



CITY COUNCIL MEETING
Tuesday, January 16, 2024 at 7:00 PM
Chambers of the Charles S. Crandall Center
540 West Hills Circle
Roll Call: Council Members Raney, Svenby, Voss,
Dotson, Burbank, Boeke & Schultz

PLEASE NOTE: At 5:30 p.m. The Council will meet in a study session in the Chambers. Items of Discussion will include review of the draft of the vision and goals for the Comp Plan. If time permits, there will also be general updates on various boards and commissions.

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

1.1. Council Agenda

1.2. Mayor Kuntz

1.2.1. Recommend New Member Appointments: EDA, HRA and Park Board

2. CONSENT AGENDA ITEMS

2.1. Minutes – Council Meeting – January 2, 2024

2.2. Minutes - Board/Commission Meetings

2.2.1. Airport Commission Meeting - December 12, 2023

2.2.2. Library Board Meeting - December 21, 2023

2.3. Department Reports:

2.3.1. Monthly Report - Building Inspection - December 2023

2.4. Licenses/Permits

2.4.1. Exempt Permit - Raffle Owatonna Area Chamber of Commerce and Tourism - February 18, 2024

2.4.2. Event Permit - Bob Fest - Foremost Brewery - February 24, 2024

2.4.3. Temporary Liquor License - St Mary's School - April 20, 2024

2.5. Miscellaneous

2.5.1. Engagement Letter - Business Email - McDonald Hopkins

2.5.2. Resolution 5-24: Authorize Contract for Purchases - Fame Awards

2.5.3. Software Subscription Services Agreement - Club Caddie

2.5.4. Employee Assistance Program (EAP) Agreement - TELUS Health

3. ACTION ITEMS

3.1. Finance Report

3.2. Resolutions:

3.2.1. Resolution 6-24: Order Feasibility Report - 2024 Street & Utility Project

3.2.2. Resolution 7-24: Lakeside Foods Violation

3.2.3. Resolution 8-24: VAR-15 - New Life Community Church Sign Variance

3.3. Miscellaneous

4. STAFF REPORTS

5. PUBLIC COMMENTS: Please limit comments to 2 minutes. Please approach the microphone, sign-in and state your name and address for the record after being acknowledged by the Council President. Speakers will be limited to two minutes to deliver their comments. Those speaking are asked to conduct themselves in a respectful manner as they deliver their comments. Audience members are asked to refrain from reacting to comments. The City Council will not respond directly to comments in this venue or take immediate action in response to them.

6. COUNCIL COMMENT AND GENERAL INFORMATION

7. ADJOURN



CITY OF
OWATONNA

Mayor Kuntz



DATE: January 16, 2024
TO: Mayor and City Council
FROM: Mayor Thomas A. Kuntz
SUBJECT: Recommend New Member Appointments: EDA, HRA and Park Board

Purpose:

Request Council approval of three nominations for board/commission members.

Background:

The City has thirteen different boards/commissions with members appointed by the City Council. Currently, there are openings on three boards as previous members have resigned. Applications were received, interviews done and background verification successfully completed. This is the final step in our appointment process; the Mayor's Recommendation for Council approval.

I am recommending the appointment of these individuals to each fulfill the remaining term of the current vacant seat as shown:

Economic Development Authority (EDA) - Patrick McDermott
term to end September 30, 2025
Housing Redevelopment Authority (HRA) - Lindsay Schultz
term to end April 30, 2024
Park Board -Eileen Wohlenhaus
term to end April 30, 2025

Budget Impact:

None.

Staff Recommendation:

Recommend approval for these recommendations.

Attachments:

None

Owatonna City Council Minutes – Draft Copy
January 2, 2024

On Tuesday, January 2, 2024 at 7:00 p.m., Council President Schultz called the regular session of the Owatonna City Council to order in the Chambers of the Charles S. Crandall Center. Present were Council Members Raney, Svenby, Voss, Dotson, Burbank, Boeke, and Schultz; Mayor Kuntz; Public Works Director Murphy; Parks, Recreation & Facilities Director Tuma; IT System Administrator Sticken; Sergeant Zackary Schumaker; City Attorney Walbran; City Administrator Busse and Administrative Coordinator Clawson.

Following the Pledge of Allegiance, Council President Schultz welcomed everyone. Council Member Svenby made a motion to approve the agenda as presented, Council Member Dotson seconded the motion; all members voted aye in approval.

2024 ORGANIZATIONAL MEETING

Resolution 1-24: Designate 2024 Depositories and Authorize Signatories

City Administrator Busse presented Resolution 1-24, designating depositories and persons authorized to sign orders thereon. This resolution authorizes disbursements via check, electronic funds transfer, wire, or ACH.

