natural person, Corporation, Partnership, Business Association, Organization

Address 1130 West Frontage Rd Owatonna, MN 55060

Phone Number 507-455-0049 Hours of operation _____

Street Address of premises to be licensed 1130 West Frontage Rd Owatonna, MN 55060

Zoning District of licensed premises B-2

Are all real estate and personal property taxes that are due and payable for the premises paid? ☒ YES ☐ NO

Does applicant own the business premises? ☒ YES ☐ NO If not, a true and correct copy of the current, executed lease and the written authorization of the property owner for the applicant's use of the property for the sale of permitted consumer fireworks is required.

Description of on-site management and parking facilities _____

Submit detailed site plan illustrating and describing proposed sales and storage areas to be covered by this license.

Name of Person in Charge of Premises Tabby De Leeuw

Address 1130 West Frontage Rd Owatonna, MN 55060

Phone Number 507-455-0049

I have read the above mentioned Section 420, 1992 Ordinance Code of Owatonna and have knowledge of its terms and provisions, and I agree to obey all the terms, provisions and requirements of said ordinance and all other ordinances of the City of Owatonna and all the laws of the State of Minnesota.

[Signature]

Signature of Applicant

3-10-23

Date

CERTIFICATION OF COMPLIANCE
MINNESOTA WORKERS' COMPENSATION LAW

Minnesota Statute, Section 176.182 requires every state and local licensing agency to withhold the issuance or renewal of a license or permit to operate a business or engage in an activity in Minnesota until the applicant presents acceptable evidence of compliance with the workers' compensation insurance coverage requirement of MSS Chapter 176. the information required is the name of the insurance company, the policy number, and dates of coverage or the permit to self-insure. This information will be collected by the licensing agency and retained in their files.

This information is required by law, and licenses and permits to operate a business may not be issued or renewed if it is not provided and/or is falsely reported. Furthermore, if this information is not provided or falsely stated, it may result in a \$1,000 penalty assessed against the applicant by the Commissioner of the Department of Labor and Industry.

Insurance company Name: Walmart 982 Everest Indemnity Insurance Co.
(**NOT** the insurance agent)

Policy Number: Unknown 12209692

Dates of Coverage: 11/1/22 to 11/1/23

(Or)

I am not required to have workers' compensation liability coverage because:

☐ I have no employees

☐ I am self insured (include permit to self-insure)

☐ I have no employees who are covered by the workers' compensation law (these include Spouse, Parents, Children, and certain farm employees)

I certify that the information provided above is accurate and complete and that a valid workers' compensation policy will be kept in effect at all times as required by law.

Name: Rosenbauer Richard Glen
(last, first, middle)

Doing Business As: Walmart 982
(business name if different than your name)

Business Address: 1130 West Frontage Rd

City, State, Zip: Watson, MN 55060 Phone: (507) 455-0049

Signature: Richard Rosenbauer Date: 3-9-23



CERTIFICATE OF LIABILITY INSURANCE

11/1/2023

DATE (MM/DD/YYYY)

11/1/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION** IS **WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Lockton Companies 3280 Peachtree Road NE, Suite #250 Atlanta GA 30305 (404) 460-3600	CONTACT NAME:		
	PHONE (A/C, No, Ext):	FAX (A/C, No):	
INSURED 1359629 American Promotional Events, Inc. DBA TNT Fireworks, Inc. P.O. Box 1318 4511 Helton Drive Florence AL 35630	E-MAIL ADDRESS:		
	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A : Everest Indemnity Insurance Company		10851
	INSURER B :		
	INSURER C :		
	INSURER D :		
INSURER E :			
INSURER F :			

COVERAGES **CERTIFICATE NUMBER:** 12209692 **REVISION NUMBER:** XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☒ LOC ☐ OTHER:	Y	N	SI8GL00242221	11/1/2022	11/1/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY			NOT APPLICABLE			COMBINED SINGLE LIMIT (Ea accident) \$ XXXXXXXX BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX \$ XXXXXXXX
	UMBRELLA LIAB ☐ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED ☐ RETENTION \$			NOT APPLICABLE			EACH OCCURRENCE \$ XXXXXXXX AGGREGATE \$ XXXXXXXX \$ XXXXXXXX
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ Y / ☒ N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N / A	NOT APPLICABLE			PER STATUTE ☐ OTH-ER ☐ E.I. EACH ACCIDENT \$ XXXXXXXX E.I. DISEASE - EA EMPLOYEE \$ XXXXXXXX E.I. DISEASE - POLICY LIMIT \$ XXXXXXXX

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Additional Insured: FMN0006; Cornerstone Evangelical(TNT Customer) and property located at WM #982 Supercenter Parking 11130 W. Frontage Rd in Owatonna, MN 55060 Certificate holder is an additional insured on the General Liability as required by written contract subject to policy terms, conditions, and exclusions.

CERTIFICATE HOLDER**CANCELLATION****12209692**Walmart Stores, Inc
702 SW 8th Street
Bentonville AR 72716

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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TNT® FIREWORKS

Site Plan Worksheet

ADDRESS 1130 West Frontage Rd
CITY Owatonna STATE MN ZIP 55060 PHONE 507-455-0049
STORE NAME / LOCATION # Wal-Mart 982

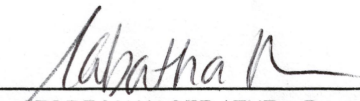
TYPE OF EVENT: In-store sales of state-approved fireworks

NORTH

See Attached

SOUTH

SPECIAL INSTRUCTIONS _____

SIGNATURE  DATE 3-10-23
STORE MANAGER / TNT® Representative

Modular Domestics
Modular Domestics

Beach

Fire ----->
Extingushier

20 Ft Fireworks

20 Ft Fireworks

Front of
Store
GM
Entrance
West Side

Fireworks

Fireworks

Fireworks

Ketchup	Ranch	BBQ Sauc	Bak Beans	Pickles	GV Buns
484	484	484	492	492	492

Fire----->
Extingushier

5	5	5	5	5
---	---	---	---	---

20 Ft Fire Works

Fire----->
Extingusher

20 Ft Fire Works

20 Ft Fire Works

Multiple locations if unable to put in orignal spot



Fire Department
107 Main St W
Owatonna, MN 55060
(507) 444-2454

Retail Fireworks License FW-23-3

Issued: March 21, 2023

Expires: December 31, 2023

LICENSE INFORMATION

Applicant / Business: Tabitha DeLeeuw / Walmart #982
Location Name: Walmart #982
Street Address: 1130 Frontage Rd W
Phone Number: 507-455-0049
Hours of Operation: Open 24 hours, 7 days per week
Location Contact: Tabitha DeLeeuw, Store Manager
Location of Sales: In-Store Display
Amount on Display: 125 pounds
Location of Storage: No storage - all stock will be on display
Amount of Storage: 0 pounds

LICENSE REQUIREMENTS

- License must be posted in a conspicuous place near the fireworks display and/or sales counter.
- License is issued to the applicant only and shall not be transferable to any other person or business.
- Only non-aerial consumer fireworks that are permitted by Minnesota Statute 624.20 shall be offered for sale.
- Signs that read "FIREWORKS - NO SMOKING" in letters not less than four inches in height on a contrasting background shall be posted conspicuously near fireworks displays.
- Fireworks shall be sold only to persons who are at least 18 years of age. A valid, current photographic ID is required by law.

LICENSE APPROVAL

Ed Hoffman, Fire Chief

Date

Kris M. Busse, City
Admin/Clerk

Date

Thomas Kuntz, Mayor

Date



DATE: March 21, 2023
TO: Mayor and City Council
FROM: Ed Hoffman, Fire Chief
SUBJECT: Retail Fireworks License - Walmart Tent

Purpose:

Standard retail fireworks license for Walmart Tent for 2023

Background:

This is a standard retail fireworks license application for Walmart Tent for 2023.

Section 111.03. License Required.

No person shall keep for retail sale or wholesale distribution, sell at retail or wholesale, or otherwise supply or furnish as part of a commercial transaction any permitted consumer fireworks without first having obtained a current license hereunder, paid the required license fee and conspicuously posted the license on the licensed premises.

Section 111.04. License Fee; Term of License.

(A) The annual license fee shall be in the amount duly established by the Council from time to time. The license fee shall cover the administrative and enforcement costs, including the conduct of unannounced compliance checks, inspections by the Fire Chief, inspections by the Police Department or other city department, as well as sampling and testing of the merchandise to ascertain chemical content. Full payment of the required license fee shall accompany the application.

(E) The annual license expires December 31 of each year.

Budget Impact:

Revenue generated for the license is \$350.00.

Staff Recommendation:

Recommend approval of the retail fireworks license.

Attachments:

1. Walmart Tent Fireworks Packet 2023
2. Walmart Tent Fireworks License 2023



Owatonna Fire Department

107 West Main Street
Owatonna, Minnesota 55060-2913

Michael Johnson
Fire Chief
(507) 444-2454

FIREWORKS DEALER'S LICENSE APPLICATION

SECTION 420

1992 ORDINANCE CODE OF OWATONNA

Name of Applicant TNT FIREWORKS

Circle One: Natural person, Corporation, Partnership, Business Association, Organization

Address 4003 HELTON DRIVE, FLORENCE, AL 35630

Phone Number 256.764.6131 Hours of operation _____

Street Address of premises to be licensed WALMART PARKING LOT - 1130 W FRONTAGE RD

Zoning District of licensed premises _____

Are all real estate and personal property taxes that are due and payable for the premises paid? ☐ YES ☐ NO

Does applicant own the business premises? ☐ YES ☐ NO If not, a true and correct copy of the current, executed lease and the written authorization of the property owner for the applicant's use of the property for the sale of permitted consumer fireworks is required.

Description of on-site management and parking facilities PARKING LOT

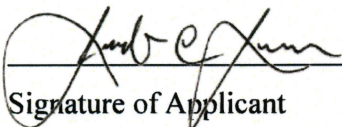
Submit detailed site plan illustrating and describing proposed sales and storage areas to be covered by this license.

Name of Person in Charge of Premises JACOB QUAM

Address 515 MCKNIGHT ROAD S, ST PAUL, MN 55119

Phone Number 612.263.4666

I have read the above mentioned Section 420, 1992 Ordinance Code of Owatonna and have knowledge of its terms and provisions, and I agree to obey all the terms, provisions and requirements of said ordinance and all other ordinances of the City of Owatonna and all the laws of the State of Minnesota.


Signature of Applicant

03.08.2023
Date



STATEMENT OF PURPOSE

American Promotional Events dba TNT Fireworks is submitting for approval for the attached application.

Location address: 1130 W Frontage Road, Owatonna, MN 55060

The purpose is to sell Minnesota State approved fireworks in a temporary tent from, approximately, June 20th 2023 - July 5th 2023. The tent will be erected about three days prior to the sale and removed within two to five days of completion of the sale. The hours of operation will be from 8am-10pm, or as dictated by local location ordinances.

There will be two fire extinguishers readily accessible. "No Smoking," age limit signs, as well as "No Discharging Fireworks within 300ft" signs will be posted and enforced. There will be a minimum of two people onsite at all times and the product will be secured 24/7 to ensure safety.

If you have any questions, please do not hesitate to call me at 256-740-6158.

Sincerely,

Virginia Hightower

Permitting Coordinator

hightowerv@tntfireworks.com



Virginia Daniel Hightower
Permitting Coordinator

American Promotional Events, Inc.
4003 Helton Drive
Florence, AL 35630
www.tntfireworks.com

(256) 740-6158
fax (205) 533-6043
hightowerv@tntfireworks.com

Certificate of Compliance
Minnesota Workers' Compensation Law
This form must be completed by the business license applicant.

Print in ink or type

Minnesota Statutes § 176.182 requires every state and local licensing agency to withhold the issuance or renewal of a license or permit to operate a business in Minnesota until the applicant presents acceptable evidence of compliance with the workers' compensation insurance coverage requirement of Minn. Stat. chapter 176. If the required information is not provided or is falsely stated, it shall result in a \$2,000 penalty assessed against the applicant by the commissioner of the Department of Labor and Industry. A valid workers' compensation policy must be kept in effect at all times by employers as required by law.

License or certificate number (if applicable)	Business telephone number	Alternate telephone number	
Business name (Provide the legal name of the business entity. If the business is a sole proprietor or partnership, provide the owner's name(s), for example John Doe, or John Doe and Jane Doe.)			
AMERICAN PROMOTIONAL EVENTS			
DBA ("doing business as" or "also known as" an assumed name), if applicable			
TNT FIREWORKS			
Business address (must be physical street address, no P.O. boxes)	City	State	ZIP code
4511 HELTON DRIVE	FLORENCE	AL	35030
County	Email address		
LAUDERDALE			

You must complete number 1 or 2 below.

Note: You must resubmit this form to the authority issuing your license if any of the information you have provided changes.

1. ☐ I have a workers' compensation insurance policy.

Insurance company name (not the insurance agent)

Policy number	Effective date	Expiration date
☐ I am self-insured for workers' compensation. (Attach a copy of the authorization to self-insure from the Minnesota Department of Commerce; see www.mn.gov/commerce/industries/insurance/licensing/self-insurance .)		

2. I am not required to have workers' compensation insurance because:

- ☒ I only use independent contractors and do not have employees. (See Minn. Stat. § 176.043 for trucking and messenger courier industries; Minn. Stat. § 181.723, subd. 4, for building construction; and Minnesota Rules chapter 5224 for other industries.)
- ☐ I do not use independent contractors and have no employees. (See Minn. Stat. § 176.011, subd. 9, for the definition of an employee.)
- ☐ I use independent contractors and I have employees who are not required to be covered by the workers' compensation law. (Explain below.)
- ☐ I only have employees who are not required to be covered by the workers' compensation law. (Explain below.) (See Minn. Stat. § 176.041 for a list of excluded employees.)

Explain why your employees are not required to be covered

I certify the information provided on this form is accurate and complete. If I am signing on behalf of a business, I certify I am authorized to sign on behalf of the business.

Print name

Applicant signature (required)	Title	Date
VIRGINIA HIGHTOWER	PERMITTING COORDINATOR	03.08.23

If you have questions about completing this form or to request this form in Braille, large print or audio, call (651) 284-5032 or 1-800-342-5354.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

11/1/2023

11/1/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Lockton Companies 3280 Peachtree Road NE, Suite #250 Atlanta GA 30305 (404) 460-3600	CONTACT NAME:		
	PHONE (A/C, No, Ext):	FAX (A/C, No):	
INSURED 1359629 American Promotional Events, Inc. DBA TNT Fireworks, Inc. P.O. Box 1318 4511 Helton Drive Florence AL 35630	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A : Everest Indemnity Insurance Company		10851
	INSURER B :		
	INSURER C :		
	INSURER D :		
	INSURER E :		
INSURER F :			

COVERAGES**CERTIFICATE NUMBER:** 12209692**REVISION NUMBER:** XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☒ LOC OTHER:	Y	N	SI8GL00242221	11/1/2022	11/1/2023	EACH OCCURRENCE	\$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 500,000
							MED EXP (Any one person)	\$ 5,000
							PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 2,000,000
							PRODUCTS - COMP/OP AGG	\$ 2,000,000
								\$
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS ONLY			NOT APPLICABLE			COMBINED SINGLE LIMIT (Ea accident)	\$ XXXXXXXX
							BODILY INJURY (Per person)	\$ XXXXXXXX
							BODILY INJURY (Per accident)	\$ XXXXXXXX
							PROPERTY DAMAGE (Per accident)	\$ XXXXXXXX
								\$ XXXXXXXX
	UMBRELLA LIAB ☐ EXCESS LIAB ☐ DED ☐ RETENTION \$			NOT APPLICABLE			EACH OCCURRENCE	\$ XXXXXXXX
							AGGREGATE	\$ XXXXXXXX
								\$ XXXXXXXX
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	NOT APPLICABLE			PER STATUTE	OTH-ER
							E.L. EACH ACCIDENT	\$ XXXXXXXX
							E.L. DISEASE - EA EMPLOYEE	\$ XXXXXXXX
							E.L. DISEASE - POLICY LIMIT	\$ XXXXXXXX

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

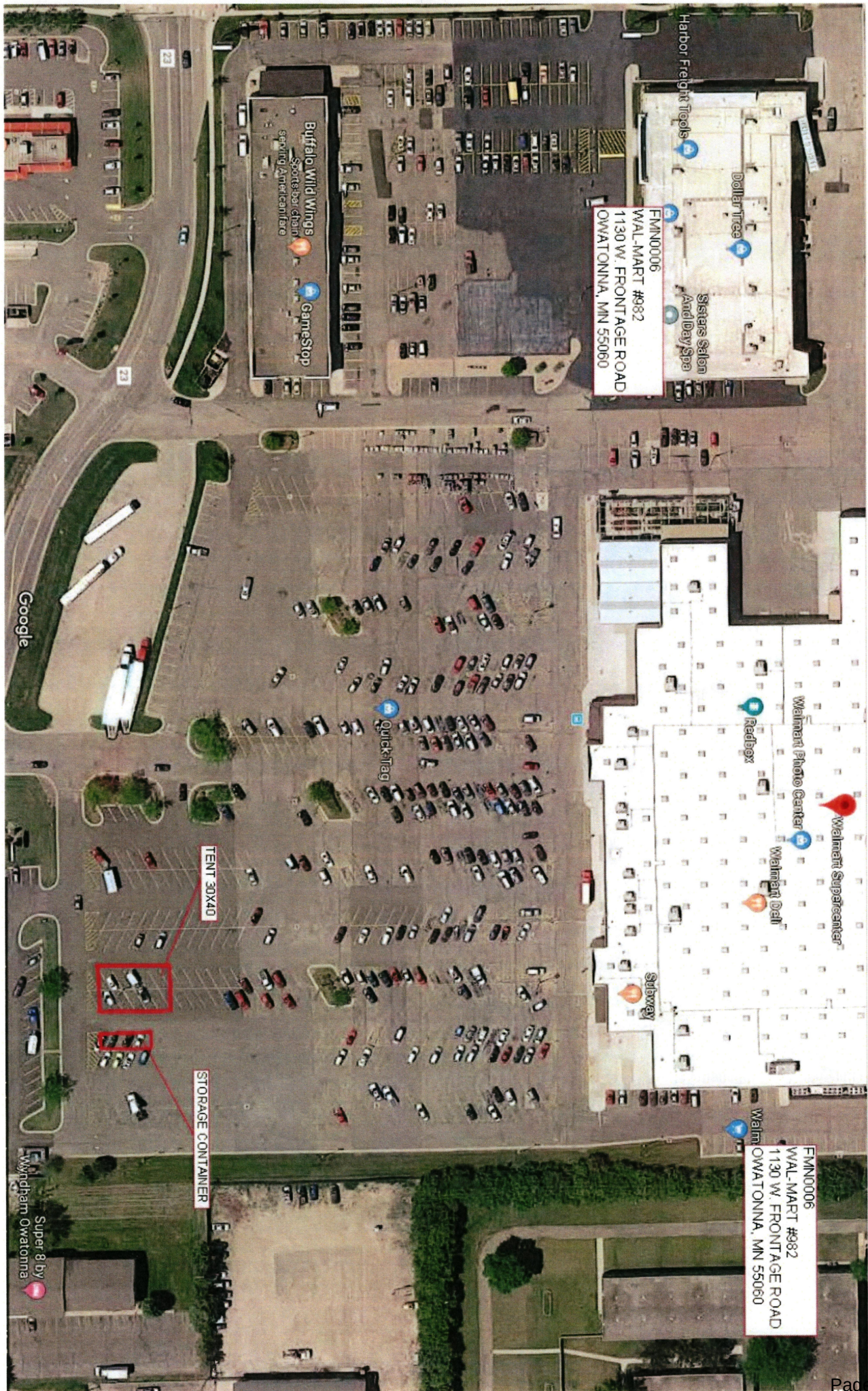
Additional Insured: FMN0006; Cornerstone Evangelical(TNT Customer) and property located at WM #982 Supercenter Parking 11130 W. Frontage Rd in Owatonna, MN 55060 Certificate holder is an additional insured on the General Liability as required by written contract subject to policy terms, conditions, and exclusions.

CERTIFICATE HOLDER**CANCELLATION****12209692**Walmart Stores, Inc
702 SW 8th Street
Bentonville AR 72716

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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FMN0006
WAL-MART #982
1130 W. FRONTAGE ROAD
OWATONNA, MN 55060

FMN0006
WAL-MART #982
1130 W. FRONTAGE ROAD
OWATONNA, MN 55060



702 SW 8th Street
Bentonville, AR 72716
Pete.Rosen@walmart.com

August 15, 2022

To Whom It May Concern,

American Promotional Events, Inc. dba TNT Fireworks is an approved National Supplier to conduct fireworks promotions on our Walmart parking lots where this type of promotion is legal. All stores have been researched and approved by the Walmart Realty Department. The approximate time frame for the promotions are:

- December 26th, 2022 through and including January 10th, 2023.
- June 12th, 2023 through and including July 12th, 2023 with the exception of Utah which has an additional selling period through the end of July for Pioneer Days.

American Promotional Events, Inc. dba TNT Fireworks is authorized to sign for and obtain all necessary permits and/or licenses for the promotion and must display such permits and/or licenses at each stand/tent. Walmart grants permission for all patrons of the sale to utilize the restroom facilities at each participating store.

An American Promotional Events, Inc. dba TNT Fireworks representative will call you to introduce the company and discuss your participation in the event. Participation is encouraged and does add additional income to your other income account. Store Management must approve the store's participation and placement on the parking lot.

Thank you in advance for your cooperation in this matter and if you have any questions, please contact TNT Fireworks at 256-767-7142.

Best Regards,

DocuSigned by:

Pete Rosen

377556219E43439...

Pete Rosen

Manager II

Walmart Retail Services



Fire Department
107 Main St W
Owatonna, MN 55060
(507) 444-2454

Retail Fireworks License FW-23-4

Issued: March 21, 2023

Expires: December 31, 2023

LICENSE INFORMATION

Applicant / Business: Virginia Hightower / TNT Fireworks

Location Name: Walmart - Parking Lot

Street Address: 1130 Frontage Rd W

Phone Number: 507-455-0049

Hours of Operation: 8 AM to 10 PM

Location Contact: Jacob Quam, Site Manager

Location of Sales: Tent/Temporary Outdoor Structure

Amount on Display: 125 pounds

Location of Storage: Storage Container (Outdoors)

Amount of Storage: 125 pounds

LICENSE REQUIREMENTS

- License must be posted in a conspicuous place near the fireworks display and/or sales counter.
- License is issued to the applicant only and shall not be transferable to any other person or business.
- Only non-aerial consumer fireworks that are permitted by Minnesota Statute 624.20 shall be offered for sale.
- Signs that read "FIREWORKS - NO SMOKING" in letters not less than four inches in height on a contrasting background shall be posted conspicuously near fireworks displays.
- Fireworks shall be sold only to persons who are at least 18 years of age. A valid, current photographic ID is required by law.

LICENSE APPROVAL

Ed Hoffman, Fire Chief

Date

Kris M. Busse, City
Admin/Clerk

Date

Thomas Kuntz, Mayor

Date



Administration Department

DATE: March 21, 2023
TO: Mayor and City Council
FROM: Jeanette Clawson, Administrative Specialist
SUBJECT: Ice Cream Vendor License - Kona Ice

Purpose:

Request Council approval to renew the Ice Cream Vendor License requested by Todd Carver to do business as Kona Ice Southern Lakes.

Background:

The license period for an Ice Cream Vendors License is April 1 – March 31st each year. Kona Ice Southern Lakes has held similar permits during the last five years. We have received a completed application, payment of fee, Certificate of Liability Insurance, Certificate of Compliance for Workers' Compensation Insurance and a copy of the company's Retail Mobile Food Handler's Permit from the Minnesota Department of Agriculture. The vehicle inspection is scheduled and will be submitted when received. Council approval is contingent on receipt of the Vehicle Inspection.

Budget Impact:

Annual vehicle fee of \$100 and \$50 for each additional vehicle. Mr. Carver is requesting to operate two vehicles within the City and has paid the fee of \$150.

Staff Recommendation:

Staff recommends Council approve this renewal application contingent on receipt of the Vehicle Inspection Report.

Attachments:

1. Application - Kona Ice



Administrative Services Department

APPLICATION
ICE CREAM VENDOR LICENSE
SECTION 118 - 2015 ORDINANCE CODE OF OWATONNA

Name of Applicant Tony Carver
Name of Business: KONA ICE
Address 122 AULIN LN. FARIBAULT, MN 55021
Phone Number 507-330-4514

Term of license: Approval to 12/31/23

NAMES OF INDIVIDUAL SALES PEOPLE:

Name Tony Carver
Name GAIL CARVER
Name MARSHALL CARVER
Name LOGAN CARVER

VEHICLES:

Make CHEVROLET License No. 4BA 9707
Make CHEVROLET License No. 4BN 0461

- ☒ Certificate of Liability Insurance naming the City of Owatonna as Additional Insured.
☒ Certification of Compliance with MN Workers' Compensation Law form (attached)
☒ Copy of State of Minnesota Food Handler's license, if applicable
on file ☐ Vehicle Inspection (attached)
N/A ☐ List of streets on which vending is planned to occur
N/A ☐ Informed Consent Form (attached)
☒ Payment of fee: \$100.00 - first vehicle, \$50.00 for each additional vehicle

Mhwa
Signature of Applicant

3/14/23
Date



Miscellaneous



Owatonna Degner Regional Airport

TO: Honorable Mayor and City Council Members, City Administrator
FROM: Dave Beaver, Airport Manager
DATE: March 15, 2023
RE: Farmland lease agreements for crop year 2023

Purpose:

Request the Council approve farmland lease agreement renewals for crop year 2023.

Background:

The 2023 annual farm land rental agreements for 152.5 acres of land at the airport have been prepared. Historically, these eight parcels have not been included in the biennial bid process for various reasons related to each piece including access, size and shape, and adjacent property considerations. Moving forward, staff is evaluating the applicability of including more of these parcels in the bid process.

The Airport Commission recommends a rate of \$247.00/acre for 2023 representing a 5% per acre increase. The rate review and determination is based on recent bids received, Steele County Extension office data, parcel farmability, operator input, and other market considerations. The lease form has been previously reviewed by the City Attorney and the following leases have been prepared:

Renter	Year	\$247.00/Acre	Annual Payment
Bob Cole	2023	50A x \$247.00	\$12,350.00
		15A x \$247.00	\$3,705.00
		20A x \$247.00	\$4,940.00
Dan Morgan	2023	23A x \$247.00	\$5,681.00
Paul Maas	2023	16A x \$247.00	\$3,952.00
Duane Schroeder	2023	20.5A x \$247.00	\$5,063.50
Andy Michaletz	2023	8A x \$247.00	\$1,976.00
		Total	\$37,667.50

The agreements provide that the City reserves the right to take possession of all or part of the rented property if needed for other purposes. In that event, the tenant shall be compensated for any lost or damaged crop for that year.

Budget Impact:

The farm land rental agreements provide for a 2023 revenue of \$37,667.50.

Recommendation:

Staff recommends approval.



Owatonna Degner Regional Airport

TO: Honorable Mayor and City Council Members, City Administrator
FROM: Dave Beaver, Airport Manager
DATE: March 15, 2023
RE: T-Hangar Lease Agreement

Purpose:

To approve T-hangar rental agreement for unit located at the Owatonna Degner Regional Airport as follows:

Lessee	Resident	Unit	Monthly Rental Fee	Term
Charles Cain	Faribault, MN	Building 2, Unit H	\$180.00	1 year
			\$180.00	Per Month

Background:

The agreement provides for the rental of a T-hangar unit at the airport for a one-year term. The agreement is a standard T-hangar lease form used for this purpose and has been reviewed by the City Attorney.

Budget Impact:

The rental fees provided for in the agreements represent a total of \$2,160.00 of annual rental revenue.

Recommendation:

Staff recommends approval.

OWATONNA DEGNER REGIONAL AIRPORT
T-HANGAR LEASE AGREEMENT

The City of Owatonna, a municipal corporation of the State of Minnesota, hereinafter referred to as "Lessor", hereby leases to Charles Cain, a resident of the City of Faribault County of Rice, State of Minnesota, hereinafter referred to as "Lessee", that T-Hangar unit situated in an aircraft hangar located at the Owatonna Degner Regional Airport which is more particularly described as follows, to-wit:

HANGAR # 2, UNIT "H "
(See attached Exhibit "A")

1. **TERM OF LEASE.** The initial term of this lease shall be for a period commencing March 1, 2023 and ending February 28, 2024. Upon the mutual agreement of the parties hereto, the lease may be renewed for up to two (2) additional periods of one (1) year each. The agreement to renew shall be entered into by the parties prior to the expiration of each term and will be subject to the T-Hangar Rental Policy in effect or applicable at time of renewal. The agreement to renew shall be in writing and signed by the parties hereto specifying the rental fee and the date of expiration.

2. **RENTAL FEE.** During the term of this lease, Lessee shall pay to Lessor a monthly rental fee of One Hundred Eighty dollars (\$180.00). All rental payments shall be made at Owatonna Degner Regional Airport, 3400 West Frontage Road, Owatonna, Minnesota, or such other place as Lessor may designate. All rental payments shall be due by the 10th day of the month for which they are made. Upon expiration of this lease the rental fee may be adjusted by the City Council of the City of Owatonna.

3. **TAXES.** Any and all taxes assessed by any governmental unit shall be the responsibility of the Lessee.

4. **PROHIBITIONS.** Lessee shall be subject to all airport rules and regulations, including but not limited to, the following:

(A) No private locks of any type will be allowed on individual pedestrian doors. If private locks are installed, they will be removed at the discretion of the City of Owatonna.

(B) All items detrimental to the environment shall be disposed of properly. The Lessee of each T-Hangar unit shall be responsible for the proper disposal of all materials generated from or within that unit. The cost of cleaning up any materials improperly disposed of on airport properties shall be charged to the Lessee of the unit which generated or was the source of the material.

(C) Lessee's private vehicle shall be allowed to be placed in a T-Hangar when the aircraft is removed for a trip. Parking on the apron or grass will not be permitted.

(D) Lessee shall be responsible for cleanliness of the T-Hangar unit. When, in the opinion of the City of Owatonna, a safety hazard is found to exist within a T-Hangar unit, Lessee will be provided with notice providing for cleanup within seven (7) days, or by such date as the City of Owatonna shall demand. If the cleanup is not completed within the designated time, the City of Owatonna will perform all cleanup, which, in its discretion, it deems necessary, and the cost of which shall be charged to the Lessee.

(E) Lessee at own expense, must maintain hangar in a safe, non-hazardous, and sanitary condition. No explosive, flammable or hazardous materials shall be stored in the leased hangar, provided, however, that materials incidental to the use and maintenance of the aircraft stored in hangar may be kept in the hangar in such amounts as are reasonable for the above described purposes. Storage and use of such materials shall, at all times, comply with all federal, state, and local laws, ordinances and regulations. Improper handling or disposal of hazardous materials shall be grounds for termination of this agreement.

(F) The Lessor, or its agent, will provide snow removal services to the area of the leased hangar and taxi-lanes as close to the leased hangar entrance as possible, the Lessee will be primarily responsible for removal of snow and ice immediately in front of the leased premises.

(G) The Lessee is responsible for ensuring the hangar door is closed at all times, except when entering or exiting the hangar.

(H) Engine run-up and taxiing out of the T-Hangars is not allowed.

(I) This lease shall not be sold, assigned, or in any manner transferred or encumbered by Lessee, nor shall the leased premises or any part thereof be sublet without the prior consent of Lessor in writing. Lessee shall keep and use the T-Hangar primarily for aircraft storage purposes and for no unlawful purpose whatsoever.