Designated as depositories for the deposits and safekeeping during 2023:

- US Bank
- Wells Fargo Bank
- Profinium, Inc.
- Bremer Bank
- United Prairie Bank
- Community Bank Owatonna
- West Bank
- Stifel
- RBC Wealth Management
- Wells Fargo Advisors
- Municipal Money Market Fund (LMC 4M Fund), hereinafter called "Financial Institutions and/or Brokers,"

Authorized signatories will be Thomas A. Kuntz, Mayor; Kris M. Busse, City Administrator and Rhonda L. Moen, Finance Director.

Authorization to the depositories to honor transfer of funds through wire, ACH, and electronic funds transfer by Thomas A. Kuntz, Mayor; Kris M. Busse, City Administrator; Rhonda L. Moen, Finance Director; Sandra Bera, Accounting Specialist or JoAnn Matejcek, Accounting Analyst.

Council Member Raney made a motion to approve Resolution 1-24, Council Member Voss seconded the motion; all members voted aye for approval.

Resolution 2-24: Designate 2024 Responsible Authority for Data Practices

Council President Schultz presented Resolution 2-24, to reappoint City Administrator Busse as the City's Responsible Authority for Data Practices Compliance during 2024. Council Member Voss made a motion for approval, Council Member Burbank seconded the motion; all members voted aye for approval.

Designate Newspaper for 2024 Official City Business

City Administrator Busse requested the Owatonna Peoples Press be reappointed as the City's Official Paper for 2024 Publications. City Attorney Walbran commented that the City's Charter requires a newspaper of general circulation in the city be designated as the official paper for publication of all matters required. Council Member Dotson made a motion to designate the Owatonna Peoples Press as the 2024 Official Paper, Council Member Svenby seconded the motion; all members voted aye for approval.

Appoint 2024 Weed Inspector

City Administrator Busse requested Fire Chief Ed Hoffman be reappointed as the City's Weed Inspector during 2024. Appointing the Fire Chief to this position works well by offering a good point of contact for residents with concerns regarding weed and nuisance vegetation. Council Member Raney made a motion to reappoint Fire Chief Hoffman as the City's Weed Inspector, Council Member Dotson seconded the motion; all members voted aye for approval.

Change 2024 Council Meeting Dates

City Administrator Busse requested a change for three 2024 Council Meeting Dates. Two dates are 2024 Election Dates, the first Tuesday in March is the Presidential Nominating Primary in the State of Minnesota, and the first Tuesday in November is the 2024 General Election. The first Tuesday in August is National Night Out. These 2024 City Council Meetings will be changed:

Tuesday, March 5 Meeting changed to Wednesday, March 6

Tuesday, August 6 Meeting changed to Wednesday, August 7

Tuesday, November 5 Meeting changed to Wednesday, November 6

Council Member Svenby made a motion to approve these meeting dates, Council Member Voss seconded the motion; all members voted aye for approval.

Council 2024 Representation on Boards/Commissions/Committees

Council President Schultz commented the Council reviewed/discussed their current assignments to various boards and commissions during the Study Session prior to tonight's meeting. With no changes, Council Members will continue during 2024 as:

Economic Development Authority (EDA) - Kevin P. Raney, Dan Boeke and Doug Voss

Owatonna Area Business Development Center (The Center) - Brent Svenby and Dan Boeke

Law Enforcement Center (LEC) Committee - Dave Burbank and Greg Schultz
Highway 14 Partnership - Kevin P. Raney
Joint Powers Board (911 Board) - Dave Burbank and Nate Dotson
Joint County/City Transportation Committee – Greg Schultz and Kevin P. Raney
Housing & Redevelopment Authority (HRA) – Nate Dotson
Joint City/Owatonna Public Utilities (OPU) Committee - Doug Voss and Nate Dotson
Facility Steering Committee - Dan Boeke, Doug Voss, and Greg Schultz
Council Member Voss made a motion for approval, Council Member Burbank seconded the motion; all members voted aye for approval.