(J) T-Hangar units shall be used primarily for the storage of active and operational aircraft. Active and operational aircraft shall be defined to mean all aircraft currently licensed and flyable which are flown to and from the Owatonna Degner Regional Airport periodically during the year.

(K) Lessee shall possess proof of ownership of the aircraft being stored in leased hangar and aircraft must be properly registered and certified for flight. If Lessee sells the aircraft, the Lessor must be notified in writing within ten (10) days of the sale, and Lessee has ninety (90) days in which to replace said aircraft. One ninety (90) day extension may be allowed, if requested in writing from Lessor. If an aircraft is not owned at the time the hangar lease is consummated, Lessee has ninety (90) days to obtain an aircraft. Prior to placing any aircraft in a T-Hangar

unit, Lessee shall provide Lessor in writing the following information: (See attached Exhibit "B")

1. Aircraft Type
2. Serial Number
3. Registration Number
4. Present Condition of Aircraft (Is the aircraft presently airworthy?)
5. Present Market Value of Aircraft
6. Insurance Carrier (Including type of coverage, limits, and policy number.)

(L) Lessee shall comply with the Owatonna Degner Regional Airport Minimum Standards now existing or as hereafter amended or adopted by the City of Owatonna.

(M) Hangar Door to be Closed. The Lessee is responsible for ensuring that the bi-fold hangar door is closed and latched at all times, except when entering or exiting the hangar. The Lessee agrees not to operate the bi-fold door in wind conditions gusting in excess of 30mph (26 knots). The Lessee is responsible for, and holds the City harmless from, any damage or destruction to the door or to the hangar attributable to or caused wholly or partly by the Lessee's failure to comply with this provision.

5. **ELECTRIC SERVICE.** Electricity is available in each unit. The City of Owatonna reserves the right to install individual meters to each unit and the cost of electricity for each unit may then be billed to Lessee by the City on a periodic basis. Engine heaters shall be of such size as to not overload the electric system. Fuel-fired, hot-air type heaters are permitted if attended on a continuous basis while in use. Electric space heaters are prohibited.

6. **RIGHT OF ENTRY.** Lessor reserves the right for itself or agents to go on, into, and have access at all times during the existence of this lease, to said premises for the purpose, including, but not limited to, inspection and showing of the building.

7. **INSURANCE.** Lessee shall maintain the following insurance coverages:

A. Lessee shall carry aircraft liability insurance with limits of coverage not less than as required pursuant to the Minnesota Statute Section 360.59 Subdivision 10, and may be amended.

B. Lessee shall carry hull insurance on each aircraft stored on the leased premises. The limits of the insurance shall be in an amount equal to or greater than the current value of the aircraft, instruments, and accessories. On or before the date of this lease, Lessee shall provide a Certificate of Insurance to the City of Owatonna indicating the

required coverage for the entire term of the lease and providing for a minimum of thirty (30) days notice to a change or cancellation of that coverage.

C. In lieu of carrying hull insurance, Lessee covenants and agrees that he will not hold the City of Owatonna or any of its agents, employees, or Airport Commission members responsible for any loss occasioned by fire, theft, rain, windstorm, hail, or from any other cause whatsoever, whether said cause be the direct, indirect, or merely a contributing factor in producing the loss to any airplane, automobile, personal property, parts, or surplus that may be located or stored in the T-hangars, aprons, field, or any other location at the airport; and Lessee agrees the plane and the contents are to be stored, whether on the field or in the hangars, at Lessee's risk.

D. Comprehensive general liability insurance insuring Lessee against any liability arising out of this lease agreement, or the use, occupancy, or maintenance of the demised premises and all areas appurtenant to the demised premises. Such insurance shall be in the amount of not less than One Million (1,000,000.00) per occurrence for property damage, bodily injuries, or deaths of persons occurring in and about the premises, not necessarily caused by aircraft, or in or about the Airport if caused by the act or omission of Tenant or those for whom Tenant is responsible. Such insurance may provide for a sub limit of not less than One Hundred Thousand (\$100,000) per person. The insurance policy shall insure the hazards of the demised premises and operations conducted in and on the demised premises, independent contractors, contractual liability (covering the indemnity included in this lease agreement), and shall name Lessor as an additionally insured party. Lessor shall be furnished with a copy of the certificate of insurance. The liability insurance policy also showing endorsements requiring thirty (30) days' written notice to Lessor prior to any cancellation or any reduction in the amount of coverage.

E. In accordance with the subrogation provisions of the standard property insurance contract, it is hereby understood and agreed by and between the undersigned parties that they do jointly and separately waive any or all right of recovery against the other for insured loss occurring to the real property owned by City of Owatonna and personal property owned by the Lessee all while located at the leased premises.

Any policy issued to the City of Owatonna providing duplicate or similar coverage shall be deemed excess over Tenant's policies. Tenant waives any subrogation rights against the City of Owatonna on all claims and insurance policies.

Tenant shall not use or permit the Premises to be used in any manner that would void Tenant's or the City of Owatonna's insurance or increase the insurance risk. Tenant shall comply with all requirements imposed by the insurers for the City of Owatonna and Tenant.

8. INDEMNIFICATION. To the fullest extent permitted by law, Lessee agrees to indemnify, defend, save and hold completely harmless the City of Owatonna or any of its agents, employees, or Airport Commission members responsible for any and all

liabilities, losses, damages, suits, actions, claims, judgments, settlements, fines or demands of any person arising by reason of injury or death of any person, or damage to any property occasioned by fire, theft, rain, windstorm, hail, or from any other cause whatsoever, whether said cause be the direct, indirect, or merely a contributing factor in producing the loss to any airplane, automobile, personal property, parts, or surplus that may be located or stored in the T-Hangars, aprons, field, or any other location at the airport; and Lessee agrees that the planes and the contents are to be stored, whether on the field or in the hangars, at Lessee's risk.

The provisions of this section shall survive expiration or earlier termination of this lease. The furnishing of the required insurance shall not be deemed to limit Tenant's obligations under this Section.

The Tenant shall defend, indemnify and hold the City of Owatonna harmless from any claims or liabilities as a result of Tenant's failure to procure and to keep in force the insurance required in the Lease.

9. **ATTORNEY FEES.** Lessee shall pay and discharge all costs, attorney fees, and expenses arising from enforcing any covenants or forfeiture hereof.

10. **TERMINATION.** In case Lessee shall fail to make any of the above-mentioned payments as specified or fail to keep and perform any of the covenants and agreements herein contained, Lessor may immediately and without notice terminate this lease and re-enter and repossess said premises, without prejudice, to its claims for earned cash rent. The following by way of illustration but not by limitation shall constitute a default under this lease:

(1) Tenant fails to pay money owed to the City of Owatonna under this Lease when due, and such failure continues for ten (10) days after written notice from the City of Owatonna.

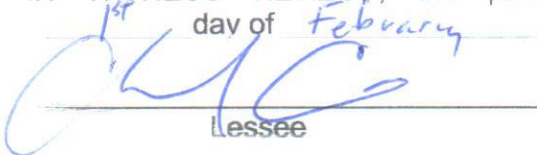
(2) Tenant uses the Premises for any purpose not expressly authorized by this Lease and such default continues for ten (10) days following written notice from the City of Owatonna.

(3) Tenant assigns, subleases or transfers this Lease except as otherwise permitted, and such default continues for ten (10) days following written notice from the City of Owatonna.

(4) Tenant fails to carry the insurance required under this Lease; any insurance required under this Lease is cancelled, terminated, expires, or is reduced or materially changed so as not to comply with this Lease; or the City of Owatonna receives such notice of any such conditions pursuant to Section 7., and such failure continues for a period of ten (10) days following written notice from the City of Owatonna to Tenant.

- 5) Tenant vacates or abandons the Premises, and such default continues for days following written notice from the City of Owatonna to Tenant.
- (6) Tenant fails to abide by any applicable federal, state, or municipal statutes, regulation, ordinance, rule, or airport policy
- (7) Any other action or inaction on the tenant's part which the City determines is in breach of the lease.

IN WITNESS WHEREOF, the parties hereto have executed this lease this 1st day of February, 2023.



 Lessee

CITY OF OWATONNA, MINNESOTA

By: _____
 Its Mayor

By: _____
 Its City Administrator

STATE OF MINNESOTA)
) ss.
 COUNTY OF STEELE

The foregoing was acknowledged before me this _____ day of _____, 20____,
 by _____ and _____,
 the Mayor and City Administrator of the City of Owatonna, a municipal corporation
 under the laws of the State of Minnesota, on behalf of the City of Owatonna,
 Minnesota.

 Notary Public

STATE OF MINNESOTA)
) ss.
 COUNTY OF STEELE

The foregoing was acknowledged before me this _____ day of _____, 20____,
 by _____.

 Notary Public

EXHIBIT "A"

T-HANGAR NO 2

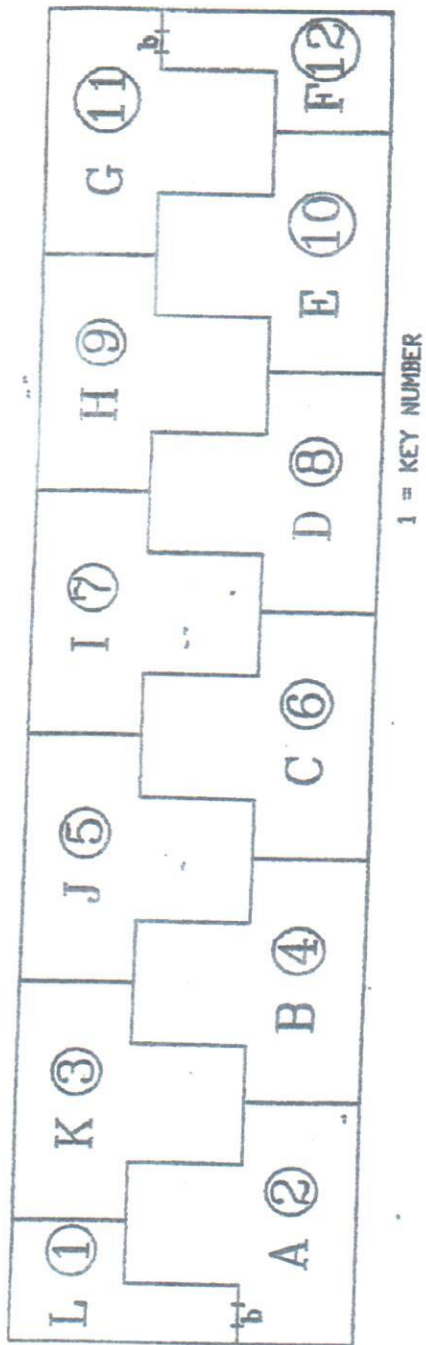


EXHIBIT "B"

1. Aircraft Type Mooney M20E
2. Serial Number 1033
3. Registration Number N2731W
4. Present Condition of Aircraft Airworthy
5. Present Market Value \$65,000
6. Insurance Carrier Falcon Insurance Agency

Attach Copy of Insurance Certificate



Owatonna Degner Regional Airport

TO: Honorable Mayor and City Council Members, City Administrator
FROM: Dave Beaver, Airport Manager
DATE: March 15, 2023
RE: MN Grant Agreement Amendment – One-ton Utility Vehicle.

Purpose:

Council authorization to accept the Minnesota Department of Transportation (MnDOT) Grant Amendment for our new one ton-utility vehicle.

Background:

During the September 7, 2021 Council Meeting, the council approved Resolution 86-21 authorizing acceptance of a MnDOT Aeronautics Grant Agreement for acquisition of this vehicle. The one-ton truck was ordered and just now arrived. We are in the process of having accessories such as plow, sander, and box mounted on the truck.

Since ordering the truck in 2021, there have been cost increases on this equipment. Due to the significant lead times and cost increases a grant amendment was applied for and received. This grant amendment provides additional funding to cover 70% funding for items including licensing and fees as well as the increase in price of attachments due to lead times.

Budget Impact:

The MnDOT Agreement Amendment is for an additional \$11,623 of funding representing 70% of additional costs. This is the same percentage share as provided for in the original grant agreement. The remaining local share cost increase of \$4,980 will be funded through the vehicle replacement fund.

Recommendation:

Staff recommends approval. of this agreement amendment

AMENDMENT #A01 TO MnDOT GRANT AGREEMENT #1047267

This Amendment is by and between the state of Minnesota, through its Commissioner of Transportation (“State”), and the **City of Owatonna** (“Grantee”).

Recitals

1. The State has an agreement with the Grantee identified as MnDOT Agreement Number **1047267** (“Original Agreement”), to provide for **A Ford F350 Truck, Boss V-XT Plow and Monroe Tailgate Sander.**
2. The agreement is being amended to **add additional funding. The original contract didn’t include licensing and fees and there was an increase in price on the plow and sander hoist box attachment due to lead times.**
3. The State and the Grantee are willing to amend the Original Agreement as stated below.

Agreement Amendment

In this Amendment deleted agreement terms will be ~~struck-out~~ and the added agreement terms will be **underlined.**

REVISION 1. Article 4. Section 4.1, **Cost Participation**, is amended as follows:

4.1 Cost Participation. Costs for the Project will be proportionate and allocated as follows:

<u>Item Description</u>	<u>Federal Share</u>	<u>State Share</u>	<u>Grantee Share</u>
Ford 350 Truck, Boss V-XT Plow, and Monroe Tailgate Sander	0%	70%	30%
Trade in equipment previously purchased Under S.P. 7401-64 (-\$9,425.00)	0%	60%	40%

Federal Committed:	\$	0.00
Federal Multiyear:	\$	0.00
State:	\$	50,902.90 <u>62,525.00</u>
Grantee:	\$	20,469.10 <u>25,450.00</u>

The federal multiyear amount is an estimate only. These funds are not committed and are only available after being made so by the U.S. Government. Federal funds for the Project will be received and disbursed by the State. In the event federal reimbursement becomes available or is increased for the Project, the State will be entitled to recover from such federal funds an amount not to exceed the state funds advanced for this Project. No more than 95% of the amount due under this Agreement will be paid by the State until the State determines that the Grantee has complied with all terms of this Agreement and furnished all necessary records.

REVISION 2. Article 4. Section 4.4, **Total Obligation**, is amended as follows:

4.4 Total Obligation. The total obligation of the State for all compensation and reimbursements to Grantee under this agreement will not exceed \$ ~~50,902.90~~ 62,525.00.

The terms of the Original Agreement are expressly reaffirmed and are incorporated by reference. Except as amended herein, the terms and conditions of the Original Agreement and all previous amendments remain in full force and effect.

THE BALANCE OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.

STATE ENCUMBRANCE VERIFICATION

Individual certifies that funds have been encumbered as required by Minn. Stat. § 16A.15 and § 16C.05.

Signed: _____

Date: _____

SWIFT Contract/PO No(s). _____

GRANTEE

The Grantee certifies that the appropriate person(s) have executed the grant agreement on behalf of the Grantee as required by applicable articles, bylaws, resolutions, or ordinances.

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

DEPARTMENT OF TRANSPORTATION

By: _____
(with delegated authority)

Title: _____

Date: _____

**DEPARTMENT OF TRANSPORTATION
OFFICE OF FINANCIAL MANAGEMENT – GRANT UNIT**

By: _____

Date: _____

**DEPARTMENT OF TRANSPORTATION
CONTRACT MANAGEMENT**

By: _____

Date: _____

RECAP:

\$	82,950.00	Electric Pump Inc - Replace Bridge St Lift Station pumps
	40,892.84	Owatonna Motor Co - Ford F-350 for Airport (\$28K grant receivable)
	<u>218,089.12</u>	OTHER EXPENDITURES
\$	<u><u>341,931.96</u></u>	TOTAL EXPENDITURES PRESENTED FOR APPROVAL

NOTE: Checks over \$20,000 are detailed out individually

Check Register

Check Number	Vendor Number	Vendor Name	Check Amount	Check Date	BW	Check Type
Checks for Cash Account: 999-19100-000-000-000000						
372405	100219	AB SYSTEMS INC	5,000.00	03/14/23		
372406	2120	ABDO PUBLISHING	2,321.45	03/14/23		
372407	27	AFLAC	3,158.38	03/14/23		
372408	34	ALEXANDER LUMBER COMPANY	853.83	03/14/23		
372409	37	ALLDATA	1,500.00	03/14/23		
372410	3410	AMERICAN RED CROSS	1,066.00	03/14/23		
372411	5727	ANHORN'S GAS & TIRE	110.71	03/14/23		
372412	3881	APG MEDIA OF SO MINNESOTA LLC	1,561.10	03/14/23		
372413	61	ARAMARK UNIFORM SERVICES INC	377.60	03/14/23		
372414	68	ARROW ACE HARDWARE	207.08	03/14/23		
372415	5338	ASPEN MILLS	212.15	03/14/23		
372416	5338	ASPEN MILLS INCORPORATED	1,218.25	03/14/23		
372417	91	BAKER & TAYLOR BOOKS	948.36	03/14/23		
372418	5188	BLACKSTONE PUBLISHING	115.47	03/14/23		
372419	128	BOUND TREE MEDICAL LLC	621.66	03/14/23		
372420	156	CARQUEST	2,744.21	03/14/23		
372421	4425	CENTRAL FARM SERVICE	1,428.51	03/14/23		
372422	175	CITY OF BLOOMING PRAIRIE	1,904.75	03/14/23		
372423	5348	CLUB PROPHET SYSTEMS	530.00	03/14/23		
372424	100250	CONFLUENCE OUTDOOR	2,813.00	03/14/23		
372425	202	CONTINENTAL RESEARCH CORP	1,048.91	03/14/23		
372426	5512	COVERALL OF THE TWIN CITIES	2,455.00	03/14/23		
372427	212	CULLIGAN OF OWATONNA	75.08	03/14/23		
372428	218	CUSTOM COMMUNICATIONS INC	284.61	03/14/23		
372429	222	D & M CONSTRUCTION LLC	2,728.50	03/14/23		
372430	4531	DAIKIN APPLIED AMERICAS INC	8,000.00	03/14/23		
372431	235	DEANS WESTSIDE TOWING	150.00	03/14/23		
372432	100208	ELECTRIC PUMP INC	1,008.50	03/14/23		
372433	100208	ELECTRIC PUMP INC	82,950.00	03/14/23		
372434	100310	ELIZABETH STRAIN	2,315.00	03/14/23		
372435	5547	ET&T DISTRIBUTORS INC	4,939.11	03/14/23		
372436	5485	EYE MED VISION CARE	431.85	03/14/23		
372437	304	FARM & HOME PUBLISHERS	527.50	03/14/23		
372438	305	FARMERS FEED AND PET SUPPLY	76.99	03/14/23		
372439	100188	FIRST HOSPITAL LABORATORIES IN	83.19	03/14/23		
372440	323	FIRST SUPPLY OWATONNA	128.18	03/14/23		
372441	3806	FOUR SEASONS ELECTRIC	661.94	03/14/23		
372442	3737	GAMEHAVEN COUNCIL-BS OF AMER	590.00	03/14/23		ACH
372443	377	GOPHER/PLAY WITH A PURPOSE	2,675.96	03/14/23		
372444	410	HAWKINS INC	14,305.60	03/14/23		
372445	2171	HEALTHPARTNERS INC	4,638.58	03/14/23		
372446	3719	HERITAGE CRYSTAL CLEAN LLC	1,209.11	03/14/23		
372447	421	HILLYARD INC	117.48	03/14/23		
372448	430	HUBER SUPPLY CO INC	12.12	03/14/23		
372449	446	IFACS	653.95	03/14/23		

Check Register

Check Number	Vendor Number	Vendor Name	Check Amount	Check Date	BW	Check Type
372450	454	INNOVATIVE OFFICE SOLUTIONS	138.58	03/14/23		
372451	5021	JETTER CLEAN INC	531.25	03/14/23		
372452	2720	JJD COMPANIES LLC	1,989.00	03/14/23		
372453	482	JOHN DEERE CREDIT	1,680.68	03/14/23		
372454	3997	JONES HAUGH & SMITH INC	6,242.26	03/14/23		
372455	100306	JTH GARAGE DOOR LLC	945.00	03/14/23		
372456	100003	KIRI ANN FAUL	650.00	03/14/23		
372457	495	KOWZ-FM	417.00	03/14/23		
372458	5324	KRFO-FM	420.00	03/14/23		
372459	525	KWIK TRIP INC	142.99	03/14/23		
372460	2999	LARRY THORNHILL	192.00	03/14/23		
372461	100084	LAWSON AUTOMOTIVE LLC	173.20	03/14/23		
372462	4457	LAWSON PRODUCTS	792.96	03/14/23		
372463	100314	LINDER DIGITAL	1,000.00	03/14/23		
372464	5699	MADISON NATL LIF INS CO INC	963.51	03/14/23		
372465	587	MARCO TECHNOLOGIES LLC	1,430.87	03/14/23		
372466	1619	MCMaster-CARR SUPPLY CO	75.60	03/14/23		
372467	603	MCNEILUS STEEL INC	712.88	03/14/23		
372468	4383	MEI TOTAL ELEVATOR	881.07	03/14/23		
372469	612	METRO SALES	892.93	03/14/23		
372470	612	METRO SALES INC	1,526.39	03/14/23		
372471	7028	METRONET	1,830.38	03/14/23		
372472	5190	MIDWEST TAPE LLC	1,356.91	03/14/23		
372473	619	MIKE'S REPAIR	1,943.94	03/14/23		
372474	1946	MINER'S OUTDOOR & RECREATION	2,102.49	03/14/23		
372475	2158	MINNESOTA LIFE	2,814.55	03/14/23		
372476	3090	MN DRIVER & VEHICLE SERVICES	14.25	03/14/23		
372477	657	MN PETROLEUM SERVICE	396.00	03/14/23		
372478	5894	MRI SOFTWARE LLC	25.00	03/14/23		ACH
372479	577	MTI DISTRIBUTING INC	785.16	03/14/23		
372480	4928	NAPA AUTO PARTS	65.11	03/14/23		
372481	2246	NATIONAL FIRE PROTECTION ASSN	1,725.00	03/14/23		
372482	100304	OLSEN RENTALS	988.00	03/14/23		
372483	744	OVERHEAD DOOR CO	666.00	03/14/23		
372484	745	OWATONNA AREA CHAMBER OF COMM	18,697.04	03/14/23		
372485	5363	OWATONNA GLASS LLC	9.62	03/14/23		
372486	762	OWATONNA GROUNDSMASTERS INC	1,989.00	03/14/23		
372487	763	OWATONNA HEATING & COOLING INC	160.00	03/14/23		
372488	759	OWATONNA MOTOR COMPANY	40,892.84	03/14/23		
372489	1309	OWATONNA PUBLIC UTILITIES	6,952.62	03/14/23		ACH
372490	49	OWATONNA RENT N SAVE	70.20	03/14/23		
372491	4839	P&R CONSTRUCTION LLC	2,040.00	03/14/23		
372492	780	PAAPE COMPANIES INC	675.40	03/14/23		
372493	783	PAL'S MACHINING INC	168.00	03/14/23		
372494	100309	PICKLEBALL INC	1,649.94	03/14/23		
372495	7003	PRECISION LINING & SEWER LLC	3,646.50	03/14/23		

Check Register

Check Number	Vendor Number	Vendor Name	Check Amount	Check Date	BW	Check Type
372496	5536	PRESENCE TELEHEALTH PLLC	198.00	03/14/23		
372497	5281	PRIME GARAGE DOOR & MORE LLC	220.00	03/14/23		
372498	1458	REINDERS INC	1,393.51	03/14/23		
372499	876	RENT N SAVE	840.00	03/14/23		
372500	895	ROCON INCORPORATED	1,989.00	03/14/23		
372501	928	SCHOLASTIC INC	201.64	03/14/23		
372502	941	SELCO	3,713.80	03/14/23		
372503	952	SHERWIN WILLIAMS COMPANY	102.32	03/14/23		
372504	1809	SHI CORP	1,213.03	03/14/23		
372505	100312	SHOWCASES	43.40	03/14/23		
372506	954	SIGN PRO OF OWATONNA	28.00	03/14/23		
372507	3336	STAR TRIBUNE	57.88	03/14/23		
372508	1935	STATE INDUSTRIAL PRODUCTS	954.20	03/14/23		
372509	997	STEELE COUNTY AUDITOR	8,986.99	03/14/23		
372510	1009	STEELE COUNTY TREASURER	6,045.23	03/14/23		
372511	4892	STEWART DENISE	132.99	03/14/23		
372512	1014	STEWART SANITATION	1,456.42	03/14/23		
372513	1018	STREICHER'S INC	7,506.00	03/14/23		
372514	4259	SUMMIT COMPANIES	1,254.00	03/14/23		
372515	3031	THOMSON REUTERS	505.59	03/14/23		
372516	100308	TJD REPAIR & SERVICE	61.20	03/14/23		
372517	100303	TONY'S FLOORING - OWATONNA LLC	154.62	03/14/23		
372518	4920	TOR SPERLING	21.75	03/14/23		
372519	1723	UNITED WAY	107.00	03/14/23		
372520	2540	USABLUEBOOK	390.19	03/14/23		
372521	2344	UTILITY CONSULTANTS INC	1,515.28	03/14/23		
372522	1133	VENTURE HYDRAULICS INC	61.64	03/14/23		
372523	2121	VERIZON WIRELESS	333.25	03/14/23		
372524	7009	VESERIS	15,828.00	03/14/23		ACH
372525	5724	WALBRAN & FURNESS CHARTERED	4,725.75	03/14/23		ACH
372526	100307	WALDRON CO	4,514.12	03/14/23		
372527	4323	WSB & ASSOCIATES INC	610.00	03/14/23		
372528	1168	XCEL ENERGY	233.55	03/14/23		
372529	2605	YOUTH 1ST COMMUNITY INITIATIVE	625.00	03/14/23		
372530	7004	MATTHEW R HOKANSON	1,672.57	03/14/23		
372531	3804	RANDALL'S LICENSE BUREAU	14.25	03/14/23		
Check totals:			313,738.65			
ACH totals:			28,193.31			
EFTPS totals:						
Wire transfer totals:						
Payment Manager totals:						
GRAND TOTALS			341,931.96			

Check totals:	313,738.65
ACH totals:	28,193.31
EFTPS totals:	
Wire transfer totals:	
Payment Manager totals:	
GRAND TOTALS	341,931.96



Ordinances



Public Works Department

DATE: March 21, 2023
TO: Mayor and City Council
FROM: Sean Murphy, Public Works Director
SUBJECT: Proposed Ordinance 23-05: Amend Chapter 35, Appendix A Fee Schedule:
Sewer Rates, Charges and Fees - Residential Septage Tank Discharge Fee -
Second/Final Reading

Purpose:

City Council to approve the second/final reading of Poposed Ordinance 23-05.

Background:

The Residential Septic Tank Discharge Fee has not been revised since 1991. Since then, the cost to ensure the septage is appropriately treated has increased.

Andrew Fischer, Wastewater Treatment Facility Manager, discussed the septic discharge fees with multiple municipalities in the surrounding area. The proposed increased rate is in line with many of those municipalities.

Council approved the first reading of this proposed ordinance during the March 7, 2023 Council Meeting. No changes have been made since.

Budget Impact:

The recommended rate adjustment would increase the fee from \$50 per load to a rate of \$100 per 1,000 gallons.

Staff Recommendation:

Staff recommends approval.

Attachments:

1. Ord 23-05 Amend Septage Rates - Section 35 Appendix A - Fee Schedule

ORDINANCE NO. 23-05

AN ORDINANCE AMENDING CHAPTER 35 OF THE 2015 ORDINANCE CODE OF THE CITY OF OWATONNA, ENTITLED "SEWER, RATES, CHARGES AND FEES" BY AMENDING CHAPTER 35, APPENDIX A FEE SCHEDULE (C) SEWER RATES CHARGES AND FEES (7) RESIDENTIAL SEPTIC TANK DISCHARGE FEE.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF OWATONNA, MINNESOTA, DO ORDAIN:

Section 1. Chapter 35 of the 2015 Ordinance Code of the City of Owatonna, entitled "Sewer, Rates, Charges and Fees", Chapter 35, Appendix A Fee Schedule, (C) Sewer Rates Charges and Fees (7) Residential septic tank discharge fee:

(7) *Residential septic tank discharge fee*

Residential septic tank discharge fee. A fee for a septic tank discharge, as authorized in § 50.32 of this code of ordinances, shall be \$100 per 1,000 gallons.

(effective 10-1-1991) (1992 Code, § 540:25)

Section 2. Effective date. This Ordinance shall be in full force and effect from and after its passage and publication.

Passed and adopted this ____ day of _____, 2023, with the following vote:

Aye __; No __; Absent __.

Approved and signed this ____ day of _____, 2023.

ATTEST:

Thomas A. Kuntz, Mayor

Kris M. Busse, City Administrator/City Clerk



Community Development Department

DATE: March 21, 2023
TO: Mayor and City Council
FROM: Greg Kruschke, Community Development Manager
SUBJECT: Proposed Ordinance 23-06 Vacate Portion of Drainage and Utility Easements - 2807 Timber Ridge Dr NE

Purpose:

Request Council approval of the first reading of Proposed Ordinance 23-06 to approve VACA-23-1. This is a petition received from Christina Wetmore, 2807 Timber Ridge Dr NE to vacate a portion of a drainage and utility easement within Majestic Oaks.

Background:

See attached Staff Report. Prior to the Planning Commission Meeting the applicant submitted the design plans for the Emergency Overflow area that needs to be graded in this area. Sean Murphy, City Engineer has provided a memo responding to the proposed plans with comments that will need to be addressed. By having these plans in place, staff recommended approval with the conditions in the packet.

Budget Impact:

None with this request.

Staff Recommendation:

Staff recommends approvals as recommended by the Planning Commission and request the second/final reading of this proposed ordinance be heard at the next Council Meeting on April 4, 2023.

Attachments:

1. Proposed Ordinance 23-06 Vacate Easement - 2807 Timber Ridge Dr NE- Wetmore
2. Staff Report to Planning Commission
3. Staff Comment - Engineering Department

ORDINANCE NO. ____

AN ORDINANCE PURSUANT TO SECTION 6.2 OF THE HOME RULE CHARTER OF THE CITY OF OWATONNA, AND SECTION 675 OF THE 1992 ORDINANCE CODE OF THE CITY OF OWATONNA, VACATING A STREET, ALLEY, OR PUBLIC RIGHT-OF-WAY, OR ANY PART THEREOF, HEREIN DESCRIBED, AND PROVIDING FOR ITS RECORDING.

WHEREAS, there has been filed with the City Council a petition to vacate the premises hereinafter described; and

WHEREAS, a public hearing was held on March 14, 2023, on the said petition and after public notice was given, pursuant to Section 6.2 of the Home Rule Charter; and

WHEREAS, the proposed vacation does not destroy or interfere with the rights of any person, corporation, or municipality; and

WHEREAS, the City finds that the premises hereinafter described are no longer required for municipal purposes.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OWATONNA DO ORDAIN:

SECTION 1. That the following described portion of a Utility Easement:

That part of Lots 9 and 10, Block 2, MAJESTIC OAKS, according to the recorded plat thereof, Steele County, Minnesota, described as follows: The North 5.00 feet of said Lot 10 lying easterly of the West 10.00 feet of said Lot 10, which lies westerly of the East 10.0 feet of said Lot 10, AND the South 5.00 feet of said LOT 9 lying easterly of the West 10.00 feet of said Lot 9, which lies westerly of the East 10.00 feet of said Lot 10.

may be and hereby is vacated.

SECTION 2. The City Clerk shall cause this Ordinance to be filed for record in the offices of the City Clerk and the City Engineer of the City of Owatonna and its title added to Appendix IV of the 1992 Ordinance Code of the City of Owatonna.