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 – December 19, 2023
- Minutes - OPU Commission Meeting - November 28, 2023
- Fire - Monthly Dashboard and Activity Report - November 2023
- 2024 Non-Benefited, Seasonal/Temporary/Part-Time Employee Wage Scale
 - Effective January 1, 2024 - Employee Wage Range
 - Adult Program Official \$18.50 - \$24.50 per hour
 - Coordinator \$19.50 - \$24.50 per hour
 - Engineering Intern \$14.00 - \$16.00 per hour
 - Guest Services \$12.50 - \$14.50 per hour
 - Guest Services Lead \$15.50 - \$17.50 per hour
 - Head Lifeguard \$16.00 - \$18.00 per hour
 - Library Page \$10.85 per hour
 - Lifeguard \$14.00 - \$16.00 per hour
 - Lifeguard Training Instructor \$19.00 - \$24.00 per hour
 - Park, Golf & Facility Maintenance \$14.50 - \$16.50 per hour
 - Park & Rec Intern \$12.50 - \$14.50 per hour
 - Program Lead \$15.50 - \$17.50 per hour
 - Street Maintenance \$14.50 - \$16.50 per hour
 - Water Safety Instructor \$16.00 - \$18.00 per hour
 - Youth Program Official \$14.50 - \$19.50 per hour**
- Fire
 - Paid on Call Firefighter - Trainee \$12.92 per hour (eff. for 2024 new hires)
 - Paid on Call Firefighter - Probationary \$15.50 per hour (eff. for 2024 new hires)
 - Paid on Call Firefighter \$17.51 per hour
 - Paid on Call Resident Firefighter \$20.71 per hour
- Weed/Nuisance Inspector \$18.11 per hour

Election Judges

Election Judges \$13.00 per hour

Head Election Judges \$14.00 per hour

Seasonal/Temporary Employee Wage Increase Procedure

The following seasonal/temporary part time employees will receive a \$0.50 increase effective January 1 after every consecutive year/season of service with the city until reaching the maximum rate.

- | | |
|----------------------------|---------------------------------|
| • Coordinator | • Lifeguard |
| • Guest Services Lead | • Lifeguard Training Instructor |
| • Program Lead | • Water Safety Instructor |
| • Guest Services | • Park Maintenance |
| • Adult Program Official | • Park and Rec Intern |
| • Youth Program Official** | • Street Maintenance |
| • Head Lifeguard | • Engineering Intern |

**Youth Program Soccer Officials who provide proof of certification will receive an additional \$3 per hour, one time, upon receipt of verification of their certification

Resolution 3-24 Authorize Contract for Purchases - Fame Awards

The city purchased recognition products from Fame Awards which is owned by current Council Member Doug Voss. State Statute prohibits a City Council member from having a personal financial interest in a contract with the City unless it meets an exception included in the statute. By unanimous vote, the council may contract goods and services with an interested officer in certain enumerated situations, including "a contract for which competitive bids are not required by law."

Competitive bids are not required for contracts less than \$100,000.00, the amount of these purchases is \$3,571.58.

Council Member Raney made a motion to approve these Consent Agenda items, Council Member Dotson seconded the motion. Council Member Voss recused himself as Resolution 3-24 authorizes purchases from his business; all members voting aye for approval.

Finance Report

Council Member Raney recapped payments made for amounts greater than \$20,000 during this period. The total amount of bills presented was \$2,555,745.99, Council Member Boeke made a motion to approve payment of all bills presented, Council Member Voss seconded the motion, all members voted aye in approval.

Resolution 4-24 Premise Permit for Lawful Gambling Activity - Owatonna Wrestling Association

City Administrator Busse requested approval of Resolution 4-24 approving the application received from the Owatonna Wrestling Association for a Premises Permit to conduct lawful gambling (pull tabs) with Inside Swing, LLC at 685 W Bridge Street #5.

Current City Code, each Lawful Gambling Permit issued allows an organization to operate at up to five locations within the city. This will be their fifth site of operations, they are currently offering offer pull tabs at Just One More, Reggie's, Lava Burgers & Wings, and Lacey's. Council Member Dotson made a motion for approval, Council Member Voss seconded the motion, all members voted aye for approval.

Purchase 2024 Tandem Plow and Chassis

Public Works Director Murphy requested approval to purchase a 2024 Western Star plow truck from TruckCenter Companies and a chassis from Towmaster Truck Equipment. A 2015 Freightliner will be replaced with a 2024 Western Star. The purchase of this equipment has been identified as necessary by the Street Maintenance Manager. Rotation of equipment is critical to ensure trade value can be applied towards new vehicle purchases and to keep maintenance costs low. The equipment is anticipated to be delivered and operational as part of the fleet for the 2024 winter season. The State Contract purchase price of the 2024 Western Star is \$148,875 and the chassis is \$189,647, totaling \$338,522. The 2015 Freightliner will be sold to the City of Clarks Grove for an agreed upon price of \$100,000. Delivery is tentatively scheduled during September for use next winter.

Council Member Voss asked if more vehicles were planned for replacement. Murphy responded that two single-axle trucks were planned to be replaced this year, but they are used little. The cost to replace the two single-axle trucks would have been more, just less than \$650,000. Voss commented that snow plowing is the hardest factor on equipment and with a mild winter, so the life expectancy on equipment should be extended. Murphy added that the shape of all equipment is constantly monitored to remain in safe condition.

With no additional comments, Council Member Raney made a motion to approve purchase of the 2024 Tandem plow and chassis. Council Member Burbank seconded the motion, all members voted aye in approval.

Brooktree Clubhouse Kitchen Hood Replacement Bid - Owatonna Heating and Cooling, Inc.

Park & Rec, Facility & Grounds Director Tuma requested the Council accept the bid received from Owatonna Heating and Cooling, Inc. for updates in the Brooktree Clubhouse kitchen to replace the current hood and install a condensate hood above the dishwasher. This is a component of the 2024 Capital Improvement Project (CIP) known as Brooktree Clubhouse Improvement BG - 23 - 010. There are two kitchen hood fire suppression systems in place at the Clubhouse. One was installed above the stove in 2012, and the other, installed in the mid-1980s covers the flattop and deep fryer. The latter is outdated as it uses a water-based system and no longer complies with current codes. Additionally, there is no hood system in place for the dishwasher.

We propose installing new kitchen hood fire suppression/exhaust hoods equipped with Ansul fire systems to rectify this. The bid encompasses two hoods: one to replace the existing cooking area hoods and another to serve as a condensate hood for the dishwasher area. This upgrade will bring the building into compliance with fire suppression/exhaust hood regulations. The project was made available for bid through the City's online procurement platform and attracted significant interest, with 150 views and 12 downloads by various companies. Owatonna Heating and Cooling submitted the sole bid for \$102,200.

Council Member Burbank questioned the life expectancy of a kitchen hood. Tuma responded 15 years, one hood has well surpassed its life expectancy, and the other is a water suspension type that is currently out of code. Council Member Burbank made a motion for approval, Council Member Voss seconded the motion, all members voted aye in approval.

2024 Energy Management Agreement - Owatonna Public Utilities

Public Works Director Murphy requested an amendment to the existing agreement with Owatonna Public Utilities regarding the Energy Management Program and rates for peak shaving. This program helps control and reduce Owatonna's peak electricity demand. The Wastewater Treatment Plant (WWTP) will occasionally, when requested by OPU, run the emergency generator during peak demand periods to help offset the overall need on the grid.

Due to more energy-efficient systems and possibly the decreased performance of the generator, OPU has proposed to revise the rate structure to more align with actual demand reduction. OPU has proposed a rate structure decrease from 150 kW to 125 kW. The number of requests will increase our revenue, which more than covers the costs to run and maintain the emergency generator.

Council Member Boeke made a motion for approval, Council Member Voss seconded the motion, all members voted aye in approval.

Stormwater Resiliency Plan Professional Services Agreement - WHKS

Public Works Director Murphy requested Council approval of a Stormwater Resiliency Plan Professional Services Agreement with WHKS. The city received a Planning Grant of \$88,380 for Stormwater Resilience in March 2023. The grant requires a 10% match, which can include staff time. The grant submission included 62 hours of City staff time. This project will study the effects of localized flooding in flood risk priority areas identified by the 2022 Surface Water Management Plan Update project that are also located within MPCA identified Environmental Justice Areas of Concern.

The attached agreement will result in the following items:

- Detailed hydrologic and hydraulic modeling and 2D flood maps in flood risk priority areas.
- Concept level design of stormwater infrastructure or road improvements and estimated costs.

- Plan for maintaining access and core functions during flood events.

Upon approval, WHKS will begin this project for scheduled completion by June 30, 2024. The agreement is not to exceed \$91,380, including expenses. Fees will be paid using the grant funds received and the 10% match will be paid for by the Stormwater Fund. City staff will be utilized to the extent practicable to reduce use of Stormwater Funds.

Council Member Boeke made a motion for approval, Council Member Voss seconded the motion, all members voted aye in approval.

STAFF COMMENTS

Park Director Tuma Jenna commented that with the colder weather, staff are beginning to prepare ice for the rinks at Morehouse Park, one rink will be on land. When available, updates will be posted on Facebook or the city's website. Staff is preparing a plaque for dedication of the Crandall S. Center Addition which will show current Council Members, Mayor, and City Administrator. Council Member Boeke commented consideration might also be given to previous Council Members, Okerberg and Abraham, who contributed during the early phases of this project.