SECTION 3. The City Clerk shall cause an original copy hereof to be filed for record and duly recorded in the office of the Steele County Recorder in and for Steele County, Minnesota.

SECTION 4. Effective Date. This Ordinance shall be in full force and effect from and after its passage and publication.

Passed and adopted this ____ day of _____, 2023, with the following vote:

Aye ____; No ____; Absent ____.

Approved and signed this ____ day of _____, 2023.

ATTEST:

Thomas A. Kuntz, Mayor

Kris M. Busse, City Administrator/City Clerk

March 10, 2023

To: Planning Commission
From: Community Development Department
RE: Request to vacate a portion of a Drainage & Utility Easement

Application Review:

Applicant: Christina Wetmore
Location of Property: 2807 Timber Ridge Drive NE
Legal Description: See Attached Survey
Report Attachments:
1. Location Map
2. Vacation Sketch & Description
3. Applicant's proposal
4. Overflow Drainage Plan

Proposed Development:

- ◆ Petition by Christina Wetmore to vacate a portion of a drainage and utility easement in order to construct a new house.
- ◆ The applicant would like to combine the two lots and vacate the easement in order to build over the lot line.
- ◆ This lot line contains the designed, but not yet constructed, emergency overflow for the subdivisions drainage.
- ◆ The City has met with the developer on getting this constructed through the development and why it should be completed. They are preparing plans and planning on constructing it this summer.
- ◆ The applicant will need to provide an engineered design of this emergency overflow before the City will recommend approval of this request.
- ◆ As it exists today, the house as proposed will be an island in the middle of a lake on a March rain or a significant rain fall event due to the grades to the north of the property.
- ◆ Without this being installed properly it will lead to drainage issues when the storm sewer cannot handle the rainfall.
- ◆ To date staff has not heard from any utility companies on this easement. The drainage appears to be the only concern.
- ◆ Once the engineered design is completed on the relocated waterway staff will have no issue with the vacation. However, without the design staff would not be in favor of this request.
- ◆ The applicant will also be required to dedicate a new easement over the drainage way.

Staff Recommendation:

Staff recommends approval of this vacation of a portion of a drainage and utility easement located on the property at 2807 Timber Ridge Drive NE as described above with the following conditions:

- 1) An easement shall be dedicated over the proposed drainageway prior to the permit being issued for construction of the home.
- 2) The drainageway shall be fully constructed prior to a Certificate of Occupancy being issued on the house.
- 3) All conditions in the City Engineer's letter dated March 14, 2023 be met.

Planning Commission:

VACA-23-1, which is request by Christina Wetmore to vacate a portion of a Drainage and Utility Easement at 2807 Timber Ridge Drive NW, was presented by Community Development Manager Greg Kruschke. (Refer to report on file.) Public hearing opened at 5:42 p.m. Dennis Wille, 2887 Timber Ridge Drive NE, said as he said he looks at some of the other lots, it seems like the elevations are in the center of those lots, verses following where that easement is plotted. It looks like water would have to go up hill in a few places on that easement. Kruschke said that was one of their concerns in vacating and moving it to the north because there is a high point that is to the north of this lot. There is going to be some excavation that has to happen to make this work, and that is part of this process. The developer needs to address that outside of the Wetmores' lot. All of this has been surveyed and they have shots through there on what will be required in order to construct this. That can't happen until the spring, but they're confident that it will be able to be regraded. Some of these side slopes will have to be redone—maybe two or three feet that needs to be excavated to form the swale. Joyce Mattison, 2887 Timber Ridge Drive NE, asked if it's up to the developer to regrade those other lots before construction can start. Kruschke said no, they will have to regrade this before the house is finished. Joyce Mattison asked if there is an agreement in place that they would do it. Kruschke said yes, they've met with the developer this last week and they are fully aware. Dennis Wille clarified that the high point has to be lowered two or three feet. Kruschke said that is an estimation. Dennis Wille said that is considerably higher than the low point of the lots in place to the north. Kruschke said that it will be fairly flat within that drainageway, but they will have to match those spot elevations. Dennis Wille said that changes his lot considerably because none of that has been done to this point. He said he's concerned about what that will all look like, because right now there is a lake in front of where they want to build their house and a lake to the south and a lake across the road to the east. He said if the intent is to make that water flow naturally, there is a lot of elevation change that will need to happen. Kruschke said that is what the engineers are designing. Generally speaking, when a subdivision is put in the majority of these things should be graded into that subdivision as it occurs. This one has been sort of piecemealed together, but this is something that is needed to protect those lots once constructed and the drainage ways so they don't have to rely on structures in case they fill up. The drainage channel overflows once the structures are at capacity. Dennis Wille said his concern is what it's going to look like – it's really going to change the area in his opinion. A lot of dirt work will need to happen. Kruschke said that is something the developers will have to work with the property owners on out there to

tie in some of the grades coming into that existing swale to get it in through those properties. Dennis Wille said that there's a high point on the vacant lot to the north. There's a high point between the existing lots to the east. It's lower close to the road. Kruschke said he understands what he's saying—there is a lot of dirt work that needs to be done. Dennis Wille said that would be a huge expense. Kruschke said that's on the developer to take care of it. Cia Grass, 2800 24th Avenue NE, said she and her husband Buzz live a little to the north and across the road from this parcel. She said they have a concerns. They have certainly had water issues since that development has taken place, but there is a county tile that they are aware of that goes directly through there. She would like to know how that will be a part of this development. Kruschke said that at this point they're not proposing any changes to the county tile. This is just constructing the emergency overflow, which is above ground drainage. Anything that's underground is not being addressed with this request. Cia Grass clarified that the county tile would not be impacted in any way. Kruschke said that is correct—not with this project. Dennis Wille said that he's heard rumors of county tile running through. He asked if there is any idea where that runs. Cia Grass had a map from the ACS office that identifies where it is. She said they have not had an opportunity to look at what they've gotten in the last few days and was hoping they'd have more time to look at and study how it may or may not affect the people who live nearby. Kruschke said that this group, the Planning Commission, holds public hearing on the request and all comments will go forward to the City Council meeting next week. All vacation requests require two readings at City Council. He said they can certainly reach out to City staff. This should have been done years ago. Karlene Just, 2820 Timber Ridge Drive NE, said that the drainage easement will be right in front of their house, and she said she doesn't know how water will go up to the pond. She said when her house was built, they went two feet lower than they needed to and ran into cattails. She said that the developer sold them swampland and she does not need anymore water coming near her. The fill alone to get that lot buildable was ridiculous. They had to put in a \$12,000 generator because if the sump pump would go out, their house would be destroyed. The City needs to look at what REO is selling, because it's not legitimate. She thought she was buying a buildable lot but has had \$15,000 in corrections because they sold her swampland. She's been told by the excavators that there are many lots up there that are equally as bad as hers. The lot to the south is estimated to have \$25,000 in corrections because that is the worst part of the swamp. This isn't a couple building a house on two lots, this is a developer. Kruschke said that the request is to vacate the easement and the developer will be constructing the emergency overflow drainage. Karlene Just asked who would be doing it. Kruschke said a combination of the home builder and the developer. Karlene Just said that nothing has been done right up there so far. She said that everybody needs to take a long look at this before anything is done. She said if you knew the amount of people up there who have tremendous water issues – it's a shame that the City has allowed this to happen. Not a lot of people can afford a \$15,000 correction, and you can't get a loan for that, so now you have a junk piece of property that who's going to buy? Nobody. She said all of the neighbors need a lot more detail with what's going to happen and how it's going to happen. Curt Broughten, 2700 24th Avenue NE, asked if the green line is the existing tile. Kruschke said that it won't be a tile, it's an emergency overflow that will be graded above ground. Curt Broughten said he's lived there 42 years and he could have told you where the swamps were. Adrian Seykora, 2722 24th Avenue NE, he said his concern with moving the easement is the tile lines. They were guaranteed by the county and the city that the county tile lines would be maintained. You might hit that tile line if you're digging down a few feet. Those tile lines need to be maintained. Joyce Mattison said she likes the idea of someone

building on two lots. She asked if the green line is the existing or proposed easement. Kruschke said that it's the existing easement, they are proposing to rotate and flip that "L" on the Wetmore's parcel. Joyce Mattison said there will be a foot and a half to two foot ditch when it's done. Kruschke said it will ebb and flow depending on existing contours as to how much needs to be excavated. Based on this design plan, they will have to hit those elevations on the engineered design. That will have to happen whether or not the easement is vacated. Joyce Mattison said that the correction is going to put the ditch in now. Kruschke said that is correct. There are already corrections that have been made, including the house being constructed on the east side of Timber Ridge, that is being constructed right now. They had to make some modifications. It will definitely be a change compared to what is there now. For some reason this was never installed. Dennis Wille said as it comes to the road, it's up hill. He asked for an idea of the elevation of that. Kruschke said that they're cutting through those high points to put that in. He said he's not an engineer or a surveyor, but the engineer designed it to these spots. Al Maas, general contractor, said that he has a survey that they're using. If you look at the very NE corner of Lot 9, the elevation is 1198.89. The back of Lot 8 is 1197.39. He said he thinks the grading has to go a little bit beyond the next lot. All of these lots have a 10 foot drainage and utility easement. He said that they are working with the City to get this corrected. There needs to be an emergency overflow no matter what. They all have to work together to correct the problem. It was never graded to match the plan. He said that it needs to be corrected. It won't be a county road ditch – it's a swale. The idea is that the people will be protected from it. The only way to solve this is to make sure this emergency drainage swale is created. Joyce Mattison asked if they would lose their big oak trees. They're ten feet from the property line and they will have to dig into their lot and that would affect the roots. Al Maas said that they want to move the overflow to the north which will move it away from the trees and that would help the trees. Philomena Seykora, 2722 24th Ave NE, said they've owned that property since December of 1978. They have seen the whole field under water. She said that there have been things that weren't being shared honestly with people who were buying land. She said the developer will work to do this swale, and she said her concern is that they're not going to do it properly. Who's going to pay for the damages or guarantee that once the swale is in we won't get water. We need to take more time to make sure this is done properly and right before they do it. Public hearing closed at 6:14. Eickhoff said that he understands the concerns. He said he bought a house on a hill specifically, so he didn't have water damage, and he's still had water damage. He said the issue in front of them is just moving the easement on this one lot, not the whole development. He said that they want to keep it moving forward. There are concerns about the overall structure and he said gets that, but the issue at hand is just moving this slightly north on the lot. Karlene Just asked if there was any way to hold the developer accountable. Kruschke said that they're working with the developer and design engineers. They are working on doing it. They can't go grade it today. The timeline is this has to be completed before the Wettmores are able to occupy their house, but that is the trigger to get this done. In talking to the developer, they realize what was done. This will be a lot more difficult to do at this point than it would have been if it was done during street construction. We will check and verify and require as-built drawings. Karlene Just said that she tried called two engineers three years ago because she wanted a calc map of land elevation for Majestic Oaks before it was developed, and to this day, no engineers called her back. She said she came to City Hall and said she needed a calc map of the area. All the engineers were gone and a gentleman came out and said that it's a private development and they had no information about it. She said that she wasn't going to stand there and argue as there were other people there,

but she can't believe that she could buy property and do whatever she wanted—the City has no business telling me what I can and can't do? One of the excavators that works up there went to where they do the mapping of the elevations and they refused to give him a map because they were worried that they were going to be sued because of the swamp land up there. She asked if that's allowed to happen in Owatonna. Kruschke said that he can't answer why they sold you a lot with poor soils but that is a private issue with the developers. As far as maps and contours, Steele County has two foot contours available for the entire county and there are general grading plans for a lot of developments. A due diligence process typically takes soil borings or tests beforehand. There are certainly a lot of private issues with the developer that the City does not get involved in. He recommended contacting the developer and her attorney on those issues. Karlene Just said that the City wouldn't give out the proper map to one of the excavators last fall. She said that it's kind of scary when the City isn't giving out the proper map. Kruschke said that the Wetmore's request is to vacate this drainage easement that goes through the proposed house area.

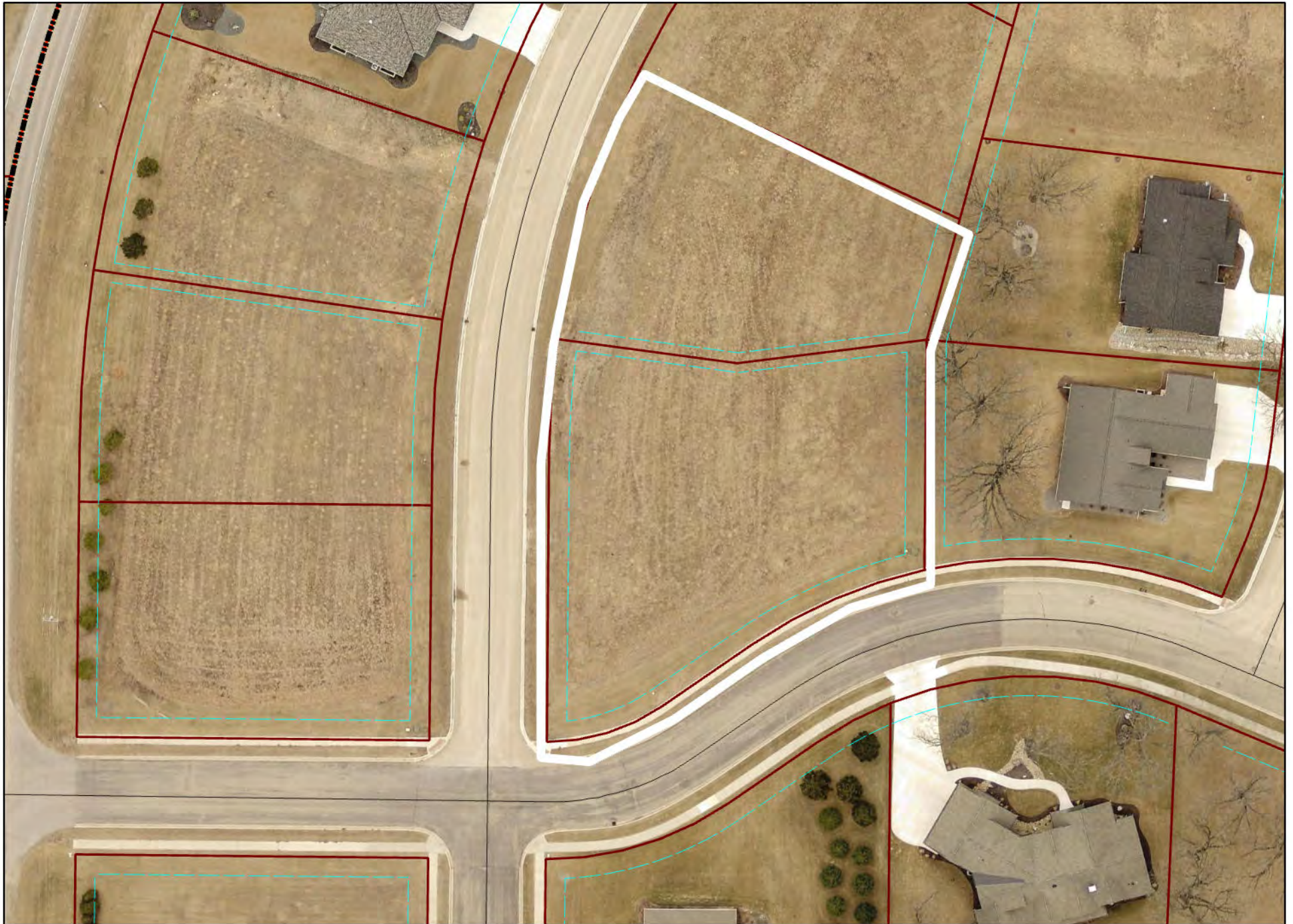
A motion was made by Eickhoff to recommend City Council approval of this request to vacate a drainage and utility easement with the following conditions:

- 1) The easement be dedicated over the proposed drainageway prior to permit being issued for the construction of the house.
- 2) The drainageway shall be fully constructed prior to a Certificate of Occupancy being issued on the house.
- 3) All conditions in the City Engineer's letter dated March 14, 2023 be met.

Effertz asked if they've been in conversation with the developer – just verbal agreements. Kruschke said that this is part of the conditions that the drainageway be fully constructed before the issuing of a Certificate of Occupancy. Generally speaking that happens when the street is constructed and that's when it should have happened. Al Maas questioned the condition that the drainageway has to be constructed prior to a Certificate of Occupancy being issued. He said he wants to make sure they're not holding the Wetmores responsible for this. He said he agrees that the developer needs to step up and fix their problem and he believes that the City needs to have an agreement with the developer that doesn't hold his clients captive. They need to be held accountable separately from this request. He said that he's asking to move the easement, which will be making it better. He said that he would hold the developer accountable and not hold the Wetmores hostage. Kruschke said that unfortunately the trigger is the vacation of the easement. The only other way to do that is to delay this request until that whole drainageway is constructed. In talking with the applicants earlier, that wasn't really an option. Unfortunately, it's putting the Wetmores at risk. If that's not acceptable, he would recommend tabling this request until we get this emergency overflow constructed as designed. Jeff Wetmore said they can't build a house there and then not be able to move into it. He asked what they can do if the developer doesn't do this. Kruschke said unfortunately that is the risk. The other option is we don't vacate the easement. Jeff Wetmore clarified that if the developer doesn't do this, they can't move into the house. Kruschke said that is the condition for the vacation. It's the trigger we have right now. We have pressure to apply to the developer. We met with them last week and they said they're going to do it all. They went and contracted the design. Christina Wetmore said shouldn't this be up to the City and shouldn't it be in writing, a contract, to make them accountable. Someone asked if it

could be vacated and the developer not required to do the ditch work. Kruschke said that they will not vacate it without a plan in place because the plan in place is the emergency overflow. Those are the conditions that the City is proposing. Without condition #2 in place, the City will recommend denying or tabling this action. The motion was seconded by Wilson.

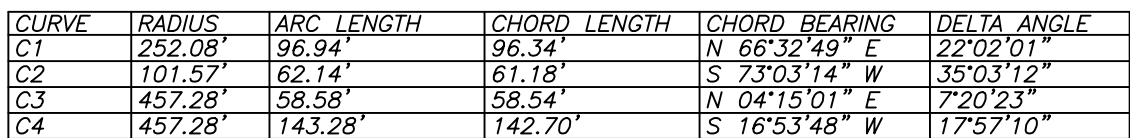
Commissioners voting Aye: Eickhoff, Rooks, and Wilson. Commissioners voting Nay: Effertz. 3-1, the motion carried.



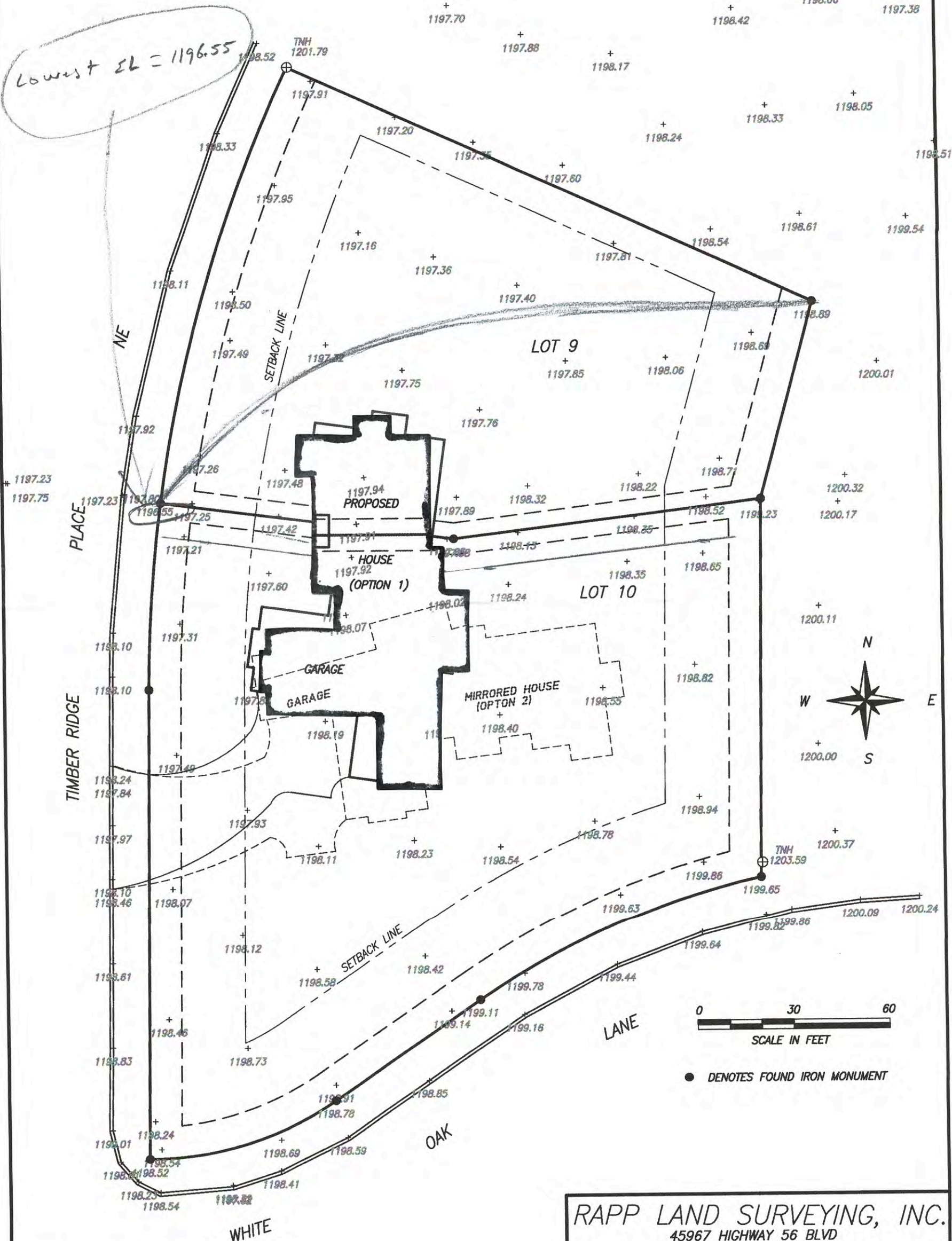
VACA 23-1 Wetmore Easement Vacation
2807 Timber Ridge Drive NE

1:785

Date: 2/27/2023
Page 91 of 189



TOPO AND CONCEPT PLAN FOR:
AL MAAS



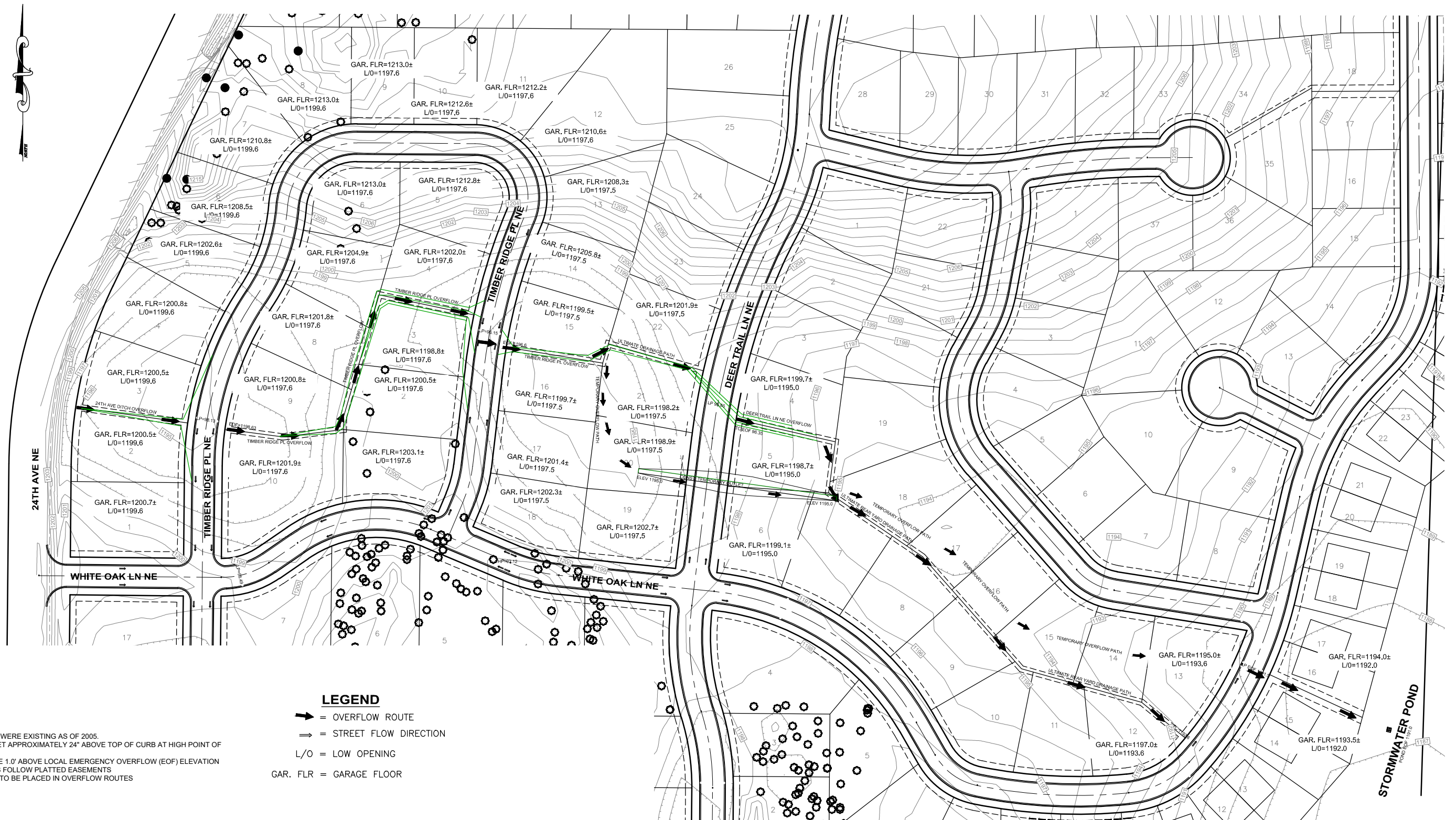
I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of Minnesota.

FEBRUARY 27, 2023
Dated:

David G. Rapp
David G. Rapp
Minnesota Registration No. 22044

RAPP LAND SURVEYING, INC.
45967 HIGHWAY 56 BLVD
KENYON, MN 55946
612-532-1263

DRAWN BY: DGR	DATE: 2-27-23	PROJECT NO. D22294
SCALE: 1"=30'	SHEET 1 of 1 sheet	BOOK/PAGE BK: 57/35



NOTES:

1. CONTOURS SHOWN WERE EXISTING AS OF 2005.
2. GARAGE FLOORS SET APPROXIMATELY 24" ABOVE TOP OF CURB AT HIGH POINT OF ADJACENT STREET
3. L/O ELEVATIONS ARE 1.0' ABOVE LOCAL EMERGENCY OVERFLOW (EOF) ELEVATION
4. OVERFLOW ROUTES FOLLOW PLATTED EASEMENTS
5. NO OBSTRUCTIONS TO BE PLACED IN OVERFLOW ROUTES

LEGEND

- ➔ = OVERFLOW ROUTE
➡ = STREET FLOW DIRECTION
L/O = LOW OPENING
GAR. FLR = GARAGE FLOOR



REV.	BY	DATE



**JONES
HAUGH
SMITH**
Engineers + Surveyors
415 West North Street Owatonna, MN 56045-4598

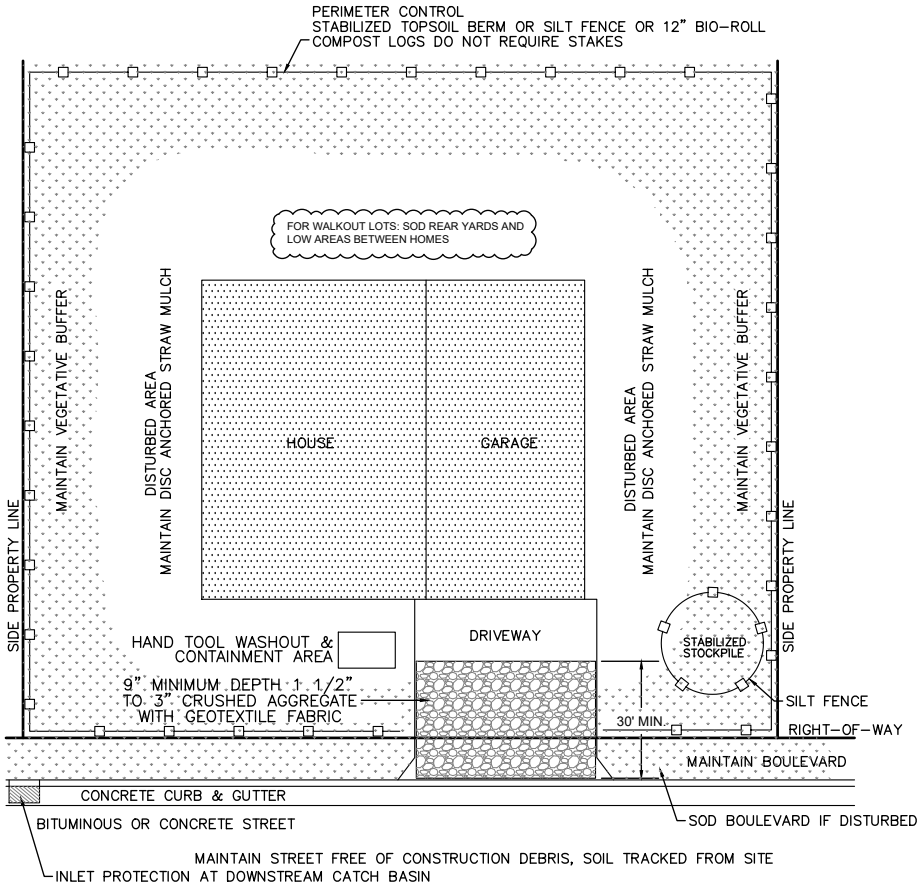
DESIGNED: JHS
DRAWN: JHS
CHECKED: BJ
Date: MARCH 2016
DWG: 16-1029

I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer under the laws of the State of Minnesota.

John H. Schulte V
License No. 44639 Date:

MAJESTIC OAKS
REO DEVELOPMENT
SURFACE OVER FLOW ROUTES & DRAINAGE PLAN
TIMBER RIDGE PL NE

SHEET
1 OF 1



TYPICAL HOMEBUILDING SWPPP

SWPPP NOTES:

1. NO CONCRETE WASHOUT ON-SITE.
2. PERFORM DEWATERING ACTIVITIES INTO TEMPORARY DEWATERING BASIN. DO NOT DEWATER INTO SANITARY SEWER SERVICE OR INTO CURB & GUTTER.
3. STABILIZE LAWN AREA IMMEDIATELY AFTER MASS GRADING ACTIVITIES ARE COMPLETE WITH SOD OR DISC ANCHORED MIN/DOT TYPE 1 MULCH. (THIS WORK WILL NEED TO BE COMPLETED BEFORE THE MAIN STRUCTURE IS ERECTED.) SOD OR SEED BUFFER AREAS AS SOON AS CONSTRUCTION ACTIVITIES ALLOW. DURING WINTER CONSTRUCTION, SPREAD MULCH AND SPRAY WITH WATER TO FREEZE TO GROUND. SEED AND DISC ANCHOR NEW MULCH IN SPRING, OR SOD.
4. DO NOT STOCKPILE GRANULAR MATERIALS WITHIN STREET RIGHT-OF-WAY.
5. PROTECT DOWNSTREAM STREET CATCH BASINS FROM SEDIMENT.
6. A HAZARDOUS MATERIALS SPILL KIT MUST ALWAYS BE AVAILABLE ON SITE.

GENERAL NOTES:

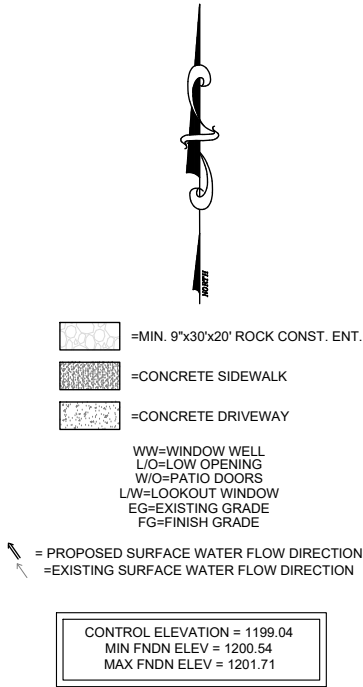
7. PROTECTION OF WOOD AND WOOD-BASED PRODUCTS FROM DECAY SHALL BE PROVIDED BY THE USE OF NATURALLY DURABLE WOOD OR WOOD THAT IS PRESERVATIVE-TREATED IN ACCORDANCE WITH AWPA U1 AT WOOD SIDING, SHEATHING AND WALL FRAMING ON THE EXTERIOR OF A BUILDING HAVING A CLEARANCE OF LESS THAN 6 INCHES (152 MM) FROM THE GROUND OR LESS THAN 2 INCHES (51 MM) MEASURED VERTICALLY FROM CONCRETE STEPS, PORCH SLABS, PATIO SLABS AND SIMILAR HORIZONTAL SURFACES EXPOSED TO THE WEATHER.
8. FINISH GRADE ADJACENT TO BUILDING IS MIN. 6" BELOW TOP OF FOUNDATION, EXCEPT AT PAVED AREAS. PAVED AREAS WITHIN 6' OF TOP OF FOUNDATION MUST BE SLOPED AT 2% AWAY FROM BUILDING.
9. FINISH GRADE 10' FROM BUILDING IS MIN. 6" BELOW FINISH GRADE ADJACENT TO BUILDING.
10. MIN. GARAGE FLOOR ELEVATION IS AS SHOWN.
11. LOT LINES OR BIO-ROLL LINES ARE CONSTRUCTION LIMITS U.O.N. PLEASE NOTE THE CONSTRUCTION LIMITS ON THIS PLAN. IF ADJACENT LAND IS UTILIZED FOR ACCESS OR STAGING OF EQUIPMENT/MATERIAL, PROVIDE TEMPORARY CONSTRUCTION BMP'S INCLUDING PERIMETER CONTROL, A STABILIZED ENTRANCE/EXIT, AND PERMANENT STABILIZATION OF DISTURBANCES.

GENERAL SITE NOTES:

SITE AREA: 50183 SF
DISTURBED AREA: 31982 SF
EXISTING IMPERVIOUS SURFACE: 0 SF
PROPOSED IMPERVIOUS SURFACE: 8540 SF

SCHEDULE OF OF MAJOR ESC BMP'S
(to be completed by Contractor)

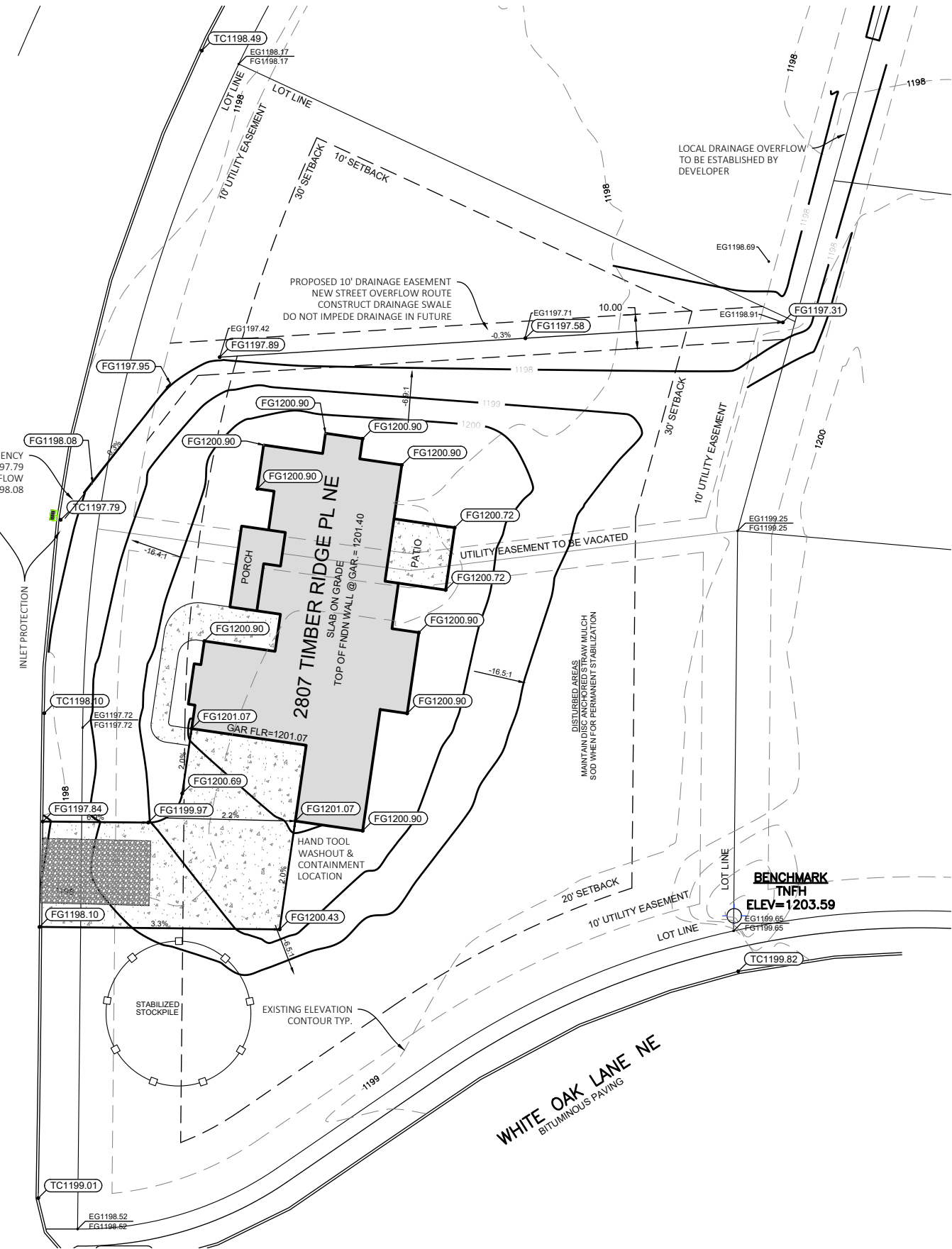
Item	Anticipated Date
PERIMETER SILT FENCE/BIO-ROLL & INLET PROTECTION	
TOPSOIL STRIPPING	
ROCK CONSTRUCTION ENTRANCE	
BUILDING "DRIED-IN"	
PERMANENT TURF ESTABLISHMENT	
REMOVAL OF TEMP. ESC BMP'S	



TIMBER RIDGE PL NE

BITUMINOUS PAVING

MAINTAIN STREET FREE OF CONSTRUCTION DEBRIS. SOIL TRACKED FROM SITE



DRAWINGS ON 11x17 SHEETS ARE HALF SCALE

REV.	BY	DATE
-	-	-

JONES HAUGH SMITH
Engineers + Surveyors
415 West North Street Owatonna, MN 56057-4514-598

DESIGNED: JHS
DRAWN: JHS
CHECKED: SAT
Date: 3/13/23
DWG: 23-1046

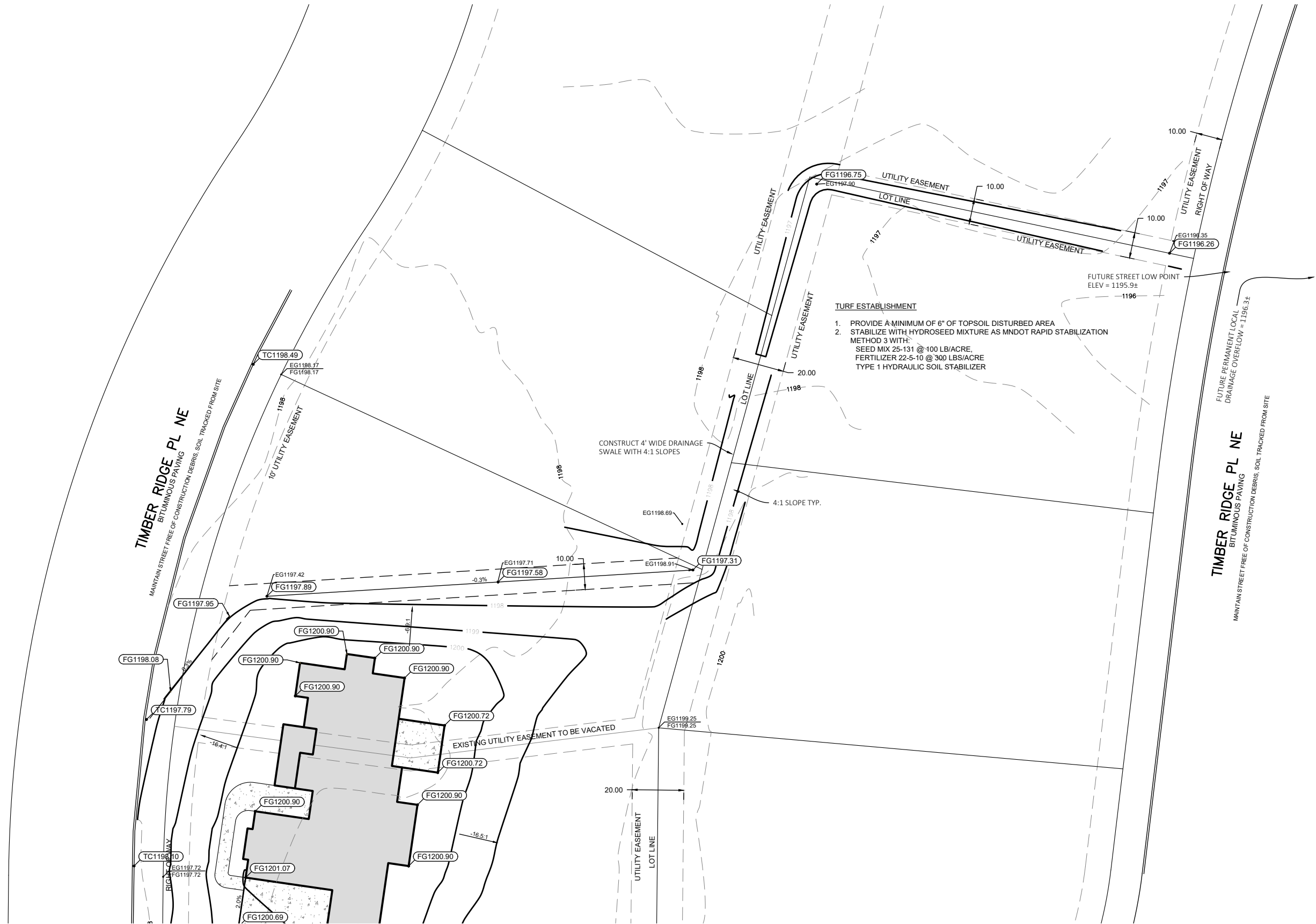
I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer under the laws of the State of Minnesota.

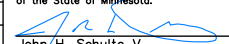
John H. Schulte V
License No. 44639 Date: 3/13/23

2807 TIMBER RIDGE PL NE WHETMORE RESIDENCE LOTS 9 & 10 BLOCK 2 MAJESTIC OAKS SITE PLAN	SHEET 1 OF 1
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LEGEND
EG=EXISTING GRADE
FG=FINISH GRADE



200 0 200 HORIZ. SCALE FEET DRAWINGS ON 11x17 SHEETS ARE HALF SCALE	<table border="1"> <tr> <th>REV.</th> <th>BY</th> <th>DATE</th> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </table>	REV.	BY	DATE										 JONES HAUGH SMITH Engineers + Surveyors 415 West North Street Owatonna, MN 56057-4514-598	<table border="1"> <tr> <td>DESIGNED: JHS</td> </tr> <tr> <td>DRAWN: JHS</td> </tr> <tr> <td>CHECKED: SAT</td> </tr> <tr> <td>Date: 3/13/23</td> </tr> <tr> <td>DWG: 23-1046</td> </tr> </table>	DESIGNED: JHS	DRAWN: JHS	CHECKED: SAT	Date: 3/13/23	DWG: 23-1046	I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer under the laws of the State of Minnesota.  John H. Schulte V License No. 44639 Date: 3/13/23	TIMBER RIDGE DRIVE NE BLOCK 2 STREET OVERFLOW GRADING BLOCK 2 MAJESTIC OAKS SITE PLAN	SHEET 1 OF 1
		REV.	BY	DATE																			
DESIGNED: JHS																							
DRAWN: JHS																							
CHECKED: SAT																							
Date: 3/13/23																							
DWG: 23-1046																							



Engineering Department

Date: 03/14/2023

Project: 2807 Timber Ridge Drive NE

Vacation Application #: VACA-23-1

Staff Review Comments:

Engineering

1. Provide spot elevations at the existing low point in the street, flowline at the catch basin and top back of curb along Timber Ridge PI NE at the downstream end of the drainage way.
2. Verify the emergency overflow swale can accommodate potential future sidewalk.
3. A grading permit will be required to perform the modifications to the overflow swale.
4. Obtain necessary permission to enter and grade on private parcels.
5. Vacation of existing easement is conditioned on publicly dedicating the easement as shown on plan.
6. Obstructions or future modifications to the overflow swale is explicitly prohibited. Easement language shall address this requirement.

Please resubmit any revised or updated documentation along with a response to all comments above. Should you have any questions, please call 507.444.4350.

Thank You

Sean Murphy, PE
Director of Public Works and City Engineer



Resolutions

RESOLUTION NO. 25-23
RESOLUTION APPROVING THE TERMS OF UP TO
\$500,000 INTERFUND LOANS IN CONNECTION WITH
TAX INCREMENT FINANCING DISTRICT NO. 19-1

BE IT RESOLVED by the City Council (the “Council”) of the City of Owatonna, Minnesota (the “City”), as follows:

Section 1. Background.

(a) The City has heretofore approved the establishment of a tax increment financing district for Tax Increment Financing District No. 19-1 (the “TIF District”), and has adopted a tax increment financing plan for the TIF District, (the “TIF Plan”).

(b) The City has determined to pay for certain costs identified in the TIF Plan consisting of redevelopment project costs including, but not limited to, property acquisition, site improvements, utilities, other public improvements and administration (the “Qualified Costs”) incurred in connection with the establishment of the TIF District, which costs may be financed on a temporary basis from City funds available for such purposes.

(c) Under Minnesota Statutes, Section 469.178, Subd. 7, the City is authorized to advance or loan money from the City's general fund or any other fund from which such advances may be legally made, in order to finance the Qualified Costs.

(d) The City intends to reimburse itself for the payment of the Qualified Costs, plus interest thereon, from tax increments derived from the TIF District in accordance with the terms of this resolution (which terms are referred to collectively as the “Interfund Loans”).

Section 2. Terms of Interfund Loans.

(a) The City hereby authorizes the advance of up to \$500,000 to Tax Increment Financing District No. 19-1 from the Economic Development Funds, City's General Fund or such other fund designated by the City or so much thereof as may be paid as Qualified Costs. The City shall reimburse itself for such advances together with interest at the rate stated below. Interest accrues on the principal amount from the date of each advance. The maximum rate of interest permitted to be charged is limited to the greater of the rates specified under Minnesota Statutes, Section 270C.40 or Section 549.09 as of the date the loan or advance is authorized, unless the written agreement states that the maximum interest rate will fluctuate as the interest rates specified under Minnesota Statutes, Section 270C.40 or Section 549.09 are from time to time adjusted. The interest rate on the TIF District shall be 5.00% and will not fluctuate.

(b) Principal and interest on the Interfund Loans shall be paid semi-annually on each February 1 and August 1 (each a “Payment Date”) commencing with the Payment Date on which the City has Available Tax Increment (defined below), or on any other dates determined by the City, through the last receipt of tax increment from the TIF District.

(c) Payments on the Interfund Loans are payable solely from “Available Tax Increments” which shall mean, on each Payment Date, all of the tax increment available before other obligations have been paid, generated in the preceding six (6) months with respect to the property within the TIF District and remitted to the City by Steele County, all in accordance with Minnesota Statutes, Sections 469.174 to 469.179. Payments on the Interfund Loans are unsubordinated to any outstanding or future bonds, notes or contracts secured in whole or in part with Available Tax Increments, and are senior to any other outstanding or future interfund loans secured in whole or in part with Available Tax Increments.

(d) The principal sum and all accrued interest payable under the Interfund Loans are pre-payable in whole or in part at any time by the City without premium or penalty. No partial prepayment shall affect the amount or timing of any other regular payment otherwise required to be made under these Interfund Loans.

(e) The Interfund Loans are evidence of an internal borrowing by the City in accordance with Minnesota Statutes, Section 469.178, Subd. 7, and are limited obligations payable solely from Available Tax Increments pledged to the payment hereof under this resolution. The Interfund Loans and the interest hereon shall not be deemed to constitute general obligations of the State of Minnesota or any political subdivision thereof, including, without limitation, the City. Neither the State of Minnesota, nor any political subdivision thereof shall be obligated to pay the principal of or interest on the Interfund Loans or other costs incident hereto except out of Available Tax Increments, and neither the full faith and credit nor the taxing power of the State of Minnesota or any political subdivision thereof is pledged to the payment of the principal of or interest on the Interfund Loans or other costs incident hereto. The City shall have no obligation to pay any principal amount of the Interfund Loans or accrued interest thereon, which may remain unpaid after the final Payment Dates.

(f) The City may amend the terms of the Interfund Loans at any time by resolution of the City Council, including a determination to forgive the outstanding principal amount and accrued interest to the extent permissible under law.

Section 3. Effective Date. This resolution is effective upon the date of its approval.

Adopted this 21st day of March 2023.

Thomas A Knutz, Mayor

ATTEST:

Kris M. Busse, City Administrator

The motion for the adoption of the foregoing resolution was made by Councilmember _____
and duly seconded by Councilmember _____. Upon a vote being taken the following
members voted in favor thereof: _____
_____.

Those against same: _____
_____.



Community Development Department

DATE: March 21, 2023
TO: Mayor and City Council
FROM: Troy Klecker, Community Development Director
SUBJECT: Res 26-23 Development Agreement - Block 300 Owatonna LLC

Purpose:

Request Council approval of Resolution 26-23 to approve the Development Agreement with Block 300 Owatonna, LLC.

Background:

Redline Development is proposing to redevelop property along the Straight River north of West Vine Street and west of North Oak Avenue. The proposed project includes the expansion of Mineral Springs Brewery, 20,000 square feet of commercial space, a new bank building and 69 luxury apartments. Tax Increment Financing is being requested to assist with the costs of the project including reimbursing the City for property that is being contributed to the project. This would be a redevelopment TIF district which can last up to a maximum of 25 years. The total TIF amount is \$7,065,451 for this project with a present day value of \$3,267,514. The development agreement spells out the distribution of TIF funds and the responsibility of both the developer and the City.

Budget Impact:

The City will be reimbursed \$500,000 through tax increment financing for property the City is contributing to the redevelopment project.

Staff Recommendation:

Staff recommends approval of this development agreement with Block 300 Owatonna LLC.

Attachments:

1. Res 26-23 Dev Agreement - Block 300 Owatonna LLC
2. Dev Ageemet t-Block 300 Owaotnna LLC

RESOLUTION NO. 26-23

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OWATONNA
APPROVING A DEVELOPMENT AGREEMENT
WITH BLOCK 300 OWATONNA, LLC

BE IT RESOLVED by the City Council of the City of Owatonna, Minnesota (herein called the "City") as follows:

That the City hereby approves a Development Agreement to be entered into with Block 300 Owatonna, LLC and authorizes the Mayor and City Administrator to execute the Development Agreement on behalf of the City.

Passed and adopted this ____ day of _____, 2023, with the following vote:

Aye ____; No ____; Absent ____.

Approved and signed this ____ day of _____, 2023.

Thomas A. Kuntz, Mayor

ATTEST:

Kris M. Busse, City Administrator/City Clerk

DEVELOPMENT AGREEMENT

BY AND BETWEEN

OWATONNA, MINNESOTA,

AND

BLOCK 300 OWATONNA LLC

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DEVELOPMENT AGREEMENT

THIS AGREEMENT, made as of the _____ day of _____ 2023, by and between the city of Owatonna, Minnesota (the "City"), a municipal corporation organized and existing under and by virtue of and pursuant to the laws of the State of Minnesota and Block 300 Owatonna LLC, a limited liability company (the "Developer"),

WITNESSETH:

WHEREAS, pursuant to Minnesota statutes, sections 469.124 through 469.133, the City has established Development District No. 19 on January 17, 2023 (the "Development District") and has adopted a development program therefor (the "Development Program"); and

WHEREAS, pursuant to the provisions of Minnesota statutes, sections 469.174 through 469.1794, as amended, (the "Tax Increment Act"), the City has created Tax Increment Financing District No. 19-1 on January 17, 2023 (the "Tax Increment District"), and has adopted a tax increment financing plan therefor (the "Tax Increment Financing Plan") which provides for the use of tax increment financing in connection with development within the Development District; and

WHEREAS, the acquisition of the Development Property and construction of the Site Improvements (as defined herein) are objectives of the Development Program and Tax Increment Financing Plan; and

WHEREAS, in order to achieve the objectives of the Development Program and Tax Increment Financing Plan and particularly to make the land in the Development District available for development by private enterprise in conformance with the Development Program, the City has determined to provide substantial aid and assistance in connection with the Development Program through the tax increment financing of the acquisition of the Development Property and construction of the Site Improvements within the Development District; and

WHEREAS, a major objective of the Development Program and Tax Increment Financing Plan is to stimulate growth in the Development District into a viable commercial and residential area by the redevelopment of certain property; and

WHEREAS, the City has requested that Steele County certify the current net tax capacity of the Tax Increment District pursuant to section 469.177, subdivision 1 of the Tax Increment Act; and

WHEREAS, the City has adopted criteria for awarding business subsidies that comply with the Business Subsidy Law, Minnesota Statutes, section 116J.993 through 116J.995, after a public hearing for which notice was published; and

WHEREAS, the City believes that the development of a certain Project (as defined herein) and the construction of the Project, and fulfillment of this Agreement are vital and are in the best interests of the City and the health, safety, morals and welfare of residents of the City and in accordance with the public purpose

and provisions of the applicable state and local laws and requirements under which the Project has been undertaken and is being assisted.

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

ARTICLE I DEFINITIONS

Section 1.1. Definitions. All capitalized terms used and not otherwise defined herein shall have the following meanings unless a different meaning clearly appears from the context:

Acquisition means the cost to acquire the property, including any related relocation costs;

Agreement means this Agreement, as the same may be from time to time modified, amended or supplemented;

Available Tax Increment means the increments received from the Development Property, less City Interfund Loan payments, less City administrative costs, and not to exceed \$226,790.00 annually until the City Interfund Loan is paid in full. Once the City Interfund Loan is paid in full, available increment shall mean 97.5% of the increment from the Development Property until the Note is fully amortized or the Tax Increment District is terminated.

Business Day means any day except a Saturday, Sunday or a legal holiday or a day on which banking institutions in the City are authorized by law or executive order to close;

Certificate of Completion means the certification in the form of the certificate attached hereto as Exhibit E and hereby made a part of this Agreement, provided to the pursuant to Section 3.1 of this Agreement;

City means the City of Owatonna, Minnesota;

County means Steele County, Minnesota;

Developer means Block 300 Owatonna LLC, a limited liability company, their successors and assigns;

Development District means the real property located within Owatonna Development District No. 19;

Development Program means the development program approved for the Development District;

Development Property means the development property described in Exhibit A of this Agreement.

Event of Default means any of the events described in Section 4.1;

Interfund Loan means the Interfund Loan authorized pursuant to City Council Resolution No. ____-23 adopted March 21, 2023, a copy of which is attached hereto as Exhibit C;

Note Payment Dates means Note Payment Dates as set forth in Exhibit B of this Agreement; provided, that if any such Note Payment Date should not be a Business Day, the Note Payment Date shall be the next succeeding Business Day;

Project means the redevelopment of the Development Property by the Developer as a mixed-use building containing approximately 29,194-ft.² of commercial space and 69 apartment units with 62 underground parking spaces, and construction of a 7,000-ft.² commercial building;

Site Improvements means redevelopment activities as described and limited in Minnesota statutes, section 469.176, subdivision 4j., that include but are not limited to building demolition, soil correction, street improvements, site preparation and engineering, design and project management costs related thereto;

State means the State of Minnesota;

Tax Increment means the Tax Increment derived from the Tax Increment District created in accordance with the provisions of Minnesota statutes, section 469.177;

Tax Increment Act means the Tax Increment Financing Act, Minnesota statutes, sections 469.174 through 469.1794, as amended;

Tax Increment District means Tax Increment Financing District No. 19-1, as adopted by the City on January 17, 2023 and qualified as a redevelopment district under the Tax Increment Act;

Tax Increment Financing Plan means the plan approved by City resolution on January 17, 2023, for the Tax Increment District;

Tax Increment Note or **Note** means the Tax Increment Revenue Note of 2023 (Block 300 Owatonna LLC) to be executed by the City and delivered to the Developer pursuant to Article III hereof, a copy of which is attached hereto as Exhibit B;

Unavoidable Delays means delays, outside the control of the party claiming its occurrence, which are the direct result of strikes, other labor troubles, unusually severe or prolonged bad weather, acts of God, fire or other casualty to the Project, litigation commenced by third parties which, by injunction or other similar judicial action or by the exercise of reasonable discretion, directly results in delays, or acts of any federal, state or local governmental unit which directly result in delays.

ARTICLE II REPRESENTATIONS AND WARRANTIES

Section 2.1. Representations and Warranties of the City. The City makes the following representations and warranties:

(1) The City is a municipal corporation and has the power to enter into this Agreement and carry out its obligations hereunder.

(2) The Tax Increment District is a "redevelopment district" within the meaning of Minnesota statutes, section 469.174, subdivision 10(a)(1), and was created, adopted and approved in accordance with the terms of the Tax Increment Act.

(3) The Project contemplated by this Agreement is in conformance with the development objectives set forth in the Development Program.

(4) The City shall (i) reimburse itself for the cost of the Development Property from the Interfund Loan, which is to be repaid by Tax Increment as further provided in Section 3.5 and (ii) reimburse the Developer for the Acquisition and Site Improvements from the Tax Increment as further provided in Section 3.3.

(5) The City has not received any notice from any local, state or federal official that the activities of the Developer or the City with respect to the Project may or will be in violation of any environmental law or regulation (other than those notices, if any, of which the Developer has been notified). The City is not aware of any state or federal claim filed and, without any investigation or review, the City is not aware of any state or federal claim planned to be filed by any party relating to any violation of any local, state or federal environmental law, regulation or review procedure, and, without any investigation or review, the City is not aware of any violation of any local, state or federal law, regulation or review procedure which would give any person a valid claim under the Minnesota Environmental Rights Act or other state or federal environmental statute.

(6) Except as expressly set forth in this Agreement, the City makes no representation or warranty, either express or implied, as to the Development Property or its condition or the soil conditions thereon, or that the Development Property shall be suitable for the Developer's purposes or needs.

(7) The City has made the findings required by Minnesota statutes, section 469.175, Subdivision 3, of the Tax Increment Financing Act for the Tax Increment District, and has set forth in writing the reasons and supporting facts for each determination.

Section 2.2. Representations and Warranties of the Developer. The Developer makes the following representations and warranties:

(1) The Developer has power to enter into this Agreement and to perform the obligations hereunder and is not in violation of the laws of the State.

(2) The Developer has full power and authority to enter into this Agreement and carry out the covenants contained herein.

(3) The Developer will cause the Project to be constructed in accordance with the terms of this Agreement, the Development Program and all local, state and federal laws and regulations (including, but not limited to, environmental, zoning, energy conservation, building code and public health laws and regulations).

(4) The Developer will obtain or cause to be obtained, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, state, and federal laws and regulations which must be obtained or met before the Project may be lawfully constructed.

(5) The Developer has not received any notice or communication from any local, state or federal official that the activities of the Developer or the City with respect to the Project may or will be in violation of any environmental law or regulation.

(6) The construction of the Project would not be undertaken by the Developer, and in the opinion of the Developer would not be economically feasible within the reasonably foreseeable future, without the assistance and benefit to the Developer provided for in this Agreement.

(7) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of, the terms, conditions or provision of any contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which the Developer is now a party or by which they are bound, or constitutes a default under any of the foregoing.

(8) The Developer will cooperate fully with the City with respect to any litigation commenced with respect to the Project.

(9) The Developer agree to pay the total amount of any costs, charges, expenses and attorneys' fees reasonably incurred or paid at any time by City because of any Event of Default by the Developer as to any stipulation, agreement, and covenant of this Agreement, resulting in any suit or proceeding at law or in equity to which the City shall become a party in reference to the Developer's interest in the Development Property or the Project.

(10) The Developer will cooperate fully with the City in resolution of any traffic, parking, trash removal or public safety problems, which may arise in connection with the construction and operation of the Project.

(11) The Developer expects that, barring Unavoidable Delays, the construction of the Project will begin on or before May 1, 2023, and will be substantially completed by January 31, 2025.

ARTICLE III UNDERTAKINGS BY DEVELOPER AND CITY

Section 3.1. Basis for Assistance. The Developer's proposal, for development of the Project, will enhance the City's tax base. The Developer has represented that without City assistance they would not proceed with the construction of the Project. Therefore, the City believes that it is in its best interest to enter into this Agreement, and to assist the Developer in the development efforts. Upon completion of the Project

contemplated by this Development Agreement, the City shall deliver to the Developer a Certificate of Completion in substantially the form as attached as Exhibit E.

Section 3.2. Property Acquisition and Site Improvements by Developer. The parties agree that the Developer's Acquisition of the Development Property and the completion of the Site Improvements on the Development Property are essential to the successful completion of the Project. The Developer has agreed to purchase the Development Property for \$1,335,000 and pay up to \$250,000 in relocation costs (the "Purchase Price"). The Purchase Price shall be reimbursed over a maximum period of 26 years from the Tax Increment as further set forth in Section 3.4. The Developer has agreed to complete improvements to Vine Street and other site improvements including demolition, infrastructure, and soil remediation. The Developer agrees to complete the Vine Street improvements to a standard that meets City of Owatonna public street specifications. The Developer is also responsible for replatting the Development Property. The City will reimburse the Developer up to \$1,182,514 of the cost of the Site Improvements, including the street improvements, actually incurred and paid by the Developer as further provided in Section 3.3.

Section 3.3. Reimbursement: Tax Increment Revenue Note. The City shall reimburse for the Acquisition and Site Improvements through the issuance of the City's Tax Increment Note in substantially the form attached to this Agreement as Exhibit B subject to the following conditions:

(1) The Note shall be dated, issued and delivered when the Developer shall have demonstrated in writing to the reasonable satisfaction of the City that the construction of the Project has been completed, that the Developer has incurred and paid the cost of the Acquisition and Site Improvements, as described in and limited by Section 3.2, and that Developer has otherwise complied with all City requirements for the Project and the terms and conditions of this Agreement.

(2) The City shall enter each cost on the Ledger attached to the Note. The Note shall have as its maximum stated amount \$2,767,514 or the sum of the costs entered on the Ledger.

(3) The unpaid principal amount of the Note shall bear interest from the date of this Note at the simple non-compounded rate of five and one-half percent (5.5%) per annum. Interest shall be computed on the basis of a 360 day year consisting of twelve (12) 30-day months.

(4) The amount of the Note payable by the City to Developer shall be solely pursuant to the formula set forth in the Note, and shall be payable solely from the Available Tax Increment, as defined in this Agreement and the Note.

(5) The payment dates of the Note shall be the Note Payment Dates. On each Note Payment Date and subject to the provisions of the Note, the City shall pay to the Developer Available Tax Increment received by the City during the preceding 6 months subject to the limitations of Section 3.4.

(6) The Note shall be a special and limited obligation of the City and not a general obligation of the City and only Available Tax Increments shall be used to pay on the Note. The payment amounts due thereon shall be payable solely from Available Tax Increments from the Development Property which are paid to the City and which the City is entitled to retain pursuant to the Tax Increment Act.

(7) The City's obligation to make payments on the Note on any Note Payment Date or any date thereafter shall be conditioned upon the requirement that (i) there shall not at that time be an Event of Default that has occurred and is continuing under this Agreement, (ii) this Agreement shall not have been rescinded pursuant to Section 4.2(2) and (iii) the Developer has paid the property taxes and the City has received from the County the Tax Increment generated by the Project.

(8) The Note shall be governed by and payable pursuant to the additional terms thereof, as set forth in Exhibit B. In the event of any conflict between the terms of the Note and the terms of this Section 3.3, the terms of the Note shall govern. The issuance of the Note pursuant and subject to the terms of this Agreement, and the taking by the City of such additional actions as counsel for the Note may require in connection therewith, are hereby authorized and approved by the City.

Section 3.4. Limitations on Site Improvements. The City shall retain Tax Increment in an amount sufficient to pay the semiannual debt service on the \$500,000 Interfund Loan and the administrative expenses of the District. Available Tax Increment shall be paid by the City to the Developer as reimbursement of the Acquisition and Site Improvements semiannually on July 15, 2025, and on December 15, 2025 and on each July 15 and December 15 thereafter to and including December 15, 2050. Notwithstanding the foregoing, in the event that in any year the annual Tax Increment is less than what is necessary to pay the debt service on the Interfund Loan, but in subsequent years are greater than the annual debt service on the Interfund Loan, the annual Tax Increment shall first be used to reimburse the City for the amount that the annual Tax Increment is less than the annual debt service on the Interfund Loan and second paid to the Developer.

Section 3.5. Interfund Loan. As consideration for the execution of this Agreement and to assist in the redevelopment of the Development Property, the City shall convey the City-owned portion of the Development Property to the Developer as further provided in this Agreement and the Real Property Purchase Agreement. The City will finance the Purchase Price through an Interfund Loan authorized, pursuant to Resolution No. ____ - 23 adopted March 21, 2023. The Interfund Loan shall be governed by and payable pursuant to the additional terms thereof, as set forth in Exhibit C. In the event of any conflict between the terms of the Interfund Loan and the terms of this Section 3.5, the terms of the Interfund Loan shall govern. The issuance of the Interfund Loan pursuant and subject to the terms of this Agreement, and the taking by the City of such additional actions as counsel for the Interfund Loan may require in connection therewith, are hereby authorized and approved by the City.

(1) The origination date of the Interfund Loan shall be the date the City transfers funds to Tax Increment Financing District No. 19-1 for financing the cost of the Development Property.

Section 3.6. Conveyance of Development Property. The Developer and the City have entered into the Real Property Purchase Agreement attached hereto as Exhibit D to provide the Developer with the right to purchase from the City that certain public property legally described therein. The Purchase Price of the Development Property is \$ _____ subject to the following conditions:

(1) Upon execution of this Agreement and conveyance of the City-owned portion of the Development Property to the Developer, the City shall be reimbursed for the \$500,000 Purchase Price of the City-owned portion of the Development Property subject to the provisions of Section 3.4.

(2) The origination date of the Purchase Price is the date when the ownership of the City-owned portion of the Development Property is transferred to the Developer.

(3) The unpaid principal amount of the Purchase Price shall bear simple, non-compounding interest from origination date of the balance of Purchase Price, at 5% per annum. Interest shall be computed on the basis of a 360-day year consisting of twelve (12) 30-day months. All such payments shall be applied first to accrued interest and then to reduce the principal of the balance of Purchase Price.

Section 3.7. Duration of Tax Increment District. The Tax Increment District shall exist no longer than through the collection, by the City, of the 2050 second half Tax Increment. The City may choose to decertify the Tax Increment District at an earlier date if the obligations of this Agreement have been met or an Event of Default causes the City to rescind or cancel this Agreement.

Section 3.8 Change in Use of Project. The Developer agrees that for themselves, and their successors and assigns, they shall devote the Development Property to, and in accordance with, the uses specified in this Agreement. The Developer warrants the continued use of the Development Property as a mixed-use, commercial and residential development. The conversion of any portion of the Project to any other use shall result in the termination of the use of the Tax Increment, unless the City first approves said change in use.

Section 3.9. Prohibition against Transfer of Property and Assignment of Agreement. The Developer represents and agrees that prior to the issuance of the Certificate of Completion the Developer shall not transfer in any form the Development Property or any part thereof or any interest therein, assign this Agreement or enter into any contract or agreement to do any of the same (a "Transfer of Development Obligations") without the prior written approval of the City. A Transfer of Development Obligations to any party will require City approval, which approval shall not be unreasonably withheld, conditioned or delayed, and shall be subject to the following conditions:

(1) Any proposed transferee shall have the qualifications and financial responsibility, in the reasonable judgment of the City, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Developer. It shall be unreasonable for the City to withhold its consent pursuant to the factors in this Section 3.9, if the proposed transferee (a) is an entity that has reasonably sufficient experience in developments such as the Project and has assets reasonably sufficient to complete the Project, or (b) is willing to provide a payment and performance bond.

(2) Any proposed transferee, by instrument in writing reasonably satisfactory to the City and in form recordable among the land records, shall, for itself and its successors and assigns, and expressly for the benefit of the City, have expressly assumed all of the obligations of the Developer under this Agreement and agreed to be subject to all the conditions and restrictions to which the Developer is subject pursuant to this Agreement.

(3) There shall be submitted to the City, for review and prior written approval, all instruments and other legal documents involved in effecting the transfer of any interest in this Agreement or the Development Property (which shall be kept confidential by the City to the extent permitted by law).

(4) Upon any (a) Transfer of Development Obligations that is approved by the City pursuant to the foregoing provisions, and (b) the assumption of the obligations under this Agreement by the transferee, then the assigning Developer shall have no obligation as to any liabilities that arise from and after the date of the such transfer under this Agreement, provided however, that Developer shall remain obligated as to liabilities that arose during the period of such Developer's ownership of the Development Property.

Section 3.10 Business Subsidies Act. The County assessor has estimated the current year (payable 2023) fair market value of the Development Property to be \$1,526,600. The Developer represents that the cost of acquisition (\$2,085,000 including \$1,335,000 private acquisition, \$500,000 public acquisition, and \$250,000 relocation) and site preparation (\$1,182,514) for the Development Property will be not less than \$3,267,514. The Developer represents that because the Purchase Price and cost of site preparation for the Development Property will equal seventy percent (70%) or more of the assessor's current year's estimated fair market value of the Development Property, assistance to the Project does not constitute a "business subsidy" and therefore the provisions of the Business Subsidy Law do not apply.

Section 3.11 Vacation of Right of Way. The City will vacate the right of way for Ted Ringhofer Drive West and that portion of Walnut Avenue North located north of Vine Street West that is included within the project boundary.

Section 3.12 Guaranty of Tax Increment Shortfall. The Developer agrees that if for any reason total Tax Increments received are less than the amount needed to repay the City's Interfund Loan, then the Developer shall pay, upon written demand by the City, to the City the amount remaining to fully repay the City Interfund Loan.

ARTICLE IV EVENTS OF DEFAULT

Section 4.1. Events of Default Defined. The following shall be "Events of Default" under this Agreement and the term "Event of Default" shall mean whenever it is used in this Agreement any one or more of the following events:

(1) Failure by the Developer to pay timely any ad valorem real property taxes or special assessments assessed with respect to the Development Property.

(2) Failure by the Developer to cause the construction of the Project to be completed pursuant to the terms, conditions and limitations of this Agreement.

(3) The holder of any mortgage on the Development Property or any improvements thereon, or any portion thereof, commences foreclosure proceedings as a result of any default under the applicable mortgage documents.

(4) Failure by the Developer to substantially observe or perform any other covenant, condition, obligation or agreement on their part to be observed or performed under this Agreement.

(5) If the Developer shall

(i) file any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act of 1978, as amended or under any similar federal or state law; or

(ii) make an assignment for the benefit of their creditors; or

(iii) admit in writing their inability to pay their debts generally as they become due; or

(iv) be adjudicated a bankrupt or insolvent; or if a petition or answer proposing the adjudication of the Developer, as a bankrupt or their reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof; or a receiver, trustee or liquidator of the Developer, or of the Project, or part thereof, shall be appointed in any proceeding brought against the Developer, and shall not be discharged within ninety (90) days after such appointment, or if the Developer, shall consent to or acquiesce in such appointment.

Section 4.2. Remedies on Default. Whenever any Event of Default referred to in Section 4.1 occurs and is continuing, the City, as specified below, may take any one or more of the following actions after the giving of thirty (30) days' written notice to the to the Developer and the holder of any subsequent mortgage of the Event of Default by the City, but only if the Event of Default has not been cured within said thirty (30) days, or if the Event of Default cannot be cured within thirty (30) days and the Developer does not provide assurances to the City reasonably satisfactory to the City that the Event of Default will be cured as soon as reasonably possible.

(1) The City may suspend its performance under this Agreement until it receives assurances from the Developer, deemed adequate by the City, that the Developer will cure the default and continue their performance under this Agreement.

(2) The City may cancel and rescind this Agreement, except that no cancellation may be effective at any time that the Developer is proceeding in good faith to cure the defect and/or gives reasonable assurances to the City as required in (1) above, or if there exists a good faith dispute with the City as to an event of default as defined above, and the Developer posts a bond or other security as reasonably adequate to cure the alleged default.

(3) The City may take any action, including legal or administrative action, which may appear necessary or desirable to collect any payments due under this Agreement, or to enforce performance and observance of any obligation, agreement, or covenant of the Developer under this Agreement.

Section 4.3. Revesting Title in the City upon Happening of Event Subsequent to Conveyance to the Developer. In the event that subsequent to conveyance of the Development Property to the Developer by the City if an event of default under Section 4.1 occurs and is not cured within 30 days after written notice to do so, then the City shall have the right but not the obligation to re-enter and take possession of the Development Property and to terminate and revest in the City pursuant to the provisions of this Section 4.3 the estate conveyed by the Warranty Deed to the Developer, it being the intent the of this provision, together with other provisions of this Agreement, that the conveyance of the Development Property to the Developer shall be made upon the condition that, and that the Development Property Deed shall contain a condition subsequent to the effect that, in the event of any default under this Section 4.1 on the part of the Developer and failure on the part of Developer to cure such default within the period and in the manner stated in such subdivision, the City may declare a determination in favor of the City of the title and of all of the Developer's rights and interest in and to the Development Property conveyed to the Developer, and that such title and all rights and interests of the City, and any assigns or successors in interest of the Developer, and any assigns or successors in interest to and in the Development Property, shall revert to the City, but only if the events stated in Section 4.1 have not been cured within the time period provided above, or, if the events cannot be cured within such time periods, the Developer does not provide assurance to the City, satisfactory to the City that the events will be cured as soon as reasonably possible.

Section 4.4. No Remedy Exclusive. No remedy herein conferred upon or reserved to the City or the Developer is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 4.5. No Implied Waiver. In the event any agreement contained in this Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 4.6. Agreement to Pay Attorney's Fees and Expenses. Whenever any Event of Default occurs and the City employs attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement of performance or observance of any obligation or agreement, the Developer agrees that they shall, on demand therefor, pay the reasonable fees of such attorneys and such other reasonable expenses so incurred by City.

Section 4.7. Indemnification of City.

(1) The Developer releases from and covenants and agree that the City, its governing body members, officers, agents, including the independent contractors, consultants and legal counsel, servants and employees

thereof (hereinafter, for purposes of this Section, collectively the "Indemnified Parties") shall not be liable for and agree to indemnify and hold harmless the Indemnified Parties against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Project, provided that the foregoing indemnification shall not be effective for any actions of the Indemnified Parties that are not contemplated by this Agreement, and shall not relate to any event or occurrence that is a breach of the explicit representations or warranties of the City pursuant to this Agreement.

(2) Except for any willful misrepresentation or any willful or wanton misconduct of the Indemnified Parties, the Developer agrees to protect and defend the Indemnified Parties, now and forever, and further agree to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from the actions or inactions of the Developer (or if other persons acting on their behalf or under their direction or control) under this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Project; provided, that this indemnification shall not apply to the warranties made or obligations undertaken by the City in this Agreement or to any actions undertaken by the City which are not contemplated by this Agreement but shall, in any event and without regard to any fault on the part of the City, apply to any pecuniary loss or damages (including interest thereon from the date the loss is incurred or damages is paid by the City at a rate equal to the "Prime Rate" as set forth from time to time in the Wall Street Journal) as a result of the Project causing the Tax Increment District to not qualify or cease to qualify as a "redevelopment district" under section 469.174, subdivision 10(a)(1), of the Act or to violate limitations as to the use of Tax Increment as set forth in section 469.176, subdivision 4.

(3) All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of any governing body member, officer, agent, servant or employee of the City, as the case may be.

(4) The Developer further agrees that they will indemnify and guarantee payment of City administrative expenses in an amount not to exceed Ten Thousand Dollars (\$10,000) in the event that the Developer fails to initiate the construction of the Project pursuant to the date set forth in Article II, Section 2.2 (11).

ARTICLE V ADDITIONAL PROVISIONS

Section 5.1. Conflicts of Interest. No member of the governing body or other official of the City shall participate in any decision relating to the Agreement, which affects its or her personal interests or the interests of any corporation, partnership, or association in which he or she is directly or indirectly interested. No member, official or employee of the City shall be personally liable to the City in the event of any default or breach by the Developer or successor or on any obligations under the terms of this Agreement.

Section 5.2. Titles of Articles and Sections. Any titles of the several parts, articles and sections of the Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 5.3. Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand or other communication under this Agreement by any party to any other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

(1) in the case of the Developer is addressed to or delivered personally to:

Block 300 Owatonna LLC
11401 SW 72nd Avenue
Ellendale, MN 56026

(2) in the case of the City is addressed to or delivered personally to the City at:

City of Owatonna, Minnesota
540 West Hills Circle
Owatonna, MN 55060
Attn: City Administrator

or at such other address with respect to any such party as that party may, from time to time, designate in writing and forward to the other, as provided in this Section.

Section 5.4. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 5.5. Law Governing. This Agreement will be governed and construed in accordance with the laws of the State of Minnesota.

Section 5.6. Term. The term of this Agreement and the requirements on the Developer set forth in this Agreement shall commence on the day and year first above written until the earlier of (i) the date this Agreement is terminated pursuant to Section 4.2 or Section 6.1, (ii) payment in full or expiration of the City's Interfund Loan, or (iii) the date of termination of the Tax Increment District.

ARTICLE VI DEVELOPER'S OPTION TO TERMINATE AGREEMENT

Section 6.1. Developer's Option to Terminate. This Agreement may be terminated by the Developer, if (i) the Developer is in compliance with all material terms of this Agreement and no Event of Default has occurred; and (ii) the City fails to comply with any material term of this Agreement, and, after written notice by the Developer of such failure, the City has failed to cure such noncompliance within thirty (30) days of receipt of such notice, or, if such noncompliance cannot reasonably be cured by the City within thirty (30) days, of receipt of such notice, the City has not provided assurances, reasonably satisfactory to the Developer, that such noncompliance will be cured as soon as reasonably possible.

Section 6.2. Action to Terminate. Termination of this Agreement pursuant to Section 6.1 must be accomplished by written notification by the Developer to the City within thirty (30) days after the date when

such option to terminate may first be exercised. A failure by the Developer to terminate this Agreement within such period constitutes a waiver by the Developer of their rights to terminate this Agreement due to such occurrence or event.

Section 6.3. Effect of Termination. If this Agreement is terminated pursuant to this Article VI, this Agreement shall be from such date forward null and void and of no further effect; provided, however, the termination of this Agreement shall not affect the rights of either party to institute any action, claim or demand for damages suffered as a result of breach or default of the terms of this Agreement by the other party, or to recover amounts which had accrued and become due and payable as of the date of such termination. Upon termination of this Agreement pursuant to this Article VI, the Developer shall be free to proceed with the Project at their own expense and without regard to the provisions of this Agreement; provided, however, that the City shall have no further obligations to the Developer with respect to reimbursement of the expenses set forth in Section 3.3.

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and on its behalf and its seal to be hereunto duly affixed, and the Developer has caused this Agreement to be duly executed in its names and on its behalf, on or as of the date first above written.

BLOCK 300 OWATONNA LLC

CITY OF OWATONNA, MINNESOTA

By _____

By _____
Its Mayor

By _____

By _____
Its City Administrator

STATE OF MINNESOTA)
): ss
COUNTY OF STEELE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2023, by Thomas Kuntz and Kris Busse the Mayor and the City Administrator, respectively, of the Owatonna, Minnesota, a municipal corporation.

Notary Public

STATE OF MINNESOTA)
): ss
COUNTY OF STEELE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2023, by _____, the _____ of Block 300 Owatonna LLC, a limited liability company.

Notary Public

This is a signature page to the Development Agreement dated as of _____, 2023, by and between the City of Owatonna, Minnesota, and Block 300 Owatonna LLC.

EXHIBIT A
DESCRIPTION OF DEVELOPMENT PROPERTY

The Development Property includes the following described property, along with the adjacent right of way for Vine Street W and right of way to be vacated within the development area, all located in the City of Owatonna, MN:

Parcel ID	Legal Description (Abbreviated)	Address
17-109-0207	Lots 4 and 5, Block 2, Abbotts	208 Oak Avenue N, Owatonna, MN
17-109-0210	BLK 2 BEG NE COR L3 S48' W11R N48' E11R TO BEG ABBOTTS	202 Vine Street W, Owatonna, MN
17-109-0211	BLK 2 THE E90' OF LOT 6 ABBOTTS ADDN	216 Oak Avenue N, Owatonna, MN
17-109-0212	BLOCK 2 LOTS 6 & 7 EX E90' OF SAID LOTS ABBOTT'S ADDN	221 Walnut Ave. N, Owatonna, MN
17-109-0213	BLK 2 LOT 8 & THE E 90' OF LOT 7 ABBOTTS	224 Oak Avenue N, Owatonna, MN
17-109-0214	BLK 2 25' X 90' OF LOT 9 ABBOTTS ADDITION	Unassigned
17-137-0101	BLOCK 1 LOTS 1 & 2 AUDITOR'S PLAT #1	320 Hoffman Dr. N, Owatonna, MN
17-203-0001	BLK 2 PART OF LOTS 2 & 3 ABBOTS ADDITION	Unassigned (Walnut Ave. N)
17-203-0002	BLK 2 PART OF LOTS 2 & 3 ABBOTS ADDN	Unassigned
17-203-0003	PARKING LOT BETWEEN OAK STREET AND RIVER	Unassigned (Walnut Ave. N)

EXHIBIT B
FORM OF TAX INCREMENT NOTE

UNITED STATES OF AMERICA
STATE OF MINNESOTA
CITY OF OWATONNA

TAX INCREMENT REVENUE NOTE OF 2023

The City of Owatonna, Minnesota (the "City"), hereby acknowledges itself to be indebted and, for value received, hereby promises to pay the amounts hereinafter described (the "Payment Amounts") to Block 300 Owatonna LLC (the "Developer") or its registered assigns (the "Registered Owner"), but only in the manner, at the times, from the sources of revenue, and to the extent hereinafter provided.

The amount of this Note shall be the lesser of (1) \$2,767,514 or (2) the aggregate amounts entered on the Ledger which is attached to and made a part of this Note, as reduced to the extent that such installments shall have been paid in whole or in part pursuant to the terms hereof; provided that the sum of the amount listed above shall in no event exceed \$2,767,514 as provided in that certain Development Agreement, dated as of _____, 2023, as the same may be amended from time to time (the "Development Agreement"), by and between the City and the Developer.

The amounts due under this Note shall be payable on July 15, 2025, and on each July 15 and December 15 thereafter to and including December 15, 2050, or, if the first should not be a Business Day (as defined in the Development Agreement), the next succeeding Business Day (the "Payment Dates"). On each Payment Date, and subject to the provisions of Section 3.4 of the Development Agreement, the City shall pay by check or draft mailed to the person that was the Registered Owner of this Note at the close of the last business day of the City preceding such Payment Date an amount equal to the sum of the Available Tax Increment (hereinafter defined) received by the City during the six month period preceding such Payment Date that remain after payment of debt service on the Development Property as provided in Section 3.4 of the Development Agreement. The unpaid principal amount hereof shall bear interest from the date of this Note at the simple non-compound rate of five and one-half percent (5.5%) per annum. Interest shall be computed on the basis of a 360 day year consisting of twelve (12) 30-day months.

The Payment Amounts due hereon shall be payable solely from the Available Tax Increment (the "Available Tax Increment") from the Tax Increment Financing District (as defined in the Development Agreement) within the City's Tax Increment Financing District No. 19-1 (the "Tax Increment District") within its Development District No. 19 which are paid to the City and which the City is entitled to retain pursuant to the provisions of Minnesota Statutes, Sections 469.174 through 469.1794, as the same may be amended or supplemented from time to time (the "Tax Increment Act"). Available Tax Increment means the increments received from the Development Property, less City Interfund Loan payments, less City administrative costs, and not to exceed \$226,790.00 annually until the City Interfund Loan is paid in full. Once the City Interfund Loan is paid in full, available increment shall mean 97.5% of the increment from the Development Property until the Note is fully amortized or the Tax Increment District is terminated. This Note shall terminate and be of no further force and

effect following the last Payment Date defined above, on any date upon which the City shall have terminated the Development Agreement under Section 4.2 thereof, on the date the Tax Increment District is terminated, or on the date that all amounts payable hereunder shall have been paid in full, whichever occurs earliest.

The City makes no representation or covenant, express or implied that the Available Tax Increment will be sufficient to pay, in whole or in part, the amounts, which are or may become due and payable hereunder.

The City's payment obligations hereunder shall be further conditioned on the fact that no Event of Default under the Development Agreement shall have occurred and be continuing at the time payment is otherwise due hereunder, but such unpaid amounts shall become payable if said Event of Default shall thereafter have been cured; and, further, if pursuant to the occurrence of an Event of Default under the Development Agreement the City elects to cancel and rescind the Development Agreement, the City shall have no further debt or obligation under this Note whatsoever. Reference is hereby made to all of the provisions of the Development Agreement, including without limitation Section 3.3 thereof, for a fuller statement of the rights and obligations of the City to pay the principal of this Note, and said provisions are hereby incorporated into this Note as though set out in full herein.

This Note is a special, limited revenue obligation and not a general obligation of the City and is payable by the City only from the sources and subject to the qualifications stated or referenced herein. This Note is not a general obligation of the City and neither the full faith and credit nor the taxing powers of the City are pledged to the payment of the principal of this Note and no property or other asset of the City, save and except the above referenced Available Tax Increment, is or shall be a source of payment of the City's obligations hereunder.

This Note is issued by the City in aid of financing a project pursuant to and in full conformity with the City Charter, the Constitution and laws of the State of Minnesota, including the Tax Increment Act.

This Note may be assigned only with the consent of the City which consent shall not be unreasonably withheld. In order to assign the Note, the assignee shall surrender the same to the City either in exchange for a new fully registered note or for transfer of this Note on the registration records for the Note maintained by the City. Each permitted assignee shall take this Note subject to the foregoing conditions and subject to all provisions stated or referenced herein.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions, and things required by the City Charter, the Constitution and laws of the State of Minnesota to be done, to have happened, and to be performed precedent to and in the issuance of this Note have been done, have happened, and have been performed in regular and due form, time, and manner as required by law; and that this Note, together with all other indebtedness of the City outstanding on the date hereof and on the date of its actual issuance and delivery, does not cause the indebtedness of the City to exceed any charter, constitutional or statutory limitation thereon.

IN WITNESS WHEREOF, City of Owatonna, Minnesota, by its City Council, has caused this Note to be executed by the manual signatures of its Mayor and City Administrator and has caused this Note to be issued on and dated _____, 202__.

Mayor

City Administrator

CERTIFICATION OF REGISTRATION

It is hereby certified that the foregoing Note, as originally issued on _____, 202__, was on said date registered in the name of Block 300 Owatonna LLC and that, at the request of the Registered Owner of this Note, the undersigned has this day registered the Note in the name of such Registered Owner, as indicated in the registration blank below, on the books kept by the undersigned for such purposes.

Name and Address of
Registered Owner _____

Date of
Registration _____

Signature of
City Executive _____

Block 300 Owatonna LLC
11401 SW 72nd Avenue
Ellendale, MN 56026

_____, 202__

LEDGER

Pursuant to Section 3.3 of this Agreement, the City shall reimburse the Developer an amount not to exceed \$2,767,514 for items listed on this Ledger.

[illegible]

EXHIBIT C
INTERFUND LOAN RESOLUTION

EXHIBIT D
REAL PROPERTY PURCHASE AGREEMENT

EXHIBIT E

CERTIFICATE OF COMPLETION AND RELEASE OF FORFEITURE

The City of Owatonna, Minnesota (the "City"), a municipal corporation hereby certifies that all building construction and other physical improvements specified to be done and made by Block 300 Owatonna LLC have been completed and the above covenants and conditions in said Development Agreement have been performed by Block 300 Owatonna LLC therein and that the provisions for breach of condition subsequent by the City, contained therein, are hereby released absolutely and forever insofar as they apply.

THE CITY OF OWATONNA

BY _____
Kris Busse
ITS City Administrator

STATE OF MINNESOTA)
): ss
COUNTY OF STEELE)

The foregoing instrument was acknowledged before me this ____ day of _____, 202__,
by Kris Busse the City Administrator of the City of Owatonna, Minnesota, a municipal corporation.

Notary Public



Community Development Department

DATE: March 21, 2023
TO: Mayor and City Council
FROM: Greg Kruschke, Community Development Manager
SUBJECT: Res 27-23 Behne Garage CUP

Purpose:

Approve Conditional Use CUP-4 by Ben Behne to construct a 28' x 34', 952 square foot detached garage in addition to a 160 square foot existing accessory structure.

Background:

See attached staff report.

Budget Impact:

None.

Staff Recommendation:

Approve Conditional Use CUP-4 by Ben Behne to construct a 28' x 34', 952 square foot detached garage in addition to a 160 square foot existing accessory structure as recommended by Staff and the Planning Commission.

Attachments:

1. CUP-4 Behne Garage CUP Staff Report
2. Resolution Behne Garage CUP

March 9, 2023

To: Mayor & City Council

From: Community Development Department

RE: Conditional Use CUP-4 by Ben Behne to construct a 28' x 34', 952 square foot detached garage in addition to a 160 square foot existing accessory structure.

Application Review:

Applicant/Owner: Ben Behne

Location of Property: 1815 Creek View Lane NE

Zoning Map: R-1, Single Family Residential District

Zoning Ordinance: Section 157.040 (A)(2)(c)(2)(a) states that lots over 20,000 square feet may have two accessory structures up to 1,250 square feet with a conditional use permit.

Report Attachments:

1. Location Map
2. Aerial Photo
3. Site Plan
4. Construction Information
5. Application Letter

Proposed Development:

- ◆ Conditional Use CUP-4 by Ben Behne to construct a 28' x 34', 952 square foot detached garage in addition to a 160 square foot existing accessory structure.
- ◆ The applicant has a 0.68 acre parcel since they have replatted and combined the lots into one.
- ◆ They currently have a 10' x 16' shed that will remain on the property.
- ◆ The garage will be used for personal storage. The applicant is planning a small room they are calling an office as well as a sink and toilet in the garage.
- ◆ The proposed garage will have a hip style roof with a 6/12 pitch to match the main house on the property.
- ◆ The proposed garage will be sided and shingled to match the house.
- ◆ A concrete driveway will be constructed from the south property line and "L" into the garage.
- ◆ Code requires that all garages over 1000 sq ft be located a minimum of 20' from the side property line.
- ◆ As with all detached structures, City Code does not permit the garage to be used for commercial purposes.
- ◆ According to the ordinance, a conditional use permit may be granted if the following findings are met:

- a) The establishment or operation of the proposed conditional use will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare.
- b) The architectural appearance and functional plan of the building and site reflects the building character of the area and will not be so dissimilar to the existing buildings or area as to cause impairment in property values or constitute a blighting influence within a reasonable distance of the lot. The proposed development will be compatible with existing and planned use of the area and conflicts will not be created between the proposed use and existing and intended future uses of the surrounding area.
- c) The traffic generated by this use shall be channelized and controlled in a manner that will avoid congestion on public streets, safety hazards or excessive traffic through residential areas. The traffic generated will not raise traffic volumes beyond the capacity of the surrounding streets. Vehicular access points will be limited, and will create a minimum amount of conflict with through traffic movements and will be subject to the approval of the City Engineer. Vehicular drive up ingress lanes will be large enough to accommodate peak auto use on the same lot without requiring the stopping or waiting of vehicles on public right-of-way. Ingress lanes will be from the least heavily traveled street wherever possible.
- d) Public services, including but not limited to sewer, water, gas, police, and fire protection, are available at an adequate level and capable of servicing the proposed land use. In addition, adequate access, drainage, and any other necessary support facilities shall be provided.
- e) All such other or further factors as the City shall deem a requisite or consideration in determining the effect of such use on the general welfare, public health and safety.

Staff Review:

Conditional Use CUP-4 by Ben Behne to construct a 28' x 34', 952 square foot detached garage in addition to a 160 square foot existing accessory structure. It appears that all of the requirements have been met for this conditional use request. Absent any new information presented at the meeting, staff would recommend approval of this conditional use permit request with the following conditions.

- 1) The accessory structures shall not be used for commercial purposes.
- 2) All grading, building, and utility permits shall be issued for the garage prior to commencing construction.

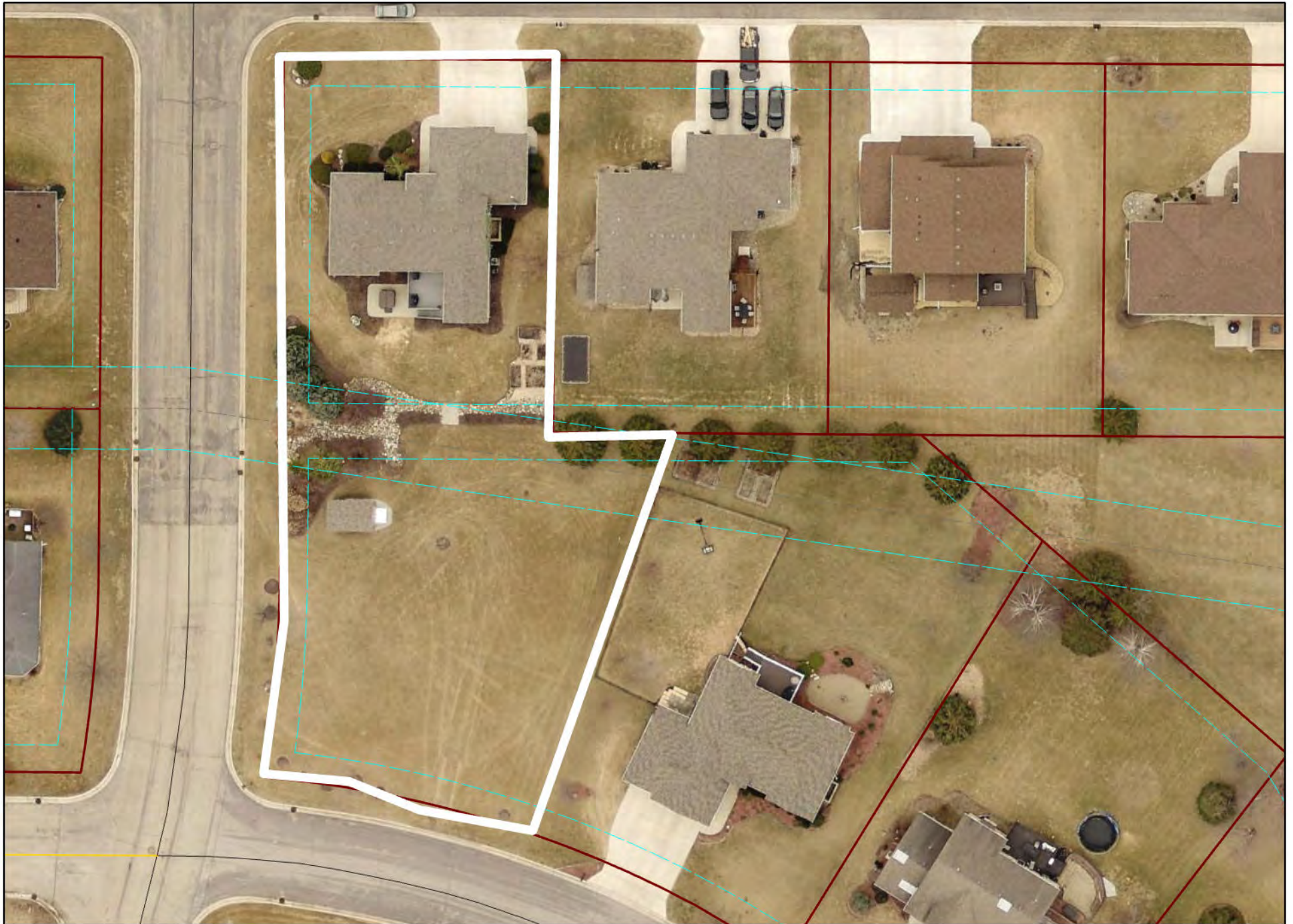
Planning Commission:

Conditional Use CUP-4, which is a request by Ben Behne to construct a 28' x 34', 952 square foot detached garage in addition to a 160 square foot existing accessory structure for the property located at 1815 Creek View Lane NE, was presented by Community Development Manager

Greg Kruschke. (Refer to report on file.) Public hearing opened at 5:33 p.m. No comments were made regarding this request. Public hearing closed at 5:34 p.m. Eickhoff asked what the enforcement looks like regarding commercial uses if the property changes owners. Kruschke said that the CUP will have a resolution that would contain those conditions. If City Council approves this request that resolution would be recorded against the property and carry on with the title going forward, thus putting any future property owners on notice. We have our Home Occupation Standards in the Zoning Ordinance if we need to go back for enforcement as well. This is not this applicant's intent, but he understands the question. A motion was made by Eickhoff and seconded by Wilson to recommend City Council approval of this conditional use permit request with the following conditions:

- 1) The accessory structures shall not be used for commercial purposes.
- 2) All grading, building, and utility permits shall be issued for the garage prior to commencing construction.

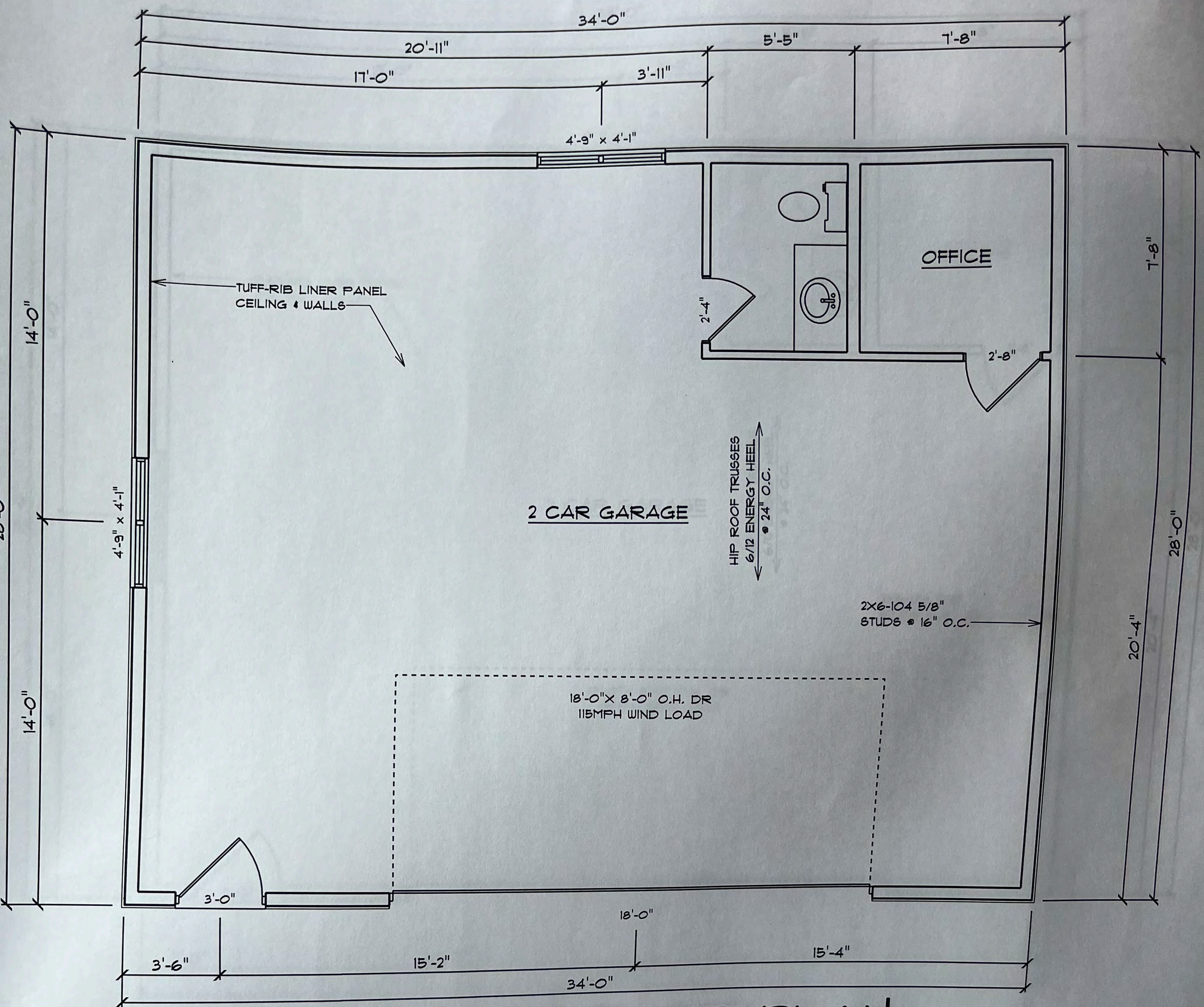
All Commissioners voting Aye, the motion carried.



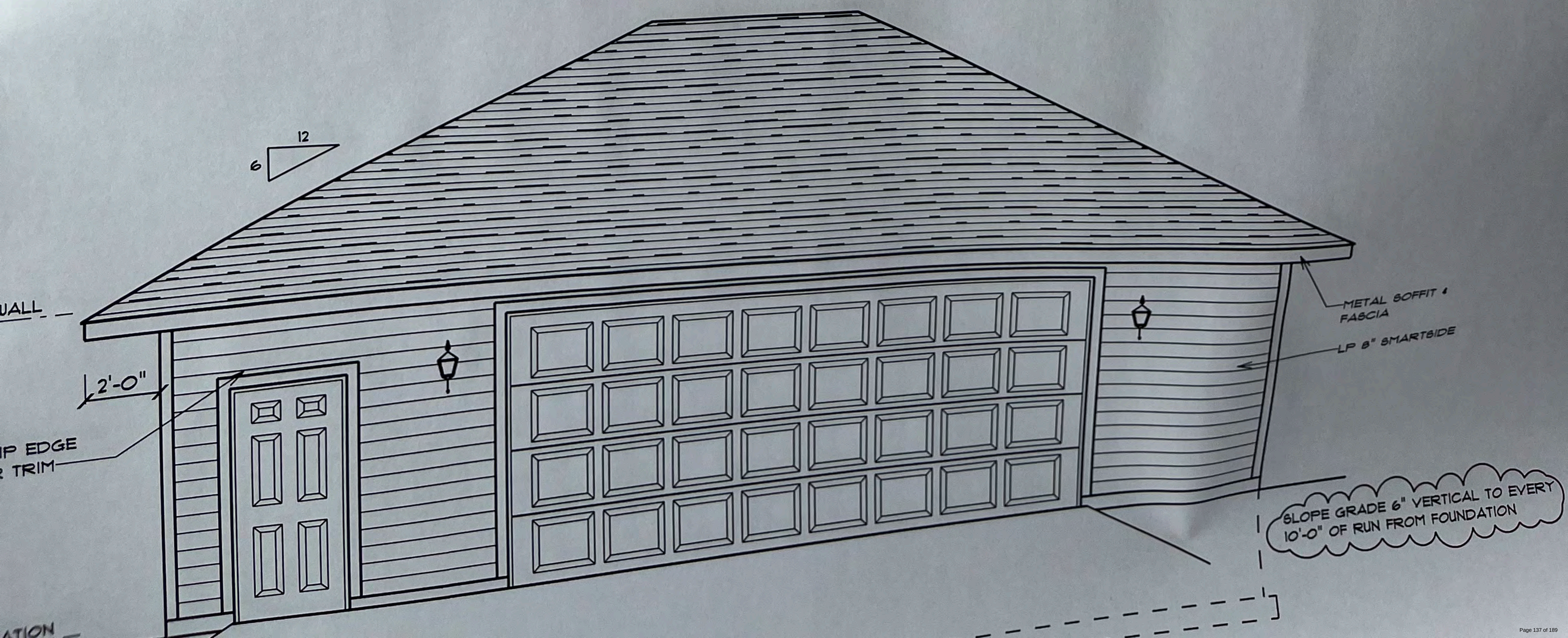
CUP-4 Behne Garage CUP
1815 Creek View Lane NE

1:559

Date: 2/27/2023
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GARAGE FLOOR PLAN



RESOLUTION NO. -23

A RESOLUTION APPROVING CONDITIONAL USE CUP-4

WHEREAS, Conditional Use CUP-4 by Ben Behne to construct a 28' x 34', 952 square foot detached garage in addition to a 160 square foot existing accessory structure. and legally described as follows; and

Lot 1, Block 1, Behne Prairie Addition, Steele County, Minnesota

WHEREAS, The Planning Commission held a public hearing on March 14, 2023 and recommended approval of CUP-4; and

WHEREAS, on March 21, 2023, the City Council accepted and approved CUP-4, as the same was approved and recommended by the Planning Commission of the City; and

WHEREAS, the City Council concurs with all of the findings of the Planning Commission and hereby makes the identical findings as referenced in the CUP-4 Staff Report.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Owatonna, Minnesota:

1. That said conditional use permit is in accordance with and conformity to the plans and regulations established by the City and the comprehensive plan for the development of the City.
2. That said conditional use permit be and the same hereby is approved with the following conditions:
 - a) The accessory structures shall not be used for commercial purposes.
 - b) All grading, building, and utility permits shall be issued for the garage prior to commencing construction.
3. That the Clerk cause a certified copy of this resolution to be filed in the office of the County Recorder of Steele County, Minnesota.

Passed and adopted this 21st day of March 2023, with the following vote:

Aye ; No ; Absent .

Approved and signed this 21st day of March, 2023.

Thomas A. Kuntz, Mayor

ATTEST:

Kris M. Busse, City Administrator/City Clerk



Administration Department

DATE: March 21, 2023
TO: Mayor and City Council
FROM: Jeanette Clawson, Administrative Specialist
SUBJECT: Res 28-23 Premise Permit for Lawful Gambling Activity - Divine Mercy Catholic School

Purpose:

Council approval of Resolution 27-23 approving an application for a Premises Permit from the Divine Mercy Catholic School, 15 SW 3rd Avenue, Faribault, MN to conduct lawful gambling (pull tabs) under a lease agreement with Midwest Restaurant Properties, LLC dba Timber Lodge Steakhouse at 4455 West Frontage Road in Owatonna.

Background:

Lawful gambling activities within the city are compliant with Minnesota State Statute 349 and City Code 120, Lawful Gambling. Charitable Gambling Licenses are issued by the Minnesota Gambling Control Board. The state application includes a completed LG214 Premises Permit Application which requires acknowledgment by the local unit of government by an approved resolution.

A background verification was completed on the applicant, Dan Moyer, Faribault, MN. Police Chief Mundale has no objections to issuance of this license.

Budget Impact:

\$250.00 - Application, background verification and license fee for the remainder of the current licensing period. The City's Charitable Gambling License is an annual license which expires June 30th each year.

Staff Recommendation:

Staff recommends approval of Resolution 27-23.

Attachments:

1. Res 27-23 Premise Permit - Lawful Gambling Activity - Divine Mercy Catholic School
2. Premise Permit Application - Divine Mercy Catholic School

RESOLUTION NO. 27-23

A RESOLUTION APPROVING
APPLICATION FOR PREMISES PERMIT

WHEREAS, Divine Mercy Catholic School has made application for a premises permit to conduct lawful gambling under a lease agreement with Midwest Restaurant Properties LLC dba Timber Lodge Steakhouse at 4455 West Frontage Road, Owatonna MN; and

WHEREAS, the application for premises permit and lease have been filed with the City; and

WHEREAS, it otherwise appears to the Council that the application for a premises permit and lease are in conformity with Section 127:00, et seq., of the 2015 Ordinance Code of the City of Owatonna, as amended,

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Owatonna, Minnesota:

1. Pursuant to Section 127:07, of the 2015 Ordinance Code of the City of Owatonna, as amended, the application for premises permit submitted by the Divine Mercy Catholic School may be and hereby is approved.

Passed and adopted this ____ day of ____, 2023, with the following votes:

Aye ____; No ____; Absent ____.

Approved and signed this ____ day of ____, 2023.

Thomas A. Kuntz, Mayor

ATTEST:

Kris M. Busse, City Administrator/City Clerk

LG214 Premises Permit Application**Annual Fee \$150 (NON-REFUNDABLE)****REQUIRED ATTACHMENTS TO LG214**

1. If the premises is leased, attach a copy of your lease. Use **LG215 Lease for Lawful Gambling Activity**.
2. \$150 annual premises permit fee, for each permit (non-refundable). Make check payable to "State of Minnesota."

Mail the application and required attachments to:

Minnesota Gambling Control Board
1711 West County Road B, Suite 300 South
Roseville, MN 55113

Questions? Call 651-539-1900 and ask for Licensing.**ORGANIZATION INFORMATION**

Organization Name: Divine Mercy Catholic School License Number: 01632
 Chief Executive Officer (CEO): Gina Ashley Daytime Phone: 507-334-7706
 Gambling Manager: Daniel Meyer Daytime Phone: 267-474-6641

GAMBLING PREMISES INFORMATION

Current name of site where gambling will be conducted: Timber Lodge Steakhouse
 List any previous names for this location: _____
 Street address where premises is located: 4455 West Frontage Rd. Owatonna, MN 55060
 (Do not use a P.O. box number or mailing address.)

City: Owatonna OR Township: _____ County: Steele Zip Code: 55060

Does your organization own the building where the gambling will be conducted?

☐ Yes☒ No

If no, attach LG215 Lease for Lawful Gambling Activity.

A lease is not required if only a raffle will be conducted.

Is any other organization conducting gambling at this site?

☐ Yes☒ No☐ Don't know

Note: Bar bingo can only be conducted at a site where another form of lawful gambling is being conducted by the applying organization or another permitted organization. Electronic games can only be conducted at a site where paper pull-tabs are played.

Has your organization previously conducted gambling at this site?

☐ Yes☒ No☐ Don't know**GAMBLING BANK ACCOUNT INFORMATION; MUST BE IN MINNESOTA**

Bank Name: State Bank of Minnesota Faribault Bank Account Number: _____
 Bank Street Address: 428 Central Ave N City: Faribault State: **MN** Zip Code: 55021

ALL TEMPORARY AND PERMANENT OFF-SITE STORAGE SPACES

Address (Do not use a P.O. box number): 15 SW 3rd Avenue City: Faribault, MN State: **MN** Zip Code: 55021

ACKNOWLEDGMENT BY LOCAL UNIT OF GOVERNMENT: APPROVAL BY RESOLUTION

CITY APPROVAL for a gambling premises located within city limits	COUNTY APPROVAL for a gambling premises located in a township
City Name: _____	County Name: _____
Date Approved by City Council: _____	Date Approved by County Board: _____
Resolution Number: _____ (If none, attach meeting minutes.)	Resolution Number: _____ (If none, attach meeting minutes.)
Signature of City Personnel: _____	Signature of County Personnel: _____
Title: _____ Date Signed: _____	Title: _____ Date Signed: _____
Local unit of government must sign.	TOWNSHIP NAME: _____ Complete below only if required by the county. On behalf of the township, I acknowledge that the organization is applying to conduct gambling activity within the township limits. (A township has no statutory authority to approve or deny an application, per Minnesota Statutes 349.213, Subd. 2.) Print Township Name: _____ Signature of Township Officer: _____ Title: _____ Date Signed: _____

ACKNOWLEDGMENT AND OATH

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. I hereby consent that local law enforcement officers, the Board or its agents, and the commissioners of revenue or public safety and their agents may enter and inspect the premises. 2. The Board and its agents, and the commissioners of revenue and public safety and their agents, are authorized to inspect the bank records of the gambling account whenever necessary to fulfill requirements of current gambling rules and law. 3. I have read this application and all information submitted to the Board is true, accurate, and complete. 4. All required information has been fully disclosed. 5. I am the chief executive officer of the organization. | <ol style="list-style-type: none"> 6. I assume full responsibility for the fair and lawful operation of all activities to be conducted. 7. I will familiarize myself with the laws of Minnesota governing lawful gambling and rules of the Board and agree, if licensed, to abide by those laws and rules, including amendments to them. 8. Any changes in application information will be submitted to the Board no later than ten days after the change has taken effect. 9. I understand that failure to provide required information or providing false or misleading information may result in the denial or revocation of the license. 10. I understand the fee is non-refundable regardless of license approval/denial. |
|--|---|


Signature of Chief Executive Officer (designee may not sign)

_____ Date

Data privacy notice: The information requested on this form (and any attachments) will be used by the Gambling Control Board (Board) to determine your organization's qualifications to be involved in lawful gambling activities in Minnesota. Your organization has the right to refuse to supply the information; however, if your organization refuses to supply this information, the Board may not be able to determine your organization's qualifications and, as a consequence, may refuse to issue a permit. If your organization supplies the information requested, the Board will be able to process your organization's application. Your organization's name and address will be public

information when received by the Board. All other information provided will be private data about your organization until the Board issues the permit. When the Board issues the permit, all information provided will become public. If the Board does not issue a permit, all information provided remains private, with the exception of your organization's name and address which will remain public. Private data about your organization are available to: Board members, Board staff whose work requires access to the information;

Minnesota's Department of Public Safety, Attorney General, Commissioners of Administration, Minnesota Management & Budget, and Revenue; Legislative Auditor, national and international gambling regulatory agencies; anyone pursuant to court order; other individuals and agencies specifically authorized by state or federal law to have access to the information; individuals and agencies for which law or legal order authorizes a new use or sharing of information after this notice was given; and anyone with your written consent.

This form will be made available in alternative format, i.e. large print, braille, upon request.

An equal opportunity employer

LG215 Lease for Lawful Gambling Activity**LEASE INFORMATION**

Organization:	<u>Divine Mercy Catholic School</u>	License/Site Number:	<u>01632</u>	Daytime Phone:	
Address:	<u>15 SW 3rd Ave</u>	City:	<u>FARIBAULT</u>	State:	<u>MN 55021</u>
Name of Leased Premises:	<u>Timber Lodge</u>	Street Address:	<u>4455 WEST Frontage Rd.</u>	State:	<u>MN 55060</u>
City:	<u>OWATONNA</u>	State:	<u>MN 55060</u>	Daytime Phone:	
Name of Legal Owner:	<u>Midwest Restaurant Properties LLC</u>	Business/Street Address:	<u>4455 W. Frontage Rd.</u>	State:	<u>MN 55060</u>
City:	<u>OWATONNA</u>	State:	<u>MN 55060</u>	Daytime Phone:	<u>507-444-0303</u>
Name of Lessor (if same as legal owner, write "SAME"):	<u>SAME</u>	Address:		State:	
City:		State:		Daytime Phone:	

Check, applicable item:

- ☒ **New or amended lease.** Effective date: 4/1/23. Submit changes at least ten days **before** the effective date of the change.
- ☐ **New owner.** Effective date: _____. Submit new lease **within** ten days after new lessor assumes ownership.

CHECK ALL ACTIVITY THAT WILL BE CONDUCTED (no lease required for raffles)

- | | |
|---|--|
| ☒ Pull-Tabs (paper) | ☒ Electronic Pull-Tabs |
| ☐ Pull-Tabs (paper) with dispensing device | ☐ Electronic Linked Bingo |
| ☐ Bar Bingo | Electronic games may only be conducted: |
| ☐ Tipboards | |
| ☐ Paddlewheel | |
| ☐ Paddlewheel with table | |
- at a premises licensed for the on-sale of intoxicating liquor or the on-sale of 3.2% malt beverages; or
 - at a premises where bingo is conducted as the primary business and has a seating capacity of at least 100.

PULL-TAB, TIPBOARD, AND PADDLEWHEEL RENT (separate rent for booth and bar ops)

BOOTH OPERATION: Some or all sales of gambling equipment are conducted by an employee/volunteer of a licensed organization at the leased premises.

ALL GAMES, including electronic games: Monthly rent to be paid: _____%, not to exceed **10%** of gross profits for that month.

- Total rent paid from all organizations for only booth operations at the leased premises **may not exceed \$1,750**.
- The rent cap does not include BAR OPERATION rent for electronic games conducted by the lessor.

BAR OPERATION: All sales of gambling equipment conducted by the lessor or lessor's employee.

ELECTRONIC GAMES: Monthly rent to be paid: 15%, not to exceed **15%** of the gross profits for that month from electronic pull-tab games and electronic linked bingo games.

ALL OTHER GAMES: Monthly rent to be paid: 20%, not to exceed **20%** of gross profits from all other forms of lawful gambling.

- If any booth sales conducted by a licensed organization at the premises, rent may not exceed **10%** of gross profits for that month and is subject to booth operation **\$1,750** cap.

BINGO RENT (for leased premises where bingo is the primary business conducted, such as bingo hall)

Bingo rent is limited to one of the following:

- Rent to be paid: _____%, not to exceed **10%** of the monthly gross profit from all lawful gambling activities held during bingo occasions, excluding bar bingo.
- OR -
- Rate to be paid: \$ _____ per square foot, not to exceed 110% of a comparable cost per square foot for leased space, as approved by the director of the Gambling Control Board. The lessor must attach documentation, verified by the organization, to confirm the comparable rate and all applicable costs to be paid by the organization to the lessor.
 - ⇒ **Rent may not be paid for bar bingo.**
 - ⇒ Bar bingo does not include bingo games linked to other permitted premises.

LEASE TERMINATION CLAUSE (must be completed)

The lease may be terminated by either party with a written 30 day notice. Other terms:

LG215 Lease for Lawful Gambling Activity

6/15 Page 2 of 2

Lease Term: The term of this agreement will be concurrent with the premises permit issued by the Gambling Control Board (Board).

Management: The owner of the premises or the lessor will not manage the conduct of lawful gambling at the premises. The organization may not conduct any activity on behalf of the lessor on the leased premises.

Participation as Players Prohibited: The lessor will not participate directly or indirectly as a player in any lawful gambling conducted on the premises. The lessor's immediate family and any agents or gambling employees of the lessor will not participate as players in the conduct of lawful gambling on the premises, except as authorized by Minnesota Statutes, Section 349.181.

Illegal Gambling: The lessor is aware of the prohibition against illegal gambling in Minnesota Statutes 609.75, and the penalties for illegal gambling violations in Minnesota Rules 7865.0220, Subpart 3. In addition, the Board may authorize the organization to withhold rent for a period of up to 90 days if the Board determines that illegal gambling occurred on the premises or that the lessor or its employees participated in the illegal gambling or knew of the gambling and did not take prompt action to stop the gambling. Continued tenancy of the organization is authorized without payment of rent during the time period determined by the Board for violations of this provision, as authorized by Minnesota Statutes, Section 349.18, Subd. 1(a).

To the best of the lessor's knowledge, the lessor affirms that any and all games or devices located on the premises are not being used, and are not capable of being used, in a manner that violates the prohibitions against illegal gambling in Minnesota Statutes, Section 609.75.

Notwithstanding Minnesota Rules 7865.0220, Subpart 3, an organization must continue making rent payments under the terms of this lease, if the organization or its agents are found to be solely responsible for any illegal gambling, conducted at this site, that is prohibited by Minnesota Rules 7861.0260, Subpart 1, item H, or Minnesota Statutes, Section 609.75, unless the organization's agents responsible for the illegal gambling activity are also agents or employees of the lessor.

The lessor must not modify or terminate the lease in whole or in part because the organization reported, to a state or local law enforcement authority or to the Board, the conduct of illegal gambling activity at this site in which the organization did not participate.

Other Prohibitions: The lessor will not impose restrictions on the organization with respect to providers (distributor or linked bingo game provider) of gambling-related equipment and services or in the use of net profits for lawful purposes.

The lessor, the lessor's immediate family, any person residing in the same residence as the lessor, and any agents or employees of the lessor will not require the organization to perform any action that would violate statute or rule. The lessor must not modify or terminate this lease in whole or in part due to the lessor's violation of this provision. If there is a dispute as to whether a violation occurred, the lease will remain in effect pending a final determination by the Compliance Review Group (CRG) of the Board. The lessor agrees to arbitration when a violation of this provision is alleged. The arbitrator shall be the CRG.

Access to Permitted Premises: Consent is given to the Board and its agents, the commissioners of revenue and public safety and their agents, and law enforcement personnel to enter and inspect the permitted premises at any reasonable time during the business hours of the lessor. The organization has access to the premises during any time reasonable and when necessary for the conduct of lawful gambling.

Lessor Records: The lessor must maintain a record of all money received from the organization, and make the record available to the Board and its agents, and the commissioners of revenue and public safety and their agents upon demand. The record must be maintained for 3-1/2 years.

Rent All-Inclusive: Amounts paid as rent by the organization to the lessor are all-inclusive. No other services or expenses provided or contracted by the lessor may be paid by the organization, including but not limited to:

- trash removal
- electricity, heat
- snow removal
- storage
- janitorial and cleaning services
- other utilities or services
- lawn services
- security, security monitoring
- cost of any communication network or service required to conduct electronic pull-tabs games or electronic bingo
- in the case of bar operations, cash shortages.

Any other expenditures made by an organization that is related to a leased premises must be approved by the director of the Board. Rent payments may not be made to an individual.

ACKNOWLEDGMENT OF LEASE TERMS

I affirm that this lease is the total and only agreement between the lessor and the organization, and that all obligations and agreements are contained in or attached to this lease and are subject to the approval of the director of the Gambling Control Board.

Other terms of the lease:

Signature of Lessor:

Date:

Signature of Organization Official (Lessee):

Date:

Print Name and Title of Lessor:

Print Name and Title of Lessee:

Questions? Contact the Licensing Section, Gambling Control Board, at 651-539-1900. This publication will be made available in alternative format (i.e. large print, braille) upon request. **Data privacy notice:** The information requested on this form and any attachments will become public information when received by the Board, and will be used to determine your compliance with Minnesota statutes and rules governing lawful gambling activities.

Mail or fax lease to:

Minnesota Gambling Control Board
1711 W. County Road B, Suite 300 South
Roseville, MN 55113

Fax: 651-639-4032



Human Resources Department

DATE: March 21, 2023
TO: Mayor and City Council
FROM: Emily Thamert, Human Resources Director
SUBJECT: Res 29-23: Labor Agreement - International Association of Fire Fighters, Local Union No.1920

Purpose:

Council approval of Resolution 29-23 to approve the 2023-2024 labor agreement with the International Association of Fire Fighters, Local Union No. 1920.

Background:

Staff have been in negotiations with the full-time Fire Fighters. A tentative agreement has been reached. A summary of the changes are as follows:

- **Wages** - Approval of a 3.25% increase on the approved wage scale for 2023 effective on January 1, 2023. Approval of a 3.25% increase on the approved wage scale for 2024 effective on January 1, 2024. Employees that have remaining steps on the wage scale will receive a step effective January 1, 2023 and January 1, 2024.
- **Insurance** - Monthly employer contribution for 2023 increased by \$42 (single) and \$117 (family). Monthly employer contribution for 2024 increased by \$28 (single) and \$80 (family).
- **Uniform Allowance** - Uniform pay increase from \$400 to \$500
- **Acting Commander Pay** - temporary acting commander pay increase from \$2.00 to \$2.50 per hour

Budget Impact:

The budget impact to implement the 2023-2024 Fire contract is \$96,600.

Staff Recommendation:

Staff recommends approval of Resolution 29-23.

Attachments:

1. Res 29-23 2023-Fire Contract 2023-2024

RESOLUTION NO. 29-23

A RESOLUTION APPROVING LABOR AGREEMENT
BETWEEN THE CITY OF OWATONNA AND
THE INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL UNION NO. 1920

WHEREAS, International Association of Fire Fighters, Local Union No. 1920 is the exclusive representative for certain City of Owatonna employees; and

WHEREAS, the current labor agreement between the City of Owatonna and International Association of Fire Fighters, Local Union No. 1920 expires on December 31, 2022; and

WHEREAS, the City of Owatonna and International Association of Fire Fighters, Local Union No. 1920 met and negotiated over the terms of the new labor agreement between the parties; and

WHEREAS, the parties reached a tentative agreement of the terms of the new labor agreement; and

WHEREAS, the Public Employment Relations Act requires that the City of Owatonna execute a labor agreement and implement it in the form of a resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF OWATONNA OF OWATONNA, MINNESOTA, AS FOLLOWS:

1. The Labor Agreement between the City of Owatonna and International Association of Fire Fighters, Local Union No. 1920 for January 1, 2023 through December 31, 2024 is approved.
2. The Mayor and the City Administrator shall execute the agreement.
3. The City of Owatonna shall implement the agreement.

Passed and adopted this ____ day of _____, 2023, with the following vote:

Aye ____; No ____; Absent ____.

Approved and signed this ____ day of _____, 2023.

Thomas A. Kuntz, Mayor

ATTEST:

Kris M. Busse, City Administrator/City Clerk



Miscellaneous



Human Resources Department

DATE: March 21, 2023
TO: Mayor and City Council
FROM: Emily Thamert, Human Resources Director
SUBJECT: Wage Adjustments - Paid on Call and Resident Firefighters

Purpose:

Council approval of 2023 and 2024 wage increases for Paid on Call and Resident Firefighters.

Background:

The following wage adjustment for Paid on Call and Resident Firefighters is recommended.

- **Wages** - Approval of a 3.25% increase effective on January 1, 2023 and January 1, 2024.

Budget Impact:

The budget impact to implement the recommended 2023 and 2024 wage increase is \$5,544.

Staff Recommendation:

Staff recommends approval of the proposed increases for 2023 and 2024 for the Paid on Call and Resident Firefighters.

Attachments:

None



Parks, Trails, Recreation & Facilities Department

DATE: March 21, 2023
TO: Mayor and City Council
FROM: Jenna Tuma, Parks, Trails, Recreation & Facilities Director
SUBJECT: ICS Professional Services Agreement - Merrill Hall

Purpose:

Enter into an agreement with ICS to provide Professional Services for the Merrill Hall improvement project.

Background:

Merrill Hall was part of the original Minnesota State School that closed in 1970. The City purchased the 74-acre campus in 1974 and renamed it to the West Hills Campus. Currently, Merrill Hall is used by the Little Theatre of Owatonna and Wee Pals Daycare. The building is needing significant mechanical upgrades and energy conservation measures and other facilities improvements.

ICS conducted a building assessment in 2019 and updated the findings in 2023. The recommendation is to use a two-phase approach to begin the renovations with phase one being the development of a project scope. See Attachment A for the project scope details.

Phase two will be the implementation of the improvements and at that time the City and ICS will enter into a Project Specific Agreement (PSA) utilizing an AIA contract defining the particular scope of work and other needs. The work may include the following project types: new construction, additions, remodeling, renovation, repairs, energy conservation measures, and other facilities improvements. See Attachment B for specifics.

Budget Impact:

There is no upfront fee for phase one unless the city terminates this agreement. In the case of termination by the city, ICS would receive payment for services executed, reimbursable expenses and a fixed fee of \$25,000.

Phase two fees will be based on which procurement method is utilized and project scope. Fees will be calculated into the funding strategy.

Staff Recommendation:

Staff recommends approval of the ICS Professional Services for Merrill Hall.

Attachments:

1. ICS Professional Services Agreement Merrill Hall

PROFESSIONAL SERVICES AGREEMENT

PARTIES: **City of Owatonna, MN**
540 West Hills Circle
Owatonna, MN 55060

And,

ICS
1331 Tyler Street NE, Suite 101
Minneapolis, MN 55413

RE: City of Owatonna – HVAC / Energy Project

1. **Overview.** The City of Owatonna, MN (“City”) and ICS (“ICS”) (collectively, “Parties”) enter into this Professional Services Agreement (“Agreement”) for professional services for the City pursuant to the terms and conditions of the Agreement including Attachments A, B, C, and D. To develop and implement the Agreement in a timely manner, a two-phase approach will be used. Phase I (“PI”) is for assessment and development of a Facility Plan or Project(s), and Phase II (“PII”) is for implementation of the Plan or Project(s). This Agreement defines the responsibilities of both parties during each phase and constitutes a binding contract for Phase I and Phase II professional services to be provided by ICS. An additional overview of the project is provided in Attachment D.
2. **Scope of Professional Services.** The scope of professional services (“Services”) for Phases I and II are defined in Attachments A and B to this Agreement. PI Services include ICS assisting the City in the development and adoption of the Facility Plan or Project(s). PII Services include ICS implementation of the improvements portion of the Facility Plan or Project(s) upon approval of the Facility Plan or Project(s) by the administration and/or governing board. The parties anticipate the Services shall include but are not be limited to the following project types: new construction, additions, remodeling, renovation, repairs, energy conservation measures, and other facilities improvements.

For Phase II Services, ICS and the City shall enter into a Project Specific Agreement (“PSA”) utilizing AIA contract forms or other industry standard agreements modified to define the particular scope of work and other needs for each specific project or projects, unless another form of contract is mutually agreeable. The PSA shall supersede this Agreement with respect to the particular project or projects defined under the PSA.

ICS shall perform its Services under this Agreement consistent with the skill and care ordinarily provided by professional service providers in the same or similar locality under the same or similar circumstances. The cost of construction shall be only estimates and shall not constitute a representation or warranty regarding the actual cost of the construction. The cost of construction of any potential project will be determined based upon competitive or negotiated bids, where required by law, that are received from construction contractors for the work at issue according to the laws in the state where the specific project is located. In the event of procurement of construction services under either a Construction Manager-at-Risk contract or a negotiated Energy Services Contract, which is not bound by competitive bidding requirements under MN Statute § 471.345 Subd. 13, a guaranteed maximum price may be established where applicable.

3. **Fee and Payments.**

PI Services: The City shall pay not pay ICS a fee for PI services. The City shall agree to form a Project Oversight Committee consisting of stakeholders including City staff members and City council members for review of deliverables resulting from PI services.

PII Services. The City and ICS shall enter into PSA for each project undertaken in Phase II including a reasonable fee for PII Services within 30 days of the City's approval of the Plan utilizing the typical fee schedule in Attachment B and the fee schedule in Attachment C. Payments shall be made within 30 days of the City receiving ICS's invoice. If the parties cannot reach agreement on a PSA including a reasonable fee for PII Services for any specific project or projects, either party may terminate this Agreement as to the specific project or projects, and the City shall pay ICS within thirty (30) days of the date of termination the unpaid portion of the fee for PI services, if any. If the City is the party terminating this Agreement as to any specific project or projects pursuant to this Paragraph, the termination of this Agreement will be considered to be for convenience as provided in Section 7 below and the City will pay ICS a fixed fee of \$25,000 in addition to any unpaid portion of the fee for PI and PII services.

Change Orders. The Parties may request additions, deletions, or other revisions to the Services performed under this Agreement ("Change Order"). The price and payment terms and time for performance shall be adjusted by mutual written agreement of the parties no later than fourteen (14) days after submission of the Change Order in accordance with the Change Order. ICS shall not be required to perform any services under the Change Order until the parties have signed a mutual written agreement for these adjustments. If concealed or unknown conditions are encountered which affect the performance of the Services under this Agreement that differ from the conditions represented by the City, the price and payment terms and time for performance shall

be equitably adjusted. Claims for equitable adjustment must be asserted in writing within a reasonable time from the date ICS becomes aware of a change to the Services.

4. **Work Product.** The City and ICS agree that the Work Product ICS creates during performance of PI Services is proprietary information and may be copyrighted by ICS. The City shall not sell, share, or distribute ICS's work product to any party, individual or entity. The City has no right or title to the work product and shall not use the work product for any purpose other than those purposes directly benefitting the project described in this Agreement. ICS has the right to use, reproduce, and to make derivative works from documents and other data generated or collected during PI Services.

The City is entitled to keep electronic and hard copies of ICS's Work Product, including plans, specifications, and construction documents, created pursuant to Project Specific Agreements. The City may, after receiving ICS's written approval, provide such documents to other professional service providers the City may retain after ICS's Services under this Agreement are completed to assist with the construction, repair, maintenance, and preservation of its properties. ICS's approval shall not be unreasonably withheld.

The provisions of this section shall not apply if the City has removed a particular project from Phase II. Further, nothing in this Agreement shall be construed to limit the City's ability to fully comply with its obligations under the Minnesota Government Data Practices Act (MGDPA), including its obligations to respond to requests for data.

5. **Insurance.** Upon request of the City, ICS shall provide a certificate of insurance to the City identifying ICS's insurance coverage. ICS shall maintain the following insurance in full force and effect until the Services are completed:

Coverages	Limits of Liability
General Liability	\$2,000,000 Each Occurrence \$4,000,000 Aggregate
Automobile Liability	\$1,000,000 Combined Single Limit
Umbrella Liability	\$5,000,000
Workers Compensation	Statutory
Professional Liability	\$1,000,000 Each Claim \$3,000,000 Aggregate

The above limits may be procured through primary and excess policies. ICS shall include the City as an additional insured on its general liability and automobile liability insurance policies applicable to the Services and required by this Agreement.

6. **Indemnification.** To the fullest extent permitted by law, ICS agrees to indemnify the City

and its employees, officers, board members, insurers, attorneys, and agents from and against any and all monetary damages including reasonable costs, judgments, or other forms of monetary legal liability including reasonable attorney's fees that are proven to be legally caused by the negligence of ICS in performing or failing to perform its obligations under this Agreement, but only for the amount of damages which are equal to ICS's proportion of the total fault which is proven to have directly caused the damages. ICS's indemnification obligation shall apply to its subconsultant(s), anyone employed or hired by ICS, or anyone for whose acts ICS may be legally liable. ICS's indemnification obligation under this paragraph will not apply to any damages proven to be legally caused by the City's negligence in performing or failing to perform its obligations under this Agreement. ICS's duty to indemnify the City pursuant to this paragraph shall survive the completion, expiration, or termination of this Agreement.

To the fullest extent permitted by law, the City agrees to indemnify ICS and its agents, representatives, employees, officers, board members, insurers, and attorneys from and against any and all monetary damages including reasonable costs, judgments, or other forms of monetary legal liability, including reasonable attorney's fees that are proven to be legally caused by the negligence of the City in performing or failing to perform its obligations under this Agreement, but only for the amount of damages which are equal to the City's proportion of the total fault which is proven to have directly caused the damages. The City's indemnification obligation shall apply to its agents, representatives, officers, board members, insurers, attorneys and anyone employed or hired by the City, or anyone for whose acts the City may be legally liable. The City's obligations under this paragraph will not apply to any damages proven to be legally caused by the negligence of ICS in performing or failing to perform its obligations under this Agreement. The City's duty to indemnify ICS pursuant to this paragraph shall survive the completion, expiration, or termination of this Agreement.

7. Termination.

Either party may terminate this Agreement upon not less than thirty (30) days written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

Termination for Cause. If the City fails to make payments to ICS in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at ICS's option, cause for suspension of its Services under this Agreement. If ICS elects to suspend Services, ICS shall give fourteen (14) days' written notice to the City before suspending Services. In the event of a suspension of Services, ICS shall have no liability to the City for delay or damage caused the City because of such suspension of Services. ICS's fees for the remaining Services, and the time schedules, shall be equitably adjusted.

If ICS defaults by failing to substantially perform, in accordance with the terms of this Agreement, the City may give written notice to ICS (i) terminating this Agreement effective fourteen (14) days from the date of written notice, or (ii) setting forth the nature of the default and requesting that ICS cure the default within fourteen (14) days from the date of written notice. If ICS fails to cure the default within 14 days of written notice, the City may give notice to ICS of immediate termination. In such event, ICS shall be entitled to receive payment for Services properly performed prior to termination, together with Reimbursable Expenses (Attachment C), if applicable, then due through the date of termination.

Termination or Suspension for Convenience. The City may at any time give written notice to ICS terminating this Agreement within thirty (30) days or suspending the Agreement, in whole or in part, for the City's convenience and without cause. If the City terminates this Agreement or suspends the Project, ICS shall promptly reduce staff, services and outstanding commitments to minimize the cost of termination or suspension. In case of termination for the City's convenience, ICS shall be entitled to receive payment for Services executed prior to termination, together with Reimbursable Expenses (Attachment C), if applicable, then due through the date of termination, and a fixed fee of \$25,000.

8. Hazardous Materials.

Asbestos-Containing Materials: Neither party desires to or is licensed to undertake direct obligations relating to the identification, abatement, cleanup, control, removal, or disposal of asbestos-containing materials ("ACM"). Consistent with applicable laws, the City shall supply ICS with any information in its possession relating to the presence of ACM in areas where ICS undertakes any Services that may result in the disturbance of ACM. If either the City or ICS becomes aware of or suspects the presence of ACM that may be disturbed by ICS's Services, it shall immediately stop the Services in the affected area and notify the other party. The City shall be responsible at its sole expense for addressing the potential for or the presence of ACM in conformance with all applicable laws and addressing the impact of its disturbance before ICS continues with its Services, unless ICS had actual knowledge that ACM was present and acted in disregard of that knowledge, in which case (i) ICS shall be responsible for remediating areas impacted by the disturbance of the ACM, and (ii) City shall resume its responsibilities for the ACM after ICS's remediation has been completed.

Other Hazardous Materials: ICS shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to Other Hazardous Materials ("OHM") in any form except ICS shall be responsible for the removal and disposal of any OHM that ICS uses in providing its Services under this Agreement.

The City shall supply ICS with any information in its possession relating to the presence of OHM if their presence may affect ICS's performance of the Services. If either the City or ICS becomes aware of or suspects the presence of OHM may interfere with ICS's Services, it shall immediately stop the Services in the affected area and notify the other party. The City shall be responsible at its sole expense for removing and disposing of OHM from its facilities and the remediation of any areas impacted by the release of OHM, unless ICS had actual knowledge that OHM were present and acted in disregard of that knowledge, in which case (i) ICS shall be responsible for the remediation of any areas impacted by its release of such OHM, and (ii) the City shall remain responsible at its sole expense for the removal of any hazardous materials that have not been released and for releases not resulting from ICS's performance of the Services.

9. **Disputes.** ICS and the City will attempt to settle any "Dispute" (including any claim, controversy, difference of opinion or matter in question between the Parties concerning the performance, enforcement, or interpretation of this Agreement), through direct informal discussions in good faith.
 - a. If informal discussions are unsuccessful, the Parties shall submit the Dispute to non-binding mediation with a mediator agreed upon by the Parties, or if one cannot be agreed upon within 15 days after the party seeking mediation provides written notice to the other party demanding mediation, a mediator shall be appointed by the City court in the jurisdiction in which the City is located. Demand for mediation shall be provided in writing to the other party within a reasonable time after the Dispute has arisen.
 - b. Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules, and judgment on the awarded rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

- c. Notwithstanding anything in this Agreement to the contrary, either party may pursue any legal remedy it deems appropriate without first resorting to informal discussion or mediation to the extent necessary to prevent a claim from being barred by the applicable statute of limitations or repose.

- 10. **Independent Consultant Relationship.** It is expressly understood that ICS is an independent contractor and not an employee of the City. ICS shall have control over the manner in which its Services are performed under this Agreement. ICS shall supply, at its own expense, all materials, supplies, equipment, and tools required to accomplish the Services contemplated by this Agreement. ICS is not entitled to any benefits from the City, including, without limitation, insurance benefits, sick and vacation leave, workers' compensation benefits, unemployment compensation, disability, severance pay, or retirement benefits. Nothing in this Agreement shall be deemed to constitute an employment, partnership, joint venture, or agency relationship between the parties. This

paragraph shall not alter or limit the City's obligations to pay ICS for its Services as set forth in this Agreement.

11. Other Provisions.

- a. This Agreement shall be governed by the laws of the State of Minnesota. This Agreement specifically includes Attachments A, B, C, and D. Any litigation proceedings between the City and ICS related to this Agreement shall be venued in Minnesota's State District Court, Steele County, pursuant to applicable law.
- b. The City shall provide ICS access to all applicable locations and facilities to assist ICS's performance of the Services under the Agreement.
- c. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid that provision shall be deemed stricken from this Agreement, and all other provisions of the Agreement shall remain in full force and effect.
- d. This Agreement represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations or agreements, either written or oral. The Parties bind themselves, their agents, successors, assigns and legal representatives to this Agreement. This Agreement cannot be assigned by either party without the prior written consent of the other party. This Agreement may be amended only by written instrument signed by the Parties. The captions and titles in this Agreement are for convenience only and shall not affect the interpretation or meaning of this Agreement. This Agreement may be signed in counterparts, each of which shall be deemed an original, and which taken together shall be deemed to be one and the same document.
- e. Nothing contained in this Agreement shall create a contractual relationship with or cause of action in favor of a third party against ICS. The Services under this Agreement are being performed solely for the benefit of the City, and no other entity or individual shall have any claim against ICS because of this Agreement or the performance or non-performance of the Services in the Agreement.
- f. The City shall make decisions and carry out its other responsibilities in a timely manner so as not to delay ICS's performance of its Services. The City shall be responsible for and ICS may rely upon the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by the City to ICS pursuant to this Agreement. ICS may use such

requirements, programs, instructions, reports, data, and information in performing or furnishing Services under this Agreement.

- g. The Parties shall act in good faith in carrying out their respective duties and obligations under this Agreement. Any failure of either party to require strict performance by the other party, or any waiver by one party of any requirement under this Agreement shall not be deemed to be a consent to or a waiver of any continuing or subsequent failure or breach.
- h. All notices and other correspondence with respect to this Agreement shall be directed to the addresses listed at the beginning of this Agreement, or to such addresses as the parties may, from time to time, designate in writing.
- I Governmental Notice Pursuant to Minnesota Statute § 13.05, subd. 11:
 - (a) If a government entity enters into a contract with a private person to perform any of its functions, all of the data created, collected, received, stored, used, maintained, or disseminated by the private person in performing those functions is subject to the requirements of this chapter and the private person must comply with those requirements as if it were a government entity. All contracts entered into by a government entity must include a notice that the requirements of this subdivision apply to the contract. Failure to include the notice in the contract does not invalidate the application of this subdivision. The remedies in section 13.08 apply to the private person under this subdivision.
 - (b) This subdivision does not create a duty on the part of the private person to provide access to public data to the public if the public data are available from the government entity, except as required by the terms of the contract.
 - (c) Notwithstanding anything in the Agreement to the contrary, ICS shall comply with all the requirements of the MGDPA. If ICS seeks to use information collected during its performance of this Agreement that is specific to the City and that is classified as public, private, or confidential information under the MGPDA, the consent of the City and, as to private or confidential data, the consent of the subject of the data shall be required to use such information, and the City or the subject of the data may elect not to provide consent to ICS.

Acceptance

The Parties hereby accept this Agreement in its entirety, including Attachments A, B, C, and D.

ACCEPTED FOR
City of Owatonna

ACCEPTED FOR
ICS

BY: _____
Thomas A. Kuntz

BY: _____
Andy Faulkner

TITLE: City of Owatonna Mayor

TITLE: Executive Vice President

DATE: _____

DATE: _____

BY: _____
Kris Busse

TITLE: City of Owatonna Administrator

DATE:

PHASE I – Assessment and Project Development at Merrill Building, City of Owatonna, MN

1.0 Consultations and Testing / Investigation

ICS shall facilitate professional consultations with key specialty resources and contractors to perform site visits and audits, conceptual design, and rough order of magnitude pricing, savings, and evaluation of funding options.

2.0 Deliverables

ICS will provide the following deliverables to establish the intended solution in order to prepare the project for implementation/construction under PII:

- Project budget
- Assistance with funding / financial solutions as applicable
- Provide recommendations and revise plans as needed based on City feedback
- Contract for implementation under PII

Deliverables NOT included in PI include:

- Renderings and/or scale models
- Engineering/architectural drawings
- Structural assessments required

PHASE II – Implementation/Construction

Recommendations included in PI may begin immediately following approval of City Administration and/or Council. ICS may utilize the services of sub consultants and sub contractors, which the City will have the right to reject the selection of. It is the City's intent to utilize ICS for professional services as described below:

2.0 Professional Services

- 2.1 Upon Development of the final project scope and schedule, ICS proposes to provide construction phase representation services with compensation to be structured as a lump sum fixed fee. Our role during this phase of the process provides full program management services including design, construction management, and commissioning (as applicable). Upon determination of the actual improvement scopes, we will work collaboratively with City administration to determine the lump sum fixed fee which will be finalized with the City following determination of the project scope and timeline.
- 2.2 Professional services do not include competitively bid construction contracts. Construction contracts will be entered by the City directly with contractors utilizing Minnesota procurement statutes for competitive bidding requirements, unless alternative procurement options are to be utilized as identified in items 2.3 and 2.4 below.
- 2.3 If the City and ICS plan to implement project(s) under the Construction-Manager-at-Risk procurement method, competitive bids from contractors will be received and entered into by ICS directly with contractors under a guaranteed maximum price and best value evaluation.
- 2.4 If the City and ICS plan to implement project(s) under MN Statute § 471.345 subd. 13, "Energy Efficiency Projects," construction contracts will be entered into between ICS and subcontractors.

3.0 Compensation

It is the intent of both parties that fees for Phase II services for plan implementation, if the City proceeds with a project as a result of the process, will be negotiated by both parties. ICS and the City will utilize standard AIA contract documentation as the basis of the Phase II contracts, unless a mutually agreeable alternative form of contract is preferred, and both parties agree to negotiate final fee percentages and terms and conditions based on the scope of work established under Phase I.

Typical industry standard fees are in the following range of total project budget:

	Typical Design Fee	Typical CM Fee	General Conditions/Reimbursable
Heavy renovation/remodeling	7.5% - 9.5%	2.5% - 3.8 %	See Attachment C
Light renovation/remodeling	6.5% - 8.5%	2.5% - 3.5%	See Attachment C
Additions	6.5% - 8.5%	2.5% - 3.5%	See Attachment C
New Construction	5.5% - 7.5%	1.5% - 3%	See Attachment C

Typical Reimbursable Compensation for Construction

Site services (full-time supervision and project management) costs are based on duration and scope of the project. These services will be estimated once the final scope and schedule is determined and billed as reimbursable costs according to the ICS rate schedule illustrated below:

Personnel Description	2022 RATES
Construction Executive	\$180
Project Director	\$150
Safety Director	\$125
Project Manager (PM 1,2,3 – Blended Rate)	\$0
Senior Project Manager	\$120
Project Manager	\$115
General Superintendent	\$120
Site Superintendent	\$110
Project Engineer	\$90
Clerical / Accounting	\$65

Flat Rates for Reimbursable Items	2022 RATES
Site Trailer	\$900 per month
Office Supplies / Equipment	\$300 per month
Phones / Internet / Technology	\$550 per month
Superintendent Truck	\$1,000 per month
Project Construction Mileage	\$1,000 per month
PreConstruction Mileage	\$250 per month
Superintendent Lodging / Meals	\$1,000 per week

ICS will develop a lump-sum amount for these services for each specific project in conjunction with the City as each project scope is finalized. ICS will account for all necessary costs associated with construction, including permitting, bonding, warranty, etc.

Project Overview and Anticipated Process

1.0 Background

Background, Scope of Work, & Budget

The City of Owatonna and ICS have completed facility surveys as part of an agreement to assist the City with long-term facilities projects planning. The agreement provided for a review of current deferred maintenance and energy efficiency projects, and subsequently ICS and City staff have focused on developing a solution to re-work the existing HVAC systems and design at the Merrill Building. Several site visits, meetings with building personnel, and system investigations have been completed to arrive at a preliminary proposed mix of projects that ICS and the City feel support the ongoing and future needs of its facilities.

While ICS is recommending the use of Energy Efficiency legislation described below, ICS will work with the City to structure the most mutually beneficial procurement method.

Several needs in City facilities should be addressed including energy efficiency measures and deferred maintenance items. The current condition of some of the systems in question requires at a minimum a plan be enacted to either significantly repair or replace the systems to reduce liabilities and maintenance costs to the City, as well as generate annually recurring savings that can be re-directed to the cost of the project. The prioritized projects include:

- Merrill Building
 - Re-design and re-work of HVAC system (chiller and boiler replacement is imminent)
 - Building controls / automation system upgrades in various facilities
 - Remove pneumatics and upgrade system to open-protocol, web-based user interface
 - Mechanical equipment ancillary replacement in various locations
 - Interior and exterior lighting improvements
 - Re-roofing as appropriate
 - General supporting construction work to support the above scope of work

Based on our preliminary review of the City facilities and their needs, some of these building needs should be implemented by bundling projects that have a shorter return on investment with those that have a longer return on investment, so that annually recurring energy and operational savings can be reinvested in debt service payments to offset some of the cost of the

overall project from an annual cash flow perspective.

Procurement Methodology & Enabling Legislation

The City has experience with design and construction in the past utilizing traditional procurement methods, where a typical process includes retaining a design architect, consulting engineer, and competitive bidding. While this process is utilized successfully in many projects, the need for minimizing upfront capitalize costs and complexity in project design and scope, price uncertainty, project schedule, and overall risk in particular at the Merrill Building is of the utmost importance. Therefore, we are recommending use of a Design-Build procurement vehicle under subdivision 13 of the State of Minnesota Municipal Contracting Law, *Energy Efficiency Projects*. This legislation has some key requirements that must be met in order to utilize the Design-Build process:

- In order to qualify as acceptable projects, the scope(s) of work must either be specifically called out in the legislation, or be a project that generally reduces energy, operational, or long-term operational costs
- Project costs must be likely to be re-couped within 20 years from estimated annual savings
- Public notice must be issued indicating the meeting at which the City intends to award a contract
- Projects not subject to the competitive bidding requirements, thus allowing a design-build approach
 - Design-build approach allows for subcontractor selection based on qualifications and collaborative project development, rather than solely based on low-bid

Energy, Operational, and Long-Term Operational Cost Savings

In order to review and estimate the amount of savings that the proposed projects will result in, ICS has assembled energy savings calculations based on data provided by Owatonna Public Utilities, as well as estimated operating cost savings from a reduction of costs in maintenance. These savings would be recognized as actual reductions in current operating budgets. In addition, long-term operational savings have been identified that can be utilized to calculate the overall project return on investment, however these are not “hard” savings that will be realized out of the current operating budget. Rather, the goal of defining long-term operational savings is to estimate the amount of funds that would otherwise be spent in the future to keep the facilities and systems running to provide adequate environmental conditions for the facility’s purpose. To define what these added costs would be, several variables need to be taken into account to recognize a true future avoidance of costs, such as current systems’ life expectancy, the addition

of cost inflation over time, and anticipated interest rates on debt service.

Utility Rebates and Other Incentives

ICS will proactively coordinate and work with Owatonna Public Utilities to ensure they have up-to-date knowledge of the proposed design and scope of work in order to ensure that any available utility rebates will be maximized and received to be applied to buy down the initial cost of the project.

Project “Soft Costs” and other Costs Comparison to Traditional Procurement

In addition to the transfer of risk regarding project costs to the Design-Builder, several efficiencies can be gained regarding soft costs and fees of a project by utilizing this procurement method. First, no upfront capital is expended because the design and development cost is included in the final GMP, which is arrived at in a collaborative fashion with only the necessary resources - there is no need to retain architectural or design services separately. Second, the GMP provides certainty that the final cost of the project will not change – meaning no change orders unless requested by the owner. The City will know the total project investment before proceeding with the final agreement. Finally, typical soft costs can be streamlined as indicated in the table below due to the project development structure.

Typical Soft Cost Range Comparison for Performance-Based Design-Build vs. Typical Approach Design-Bid-Build			
Cost Type	Performance Based Design Build	Design-Bid-Build	Remarks
Architectural Design	3-5%	5-7%	Professional Services can be very clearly identified according to discipline - fees focused on provider's scope of work rather than entire project budget.
Engineering (MEPC)	3% - 4%	5% - 7%	Professional Services can be very clearly identified according to discipline - fees focused on provider's scope of work rather than entire project budget.
Insurance/Permits/Bonding	1% - 1.5%	1% - 1.5%	Costs are same regardless of scope of work.
Project Management	6% - 8%	8% - 10%	Project Management can be streamlined due to ability to structure project team directly with subcontractors.
General Conditions / Equipment	0%	1% - 3%	Not a typical part of Design - Build because cost is structured as Guaranteed Maximum Price - general conditions, site services, equipment rental included in GMP.
Testing/Commissioning	1% - 1.5%	2% - 3%	Testing and Commissioning streamlined by involving team early in process - eliminates learning curve of another provider.
Project Validation / Savings	.25% - 0.5%	0%	Validation is necessary since measuring and leveraging savings.
Total	14.25% - 20.5%	22% - 31.5%	Fees vary depending on scope of work.



Public Works Department

DATE: March 21, 2023
TO: Mayor and City Council
FROM: Sean Murphy, Public Works Director
SUBJECT: Stormwater Facility Maintenance Easement Agreement - Steele County Humane Society

Purpose:

Approve the stormwater facility maintenance agreement with the Steele County Humane Society for their new facility located at 1855 State Avenue.

Background:

The City requires that on-site stormwater management must be maintained by the property owner to meet the requirements of the MS4 permit held by the City. The property owner agrees to the terms and conditions as outlined in the attached agreement.

Budget Impact:

No budget impact.

Staff Recommendation:

Staff recommends approval.

Attachments:

1. Steele County Humane Society Stormwater Facility Maintenance Easement Agreement

City of Owatonna Stormwater Facility Maintenance Easement

THIS AGREEMENT, made and entered into this 14th day of November, 2022, by The Steele County Humane Society hereinafter called the "Property Owner" and the City of Owatonna, MN hereinafter called "City".

WHEREAS, the Property Owner is the owner of certain property described as 1855 State Avenue , BLK 1 LOT 4 STATE AVENUE ADDN NO.2, Parcel ID # 17-596-0104. **Exhibit A: (ATTACH LEGAL DESCRIPTION)**

WHEREAS, the Property Owner is proceeding to build on and develop the property; and

WHEREAS, the site plan known as Steele County Humane Society – New Facility, hereinafter called the "plan", which is expressly made a part hereof, as approved or to be approved by the City, provides for management of stormwater within the confines of the property; and

WHEREAS, the City and the Property Owner, its successors and assigns, agree that the health, safety, and welfare of the residents of the City of Owatonna, MN require that on-site stormwater management/BMP facilities be constructed and maintained on the Property; and

WHEREAS, the City requires that on-site stormwater management/ Structural Best Management Practices (BMP) facilities, as shown on the Plan and implemented to meet requirements of Minnesota Permit No. MNR040000 and Minnesota Permit No. MNR100001,

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

1. The Property Owner shall provide an attachment to this agreement the required Maintenance Plan, as-built drawings, and certification that the BMP has been constructed properly as required by the City of Owatonna Stormwater Management Ordinance No. 52.00 at end of project.
2. The facilities shall be constructed and maintained by the Property Owner, its successors, and assigns in accordance with the plans and specifications identified in the submitted plan.
3. The facilities shall be constructed and maintained by the Property Owner, its successors, and assigns, in compliance with the most recent requirements of the City's Stormwater Management Ordinance 52.00, Minnesota Permit No. MNR040000 and Minnesota Permit No. MNR100001 under the National Pollutant Discharge Elimination System/State Disposal System Permit Program.
4. The Property Owner, its successors, and assigns, shall at all time, adequately maintain the facilities. Such maintenance obligations shall include the obligation to properly maintain all pipes, channels, or other conveyances built to convey stormwater, as well as, all structures, improvements, and vegetation provided to control the quantity and quality of the stormwater.
5. Adequate maintenance is herein defined as keeping the facilities and all components in good working condition so that these facilities continue to perform their design functions.
6. The Property Owner, its successors, and assigns, shall inspect the stormwater management facility on a routine basis, at a minimum annually, to assure safe and proper functioning of the

facilities. The inspection shall cover the entire facilities including embankments, berms, inlet and outlet structures, pond areas, access roads, etc.

7. The Property Owner, its successors, and assigns shall be responsible for improving, modifying, installing new/existing structural stormwater best management practices in the event the practice is found to no longer be effective in meeting treatment requirements of MN Permit No. MNR040000 and MN Permit No. MNR100001.
8. The Property Owner, its successors, and assigns, hereby grants to the City, its authorized agents and employees, a non-exclusive perpetual easement of ingress and egress over, across, under, and through the property for the purpose of inspecting the facilities. The Property Owner also grants the City the access to inspection and maintenance records conducted by the Property Owner.
9. The City shall provide the Property Owner, its successors, and assigns, a notice including copies of any inspection findings, a directive to commence with needed repairs, improvements, or modifications and a deadline to complete the repairs.
10. The Property Owner, its successors and assigns, shall reply to the Engineering Department within 15 business days, indicating their response to the notice.
11. In any event the Property Owner, its successors, and assigns, fails to maintain the facilities in good working condition acceptable to the City, the City and its authorized representatives may enter upon the property and take such steps as are necessary to correct deficiencies identified in the inspection report and to charge the costs of such repairs to the Property Owner, its successors, and assigns, as outlined in the City's Stormwater Management Ordinance 52.00.
12. It is expressly understood and agreed that the City is under no obligation to routinely maintain or repair said facilities, and in no event shall this agreement be construed to impose any such obligations on the City.
13. This agreement imposes no liability of any kind whatsoever on the City. The Property Owner, its successors, and assigns, agrees to hold the City harmless from any liability in the event the stormwater management facilities fail to operate properly.
14. This agreement shall be recorded by the County Recorder of Steele County, Minnesota, and shall constitute a covenant running with the Property and/or equitable servitude, and shall be binding on the Property Owner, his or her heirs, successors, and assigns, and any other successors in interests, in perpetuity.

Property Owner: Steele County Humane
Society _____

By: Karen A. Thompson
Its: President

STATE OF MINNESOTA)
) ss.
COUNTY OF STEELE)

The foregoing instrument was acknowledged before me this 14 day of November, 2022, by Karen Thompson the President of SCHS, a 501 C 3 Charitable Organization under the laws of the State of Minnesota on behalf of the Charitable Organization.

Sara Ann Hinna
Notary Public



City: City of Owatonna

By: Thomas A. Kuntz, Mayor

By: Kris M. Busse, City Administrator

STATE OF MINNESOTA)
) ss.
COUNTY OF STEELE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by Thomas A. Kuntz, the Mayor of the City of Owatonna, and by Kris M. Busse, the Administrator of the City of Owatonna, a municipality under the laws of the State of Minnesota on behalf of the City.

Notary Public



Drafted By:
City of Owatonna
540 West Hills Circle
Owatonna, MN 55060



Public Works Department

DATE: March 21, 2023
TO: Mayor and City Council
FROM: Sean Murphy, Public Works Director
SUBJECT: Compost Site Agreement - Ed's Backhoe Service

Purpose:

To receive council approval of a contract with Ed's Backhoe Service for operation of a compost site on City owned property.

Background:

Since 2010, the City has contracted with Ed's Backhoe Service to operate a compost facility on City-owned property on 32nd Avenue SW identified as PIN# 17-0072-103. The contract shall be from April 20, 2023 to and including December 31, 2023.

Terms of the contract are shown in the attachment.

Budget Impact:

The City may deliver, without cost to the City, up to a total of 1,500 cubic yards per season, of acceptable materials generated by the City and delivered in City vehicles. All additional acceptable materials will be charged at \$6.00 CY with a maximum of amount paid by City of \$4,500.00. The City shall also receive 150 cubic yards of compost material per season loaded in City vehicles. The contractor will also sell up to 100 cubic yards of hardwood mulch, loaded on City vehicles at \$5.00 per cubic yard below the retail price.

Staff Recommendation:

Staff recommends approval.

Attachments:

1. 2023 Compost Site Agreement

CONTRACT BETWEEN THE CITY OF OWATONNA AND CONTRACTOR FOR OPERATION AND MAINTENANCE OF YARDWASTE COMPOST FACILITY

This contract is made and entered into between the City of Owatonna, a Minnesota Municipal Corporation, hereinafter called "City" and Ed's Backhoe Service, hereinafter called "CONTRACTOR".

WHEREAS, the State of Minnesota, through enactment of the Waste Management Act of 1980, as amended, has declared as State policy the improvement of Solid Waste Management through the separation and recovery of energy and materials from Solid Waste and through the reduction of indiscriminate reliance upon land disposal of Solid Waste; and

WHEREAS, Yardwaste may not be disposed of in mixed municipal solid waste, in a landfill, or in a resource recovery facility except for purposes of composting or co-composting; and

WHEREAS, the City consistent with these policies, desires to ensure an alternative to the land filling of yardwaste and brush, pursuant to its Solid Waste Master Plan; and

WHEREAS, CONTRACTOR offers to operate and maintain sites for the receiving, storage, transfer and processing of Acceptable Materials; and

WHEREAS, the City agrees to promote the delivery of Acceptable Materials to CONTRACTOR and CONTRACTOR agrees to accept, store, and compost or otherwise process Yardwaste, Brush, Trees, and Christmas Trees delivered to the Facilities and CONTRACTOR further agrees to market or otherwise utilize or dispose of all the compost, chips, and mulch produced at the Facilities; and

WHEREAS, CONTRACTOR has the authority to execute this contract as a binding legal obligation, fully enforceable in accordance with its terms and conditions.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the parties agree as follows:

1. GENERAL PROVISIONS

- 1.1 Purpose. The purpose of the Contract is to define the rights and obligations of the parties with respect to the operation and maintenance of yardwaste compost facilities.
- 1.2 Cooperation. The City and CONTRACTOR shall cooperate and use their reasonable efforts to ensure the most expeditious implementation of the various provisions of this Contract. The parties agree to, in good faith, undertake resolution of any disputes in an equitable and timely manner.
- 1.3 Term. The term of this Contract shall be from April 20th, 2023 to and including December 31, 2023, notwithstanding the date of the execution by all parties unless earlier terminated by law or according to the provisions herein.

2. **DEFINITIONS**

Unless the language or context clearly indicates that a different meaning is intended, the words, terms, and phrases stated below, when capitalized, shall have the following meaning:

- 2.1 Acceptable Materials. Yardwaste, Trees, Brush and Christmas Trees. However, when the site closes at the end of the day, no bags shall be left at the facility.
- 2.2 Brush. Shrub, and Tree Waste.
- 2.3 Christmas Trees. Fresh-cut coniferous or evergreen trees or boughs, used for Yuletide decorations.
- 2.4 Commercial Entity. Any person, or public or private entity delivering Acceptable Materials to the Facility, other than an Individual delivering Acceptable Materials from his/her own residence.
- 2.5 Facility. The site used for the receiving, storage, transfer, or processing of Acceptable Materials.
- 2.6 Finished Products. Screened compost in marketable condition and wood chips or mulch for landscaping purposes.
- 2.6.1 Gate Yard. A non-compacted gross cubic yard of Yardwaste as measured at the Facility entrance.
- 2.7 Hazardous Waste. Materials defined as Hazardous Waste by local, State, or Federal law, specifically including, but not limited to, petroleum products, polychlorinated biphenyls, and asbestos-containing materials.
- 2.8 Individual. Any person who delivers Acceptable Materials to a Facility from his/her residence.
- 2.9 Processing. Changing Acceptable Materials, as delivered to the Facilities, into useful products, through the natural process of composting, or the mechanical process of chipping and screening, and the preparation needed for these processes to occur.
- 2.10 Receiving Time. That time during which Acceptable Materials are received at the Facility.
- 2.11 Season. April 1 through day before Thanksgiving.
- 2.12 Tip Fee. A fee charged to Commercial Entities and Individuals for delivery of Acceptable Materials to a Facility.
- 2.13 Unacceptable Materials. All materials except Yardwaste, Brush, Trees, Christmas Trees, and the bags in which it is delivered.

- 2.14 Users. Commercial Entities or Individuals delivering Acceptable Materials to a Facility.
- 2.15 Yardwaste. Lawn cuttings, leaves, garden wastes, weeds, pruning, brush, trees and sod trimmings.

3. **CONTRACTOR RIGHTS AND OBLIGATIONS,**

- 3.1 Capacity. CONTRACTOR shall operate and maintain in each season, starting the first day of April and ending the day before Thanksgiving, a facility or facilities capable of handling yardwaste generated in Steele County.

In addition, CONTRACTOR shall operate and maintain a facility that is at a minimum, capable of receiving and processing Christmas Trees and Brush from Owatonna from April 20, 2023 through and including December 31, 2023 in accordance with the terms herein.

Minimum days and hours of operation are as follows: Monday, Wednesday, Friday and Saturday, 8:00 am through 6:00 pm. Final hours maybe subject to change based on approved contractor's proposal.

- 3.2 Receiving. CONTRACTOR shall accept Acceptable Materials generated in Steele County from Individuals and Commercial Entities, based upon policies which CONTRACTOR shall set for each Facility. Such policies shall be submitted to the City thirty (30) days prior to the beginning of each Season or ten (10) days prior to the effective date of any changes thereto. Such policies shall include:

Condition of Acceptable Materials when delivered,
Bagged vs. Debagged Materials,
Parties who may deliver Acceptable Materials,
Acceptance of Christmas Trees

- 3.3 Out-of-County Waste. CONTRACTOR may receive Acceptable Materials generated outside Steele County so long as sufficient capacity is retained for Materials to be accepted under Section 3.1 and 3.2.
- 3.4 Tip Fees. CONTRACTOR shall charge a tipping fee to users sufficient to cover the costs of the facilities. The city shall be notified of the fee schedule or any changes thereto, prior to implementation.
- 3.5 Compensation. The City may deliver, without cost to the City, up to a total of 1,500 cubic yards per season, of acceptable materials generated by the City and delivered in City vehicles. All additional acceptable materials will be charged at \$6.00 CY with a maximum of amount paid by City of \$4,500.00. The City shall also receive 150 cubic yards of compost material per season loaded in City vehicles. The CONTRACTOR will also sell up to 100 cubic yards of hardwood mulch, loaded on City vehicles at \$5.00 per cubic yard below the retail price.

- 3.6 Receiving Time. Subject to applicable County and municipal ordinances, CONTRACTOR shall keep a Facility open for the receiving of Acceptable Materials from April 1 through the day before Thanksgiving each Season. CONTRACTOR shall set a schedule for the Facility and inform the City of the schedule and any schedule changes, thirty (30) days prior to the Season and ten (10) days prior to any change. The Facility will be open on the first and second Saturday and Sunday in January after Christmas from noon to 4 pm to receive Christmas Trees.
- 3.7 CONTRACTOR'S Rejection of Deliveries. CONTRACTOR may reject Acceptable Materials delivered at hours other than the receiving Time. A vehicle shall be denied entrance if CONTRACTOR has a reasonable basis to believe it contains any amount of Unacceptable Materials. Upon request, CONTRACTOR will provide the User and the City with the documentation of the rejection and the reasons therefore. CONTRACTOR shall be responsible to obtain landfill capacity and to properly dispose of Unacceptable Materials, which have been delivered and when CONTRACTOR is unable to have removed at the expense of the Individual or Commercial Entity delivering it.
- 3.8 Processing. CONTRACTOR shall process all Acceptable Materials received at the Facilities. Acceptable Materials shall be composted, except for Brush which must be chipped.
- 3.9 Finished Products. CONTRACTOR shall develop a policy for distributing finished compost, mulch and woodchips. CONTRACTOR shall submit said policy and any changes thereto to the City.
- 3.10 Closure of Facility. CONTRACTOR shall not accept any Materials after December 31, 2023 at the Facility, unless the City's lease for the Facility is renewed for an additional term, and unless the City notifies CONTRACTOR in writing of such renewal and a new date for the closure. During the period after December 31, 2023 CONTRACTOR shall have access to the Facility for 120 days for the purposes of processing materials accepted, selling or otherwise distributing finished products and site cleans up.
- 3.11 Cleanup of Facility. Unless the City's lease for the Facility is renewed for an additional term, and unless the City notifies CONTRACTOR in writing by December 31, 2023 of such renewal and a new date for cleanup, CONTRACTOR shall remove all finished compost, unprocessed Acceptable Materials and Unacceptable Materials at the Facility within reasonable time limit.
- 3.12 Cost of Removal. If CONTRACTOR does not remove Materials and Finished Products as required under 3.10, the City may remove them and charge CONTRACTOR for its removal.
- 3.13 Loss of Facility. Notwithstanding the foregoing, in the event that the City sells the property, the City shall provide CONTRACTOR with thirty (30) days notice of said sale. Upon receipt of the notice from the City, CONTRACTOR shall make its best

efforts to reduce the volume of Acceptable Materials at the Facility. If a new location for the Facility is located, it shall be the City's responsibility and cost to provide the trucks and labor to transport Acceptable Materials a reasonable distance from the Facility to a new location. CONTRACTOR shall provide the necessary equipment and labor required to load the Acceptable Materials into City trucks. In the event that a new site for the Facility cannot be located within a reasonable distance, upon termination of the City's lease for the Facility and Acceptable Materials at the Facility shall become the property of the City, and CONTRACTOR shall have no further right or claims to the Acceptable Material.

- 3.14 Labor and Equipment. CONTRACTOR shall provide all labor, equipment, tools, supplies and other materials necessary to operate the Facilities. CONTRACTOR shall maintain, repair and replace all equipment as necessary, to ensure continued compliance with all requirements of law and other obligations as set up in this Agreement.
- 3.15 Roads. CONTRACTOR shall be responsible for maintaining all roads within the boundaries of the site required for continued operation as contemplated by this Agreement. CONTRACTOR shall be responsible for connecting such roads to the access roads or drives at the boundaries of the site.
- 3.16 Drainage. CONTRACTOR shall provide and maintain an adequate storm and surface water drainage system during the period of operations. CONTRACTOR shall ensure that storm and surface water leaving the site does not cause erosion or sediment loss and will conform to the City's stormwater management ordinance. At a minimum silt fence and wood chip berm is required downstream.
- 3.17 Product Collection Report. CONTRACTOR shall report annually to the City the volume of yardwaste collected.
- 3.18 Product Distribution Report. CONTRACTOR shall report quarterly to the City the volumes, type of use intended by the end user, and the value of distributed finished products.

4. **RIGHTS AND OBLIGATIONS OF THE CITY.**

- 4.1 Commitment to Promote the Delivery of Acceptable Materials. The City will use reasonable efforts to promote the delivery of Acceptable Materials to the Facilities. The City will meet and confer with CONTRACTOR on publicity of the Yardwaste program. The City, jointly with Steele County and CONTRACTOR shall develop a program and materials for promoting the Yardwaste management program and Facilities.
- 4.2 Permit. Notwithstanding Section 5.2 of this contract, except for the Minnesota Pollution Control Agency Permit, the City shall obtain all other permits required by Rule and other land use or conditional use permits.
- 4.3 Site.
 - A. The City shall provide a site for the Facility at no cost to the CONTRACTOR.
 - B. CONTRACTOR may procure any other sites CONTRACTOR deems necessary to meet the requirements of this Agreement.

- 4.4 Tours. At any time during the term of this Agreement and upon reasonable prior notice to CONTRACTOR, the City, its elected officials, employees, agents, representatives or guests shall have the right to tour the Facilities in order to observe and to permit others to observe the various services which CONTRACTOR performs. CONTRACTOR may take reasonable precautions to protect proprietary equipment and processing procedures. Such scheduled tours shall be conducted in a manner so as to comply with CONTRACTORS's safety standards, and shall not interfere with CONTRACTORS's ability to perform its obligations under this Agreement. Tours shall occur during regular operating hours, unless otherwise agreed to be both parties.
- 4.5 Inspection. The City, its elected officials, employees, agents or representatives may inspect the operation of the Facilities at any time for the purposes of verifying compliance with the inspection. The City, its elected officials, employees, agents or representatives shall have complete right and access to the Facilities so long as it does not interfere with the normal operations of the Facilities.
- 4.6 Access. At all times, access shall be allowed to the City, its employees, agents or contractors for the purpose of hauling sludge to and from the City's Sludge Bunker Facility. The Sludge Bunker Facility is located adjacent to and immediately west of the compost site. The City shall be responsible to grade, maintain or repair the access road during the time periods when the sludge hauling operations are occurring.
- 4.7 Miscellaneous.
- A. The City shall provide CONTRACTOR with access to City water for use in conjunction with the operation of the Facility. CONTRACTOR shall provide an anti-siphon device on the equipment which is used to obtain and transport water and said anti-siphon device shall be approved by the City water superintendent prior to use.
- B. CONTRACTOR shall be required to apply for a permit for exemption from the spring road restrictions.

5. **COMPLIANCE WITH LAWS/STANDARDS.**

- 5.1 General. CONTRACTOR shall abide by all Federal, State or local laws, statutes, ordinances, rules and regulations now in effect or hereafter adopted pertaining to the Contract or to the Facilities, programs and staff for which CONTRACTOR is responsible. This includes but is not limited to all Standard Assurances.
- 5.2 Licenses. CONTRACTOR shall procure, at its own expense, all licenses, permits or other rights required for the provision of services contemplated by this Contract. CONTRACTOR shall inform the City of any changes in the above within five (5) days of occurrence.

- 5.3 Violations. Any violation of Federal, State or local laws, statutes, ordinances, rules or regulations, as well as loss of any applicable license or certification by CONTRACTOR shall constitute a material breach of this Contract, whether or not intentional, and shall entitle the City to terminate this Contract upon delivery of written notice of termination to CONTRACTOR. Notwithstanding any other provision of this Contract, such termination shall be effective as of the date of such violation, failure or loss, subject, however to CONTRACTOR performing clean up in accordance with Section 3.1.
- 5.4 Minnesota Law to Govern. This Contract shall be governed by and construed in accordance with the substantive and procedural laws of the State of Minnesota, without giving effect to the principles of conflict of laws. All proceedings related to this Contract shall be venued in the State of Minnesota

6. **INDEPENDENT CONTRACTOR STATUS.**

CONTRACTOR is to be and shall remain an independent contractor with respect to any and all work performed under this Contract. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of agents, partners, joint ventures or associates between the parties hereto or as constituting CONTRACTOR as the employee of the City for any purpose of in any manner whatsoever.

CONTRACTOR acknowledges and agrees that CONTRACTOR is not entitled to receive any of the benefits received by City employees and is not eligible for workers' or unemployment compensation benefits under the City.

CONTRACTOR also acknowledges and agrees that no withholding or deduction for State or Federal income taxes, FICA, FUTA or otherwise, will be made from the payments due CONTRACTOR and that it is the Contractor's sole obligation to comply with the applicable provision of all Federal and State tax laws.

7. **INDEMNIFICATION AND INSURANCE**

- 7.1 Indemnified and Appointed. CONTRACTOR will indemnify, defend and save harmless the City, its elected officials, employees, agents or representatives from any and all claims, damages, lawsuits, losses, liabilities, costs and expenses arising out of any act, omission or equipment failure on the part of CONTRACTOR or its subcontractors, agents, servants or employees in the performance of any of the work or services to be performed or furnished by CONTRACTOR under the terms of this Agreement. Such indemnity shall include, but not be limited to, property damage, personal injury, bodily injury and death, punitive damages or any combination thereof.

The City shall indemnify, defend and save harmless CONTRACTOR, its employees, agents or representatives from any and all claims, damages, lawsuits, losses, liabilities, costs and expenses arising out of any act or omission of the City, its elected officials, employees, agents or representatives in

connection with work or services to be performed by the City under the terms of this Agreement.

CONTRACTOR and the City understand and agree that the subsurface and surficial soil conditions of the facility are Unknown and that the City has not required that any clay or other liner be constructed and CONTRACTOR will not construct any. The City shall indemnify CONTRACTOR, its employees, subcontractors, agents or representatives from any and all costs for remediation of environmental impairment to the site resulting from preexisting site condition or from the operation of the Facility by the City prior to CONTRACTOR's operation of the facility under contract with the City, except that the City shall not indemnify CONTRACTOR for any such costs which are a result, in whole or in part, of CONTRACTOR's or its employees, subcontractors, agents or representatives willful or negligent acts or omissions.

- 7.2 Insurance. In order to protect itself and to protect the City under the indemnity provision set forth above, CONTRACTOR shall at CONTRACTOR's expense, procure and maintain policies on insurance during the term of this Agreement as set forth. Such policies of insurance shall apply to the extent of, but not as a limitation upon or in satisfaction of, the indemnity provisions herein. All retentions and deductibles under such policies of insurance shall be paid by CONTRACTOR. Each such policy of insurance and insurance certificate shall not be canceled, non-renewed, or materially changed in the issuing insurance company, without at least thirty (30) days written notice of intent to cancel to the City.

Concurrent with execution of this Agreement and as necessary to show continuous coverage, CONTRACTOR shall file acceptable Certificates of Insurance with the City which shall be incorporated into this Agreement. All insurance shall state that the insurance broker, through which this insurance was purchased, has errors and omissions insurance.

- 7.3 Coverage. The policies of insurance to be obtained by CONTRACTOR pursuant to this Article shall be purchased from a licensed carrier, shall name the City of Owatonna as an additional insured, and shall include the following:
- A. Comprehensive General Liability, including Contractual. Occurrence-based single or combined limit comprehensive general liability insurance with the minimum limits of \$1,000,000 combined single limit.
 - B. Automobile Liability. Automobile Liability insurance if any vehicles are used in connection with this Agreement which shall include the following minimum coverage's:
 - 1) Bodily Injury and Property Damage: \$1,000,000 combined single limit.
 - 2) Hired, owned and non-owned vehicles Damage: \$1,000,000 combined single limit.

C. Umbrella Liability. Umbrella Liability insurance in the minimum amount of \$1,000,000. It is the responsibility of Contractor to maintain all underlying insurance in accordance with the terms of the Umbrella liability policy.

D. Workers' Compensation. The statutory minimum.

7.4 Failure to Provide Proof of Insurance. This Agreement will not be executed until proof of insurance consistent with the insurance requirements herein has been submitted to the City.

7.5 Excessive Premiums. If the premium for any liability insurance more than triples from one year to the next during the term of this Agreement, CONTRACTOR may terminate this Agreement effective upon cancellation of insurance coverage and ten (10) days notice. In the event CONTRACTOR gives notice to terminate under this paragraph, CONTRACTOR and City agree to meet and confer on payment of insurance premiums and continuation of Agreement.

8. **PERFORMANCE BOND**.

CONTRACTOR Shall furnish to the City a bond in the amount of Ten Thousand and no/100 Dollars (10,000.00), naming the City as sole obligee, the condition of which shall be that if CONTRACTOR fails to perform any of the obligations required by this Agreement, and the City is required to spend monies or labor or material to remedy such nonperformance, CONTRACTOR and the sureties on the bond will indemnify and save the City harmless from all losses, costs, and charges that may be incurred by the City because of any failure by CONTRACTOR to comply with the terms of this Agreement The City may approve an irrevocable letter of credit in lieu of a performance bond.

9. **SUBCONTRACTING**.

Parties shall not enter into any subcontract for the performance assignment of this Contract nor assign any interest in the Contract without prior written consent of all parties and subject to such conditions and provisions as are deemed necessary. This limitation shall not apply to subcontracts so long as CONTRACTOR retains managerial control of the Facilities. All parties shall be notified of subcontracts as soon as reasonable possible, regardless of their dollar value or nature.

Any Agreement between CONTRACTOR and any subcontractor shall obligate the subcontractor to comply with the general terms of this Contract.

The subcontracting or assigning party shall be responsible for the performance of its subcontractors or assignees and their compliance with the Contract terms.

10. **DEFAULT**.

10.1 Force Majeure. No party shall be held responsible or subject to damages for delay of failure to perform when such delay or failure is due to any uncontrollable

circumstance unless the act of occurrence could have been foreseen and reasonable action could have been taken to prevent the delay or failure, including but not limited to:

- A. Riots, insurrections, war, or civil disorder affecting performance of work, blockages, sabotage and acts of God (including tornadoes, lightening, earthquakes, fires, explosions and floods, but not including typical seasonal weather conditions of this geographic area).
- B. The adoption of or change in any Federal, State or local laws, rules, regulations, ordinances, permits or licenses, or changes in the interpretation of such laws, rules, regulations, ordinances, permits, or licenses by a court or public agency asserting jurisdiction after the date of the execution of the Contract except a change in Federal, State or local tax law.
- C. The suspension, termination, interruption, denial or failure of renewal of any permit, license, consent, authorization or approval essential to the operation, management or maintenance of the Facility.
- D. Orders and/or judgments of any Federal, State or local court, administrative agency or governmental entity.

The City and CONTRACTOR agree to attempt to resolve quickly all matters related to uncontrollable circumstances and use all reasonable efforts to mitigate its effects.

If a matter arising under this paragraph is unable to be resolved within sixty (60) days, the non-defaulting party may terminate this Contract upon ten (10) days written notice.

- 10.2 Inability to Perform. CONTRACTOR shall make every reasonable effort to maintain staff, facilities and equipment to deliver the services to be purchased by the City. CONTRACTOR shall immediately notify the City in writing whenever it is unable to or reasonably believes it is going to be unable to provide the agreed upon quality of services. Upon such notification, the City shall determine whether such inability requires a modification or cancellation of this Contract.
- 10.3 Default by CONTRACTOR. Unless cured or excused by the occurrence of Force Majeure of City default, each of the following shall constitute default on the part of CONTRACTOR:
 - A. The written admission by CONTRACTOR that it is bankrupt; or filing by CONTRACTOR of a voluntary petition under the Federal Bankruptcy Act; or the filing of an involuntary petition under the Federal Bankruptcy Act against CONTRACTOR unless dismissed within ninety (90) days. The Notice of Default and cure provisions of this Contract do not apply to this paragraph.

- B. The making of any arrangement with or for the benefit of CONTRACTORS's creditors involving an assignment to a trustee, receiver or similar fiduciary. The Notice of Default and cure provisions of this Contract do not apply to this paragraph.
 - C. Making material misrepresentative in any material provision or condition relied upon in the making of this Contract.
 - D. A court of administrative body having competent jurisdiction finds that CONTRACTOR persistently disregards laws, ordinances, rules, regulations or orders of any public authority.
- 10.4 Default by the City. Unless cured or excused by the occurrence of Force Majeure or default of SMC, each of the following shall constitute a default on the part of the City:
- A. Making knowing material misrepresentative in any material provision of condition relied upon in the making of this Contract.
 - B. Failure to provide the Facility indicated in paragraph 4.3A or equivalent.
 - C. Failure to perform any other material provision of this Contract.
- 10.5 Written Notice of Default. Unless a different procedure and/or effective date is provided in the article or paragraph of this Contract under which the default, failure or breach occurs, no event shall constitute a default giving rise to the right to terminate unless and until written Notice of Default is given to the defaulting party specifying the particular event, series of events or failure constituting the default and cure period.
- 10.6 Cure Period. If the party in default fails to cure the specified circumstances as described by the Notice of Default within twenty (20) days or such other times as may be specified under the terms of this Contract, then this Contract may be terminated by written notice as stated in Article 11 below.

11. **TERMINATION**

- 11.1 Written Notice of Termination. Notice of Termination shall be made by certified mail or personal delivery. Notice is deemed effective upon delivery to the party's Authorized Representative.
- 11.2 Duties of CONTRACTOR upon Termination. Upon delivery of a Notice of Termination and except as otherwise requested, CONTRACTOR shall:
- A. Discontinue performance of this Contract on the date and to the extent specified in the Notice of Termination;
 - B. Cancel all orders and subcontracts to the extent that they relate to the performances cancelled by the Notice of Termination;

- C. Remove from the Facility all chips, finished products, unprocessed acceptable materials and unacceptable materials.
 - D. Complete performance of such terms as shall not have been cancelled by the Notice of Termination.
- 11.3 Duties of City upon Termination. Upon delivery of a Notice of Termination and except as otherwise provided, the City:
- A. Shall not be liable for any services provided after Notice of Termination, except as stated above or as authorized by the City in writing.
- 11.4 Effect of Termination. Termination of this Contract shall not discharge any liability, responsibility or right of any party which arises from the performance of or failure to adequately perform the terms of this Contract prior to the effective date of termination. Nor shall termination discharge any obligation which by its nature would survive after the date of termination, including by way of illustration only and limitation, Standard Assurances.
12. **CONTRACT RIGHTS/REMEDIES.**
- 12.1 Rights Cumulative. All remedies available to either party under the terms of this Contract or by law are cumulative and may be exercised concurrently or separately and the exercise of anyone remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 12.2 Waiver. The Waiver of any default by either party or the failure to give notice of any default, shall not constitute a waiver of any subsequent default or be deemed to be a failure to give such notice with respect of any subsequent default. Waiver of breach of any provision of this Contract shall not be construed to be modification for the terms of this Contract unless stated to be such in writing and signed by authorized representatives of the City and CONTRACTOR.
13. **DAMAGES.**
- 13.1 Duty to Mitigate. Both parties shall use their best efforts to mitigate any damages which might be suffered by reason or any event giving rise to a remedy hereunder.
- 13.2 Cost of Defense. in the event CONTRACTOR fails to operate the Facility in compliance with all applicable local, State and Federal laws, permits, rules and regulation, CONTRACTOR shall reimburse the City for any civil or criminal penalties or costs of defense incurred due to such violations.
14. **REPRESENTATIVE.**
- 14.1 Authorized Representative. The following named persons are designated the Authorized Representatives of parties for purposes of this Contract. These

persons have authority to bind the party they represent and to consent to modifications and subcontracts, except that, as to the City, the authorized Representative shall have only the authority specifically or generally granted by the City Council. Notification required to be provided pursuant to the Contract shall be provided to the following named persons and addresses unless otherwise stated in this Contract, or in a modification of this Contract:

TO CONTRACTOR

ED'S BACKHOE SERVICE, LLC
JANET SPRINGER
3150 NE 74TH AVE
OWATONNA, MN, 55060
(507) 451-6980
CELL (507) 475-0205

TO CITY

CITY OF OWATONNA
KRIS BUSSE
CITY ADMINISTRATOR
540 WEST HILLS CIRCLE
OWATONNA, MN 55060
(507) 774-7340

- 14.2 Coordinator. To assist the parties in the day-to-day performance of this Contract and to develop service, ensure compliance and provide ongoing consultation, a coordinator shall be designated by CONTRACTOR and the City. The parties shall keep each other continually informed in writing of any change in the designated coordinator. At the time of this Contract, the following persons are the designated coordinators:

CONTRACTOR COORDINATOR

ED'S BACKHOE SERVICE, LLC
JANET SPRINGER
3150 NE 74TH AVE
OWATONNA, MN, 55060
(507) 451-6980
CELL (507) 475-0205

CITY COORDINATOR

CITY OF OWATONNA
BRAD RADEMACHER
540 WEST HILLS CIRCLE
OWATONNA, MN 55060
(507) 774-7300

15 **CONFLICT OF INTEREST**

CONTRACTOR agrees that it will not contract for or accept employment for the performance of any work or services with any individual, business, partnership, corporation, government, governmental unit or any other organization that would create a conflict of interest in the performance of its obligations under this Contract.

16. **MODIFICATIONS.**

Any alterations, variations, modifications or waivers of the provision of this Contract shall only be valid when they have been reduced to writing, signed by Authorized Representatives of the City and CONTRACTOR.

17. **SEVERABILITY.**

- 17.1 The provision of this Contract shall be deemed severable. If any part of this Contract is rendered void, invalid or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Contract unless the part or parts which are void, invalid or otherwise unenforceable shall substantially impair the value of the entire Contract with respect to either party.
- 17.2 The parties further agree to substitute for the invalid portion a valid provision that most closely approximates the economic effect and intent of the invalid provision.
18. **MERGER.**
- 18.1 Final Agreement. This Contract is the final expression of the Agreement of the parties and the complete and exclusive statement of the terms agreed upon, and shall supersede all prior negotiations, understandings or agreements. There are no representatives, warranties or stipulations, either oral or written not herein contained.
- 18.2 Prior Contracts. Prior contracts between CONTRACTOR and City concerning the Facilities are terminated upon and superseded by the execution of this Contract.
- 18.3 Maintenance of Buffer Zone Around Owatonna Public Utility Facilities. A protective buffer zone shall be established around the Owatonna Public Utilities propane tanks and control house. Such buffer shall create a 100 foot clear zone around the tanks and a 50 foot clear zone around the control house. CONTRACTOR shall remove all materials and structures from any area necessary to create this buffer area within ninety (90) days. The Owatonna Public Utilities shall clearly mark the boundaries of the clear zone and may elect to erect a fence along said boundaries. There will be no use of the delineated buffer area by CONTRACTOR unless approved by the Owatonna Public Utilities and the City of Owatonna.

IN WITNESS WHEREOF, parties have executed this Contract on the dates indicated below.

CITY OF OWATONNA

By: _____

Title: _____

CONTRACTOR

By: Janet Sprunger

Title: reg agent