Public Works Director Murphy commented that the first substantial snow event of this winter happened last weekend. There was a minimal amount of snow with trucks out Saturday and Sunday to clear the streets. When you see the trucks, we ask that you give them some space so they can maneuver to operate and clear the streets. When not plowing, our staff has helped the maintenance specialist mechanic change over equipment in the shop. Staff might be doing some tree maintenance, today they were at the airport removing trees and brush. Or they might be doing some additional street sweeping. The streetlight at Oak & Main has a fully operational cabinet; some is loaner equipment in place for use until we can have our equipment evaluated to verify if it is salvageable.

PUBLIC COMMENTS

Matt Sennett, 2519 Stoney Creek Drive commented that during his presentation to the City Council Meeting, the Steele County Engineer commented that a project study will be done which will include review of several proposed routes. For several months, property owners have been told that only one route, 29th Avenue, is being studied. This route is next to my residential neighborhood with 150 homes. Recently, the city gave the county a Letter of Support and several council members clarified the letter was supporting the east side corridor project and not specifically supporting use of 29th Avenue for this project. We hope 34th Avenue and other routes will be studied for use in this project. During the last City Council Meeting when discussing a proposed bike path and budget items, reference was made to 29th Avenue and not the east side corridor. No study has been completed and there isn't any mention of mitigation in the budget so we hope clarification will be made to not specifically reference 29th Avenue as this project route.

Gary Jones, 995 Ridge Road commented he has spoken before on safety concerns about the deer management program. He gave three scenarios which would not be left unattended to as they would be dangerous to the public. During the City's 2023 Deer

Management Program, thirty-three deer stands were left unattended at times in various City parks over an eight-week period and were dangerous to the public. The DNR says elevated deer stands will cause accidents and the city allows use of them. He suggested a deer count be completed to confirm there is a deer problem and then hold a hunt over just two weekends and deer stands timely removed.

MAYOR AND COUNCIL COMMENTS:

Council Member Voss commented he read an article in the local newspaper about the city approving a levy amount lower than the preliminary amount and stated the adopted levy amount will raise the budget amount by \$18.2 million. That was incorrectly stated, \$18.2 million is the adopted budget and not the increased amount.

Mayor Kuntz commented that applications are currently being accepted on the City's website to fill one opening on each of the HRA, EDA and Park Board. He hopes to make new member recommendations during the next City Council Meeting so apply soon if interested.

City Administrator Busse commented that the Owatonna Human Rights Commission is hosting a noon lunch event at the Steele Co History Center on MLK Jr Day. This is a free lunch event with Seema Pothini, co-founder of Humanize my Hoodie, to present Speak UP, the tools to recognize and respond to injustices in the moment by humanizing each other. Everyone is encouraged to preregister at Eventbrite.

Council President Schultz commented this was a good productive meeting to start 2024.

At 7:46 p.m., Council Member Boeke made a motion to adjourn, Council Member Voss seconded the motion and with no objection, the meeting ended.

Respectfully submitted,
Jeanette Clawson, Administrative Coordinator



CITY OF
OWATONNA

Board Commisison

Airport Commission Meeting Minutes
December 14, 2023 – Owatonna Degner Regional Airport
“DRAFT”

1. Call to Order

Chair Thurnau called the meeting of the Airport Commission to order at 5:00 PM.

2. Roll Call

Attending

Anthony Louris	Commissioner
Tim McManimon	Commissioner
Paula Snitker	Commissioner
Daren Tarpenning	Commissioner
Matt Thurnau	Chair
Dave Beaver	Airport Manager

Visitors

Ron Roetzel	Bolton and Menk
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3. Approval of Agenda

Commissioner Snitker made a motion to approve the agenda with the change of removing item (e.) 2024 farm land lease rates, and Commissioner Louris seconded the motion. The motion was approved.

4. Minutes

Commissioner Tarpenning made a motion to approve the minutes from the September 14, 2023 Airport Commission meeting and Commissioner Snitker seconded the motion. There was no meeting in October or November. The motion was approved.

5. Action Items

Chair Reports

Chair Thurnau recognized the recent passing of former Airport Commission member Sharon West who will be greatly missed. Chair Thurnau also recognized and thanked Becky Wolfe for the beautiful winter planters placed at the entrance of the terminal building in memory of former Airport Commission member Kyle Wolfe.

Staff Reports

Airport Manager Beaver provided a brief report on airport activities, recent business arrivals, and activity at Accelerated Aviation flight school. Mr. Beaver presented the fuel volumes dispensed and explained that fuel dispensed year to date is higher this year than last year.

For other activities Mr. Beaver explained that the City of Owatonna is in the process of wrapping up the 2024 budget process. Mr. Beaver presented an overview of the 2024

airport department operations budget and explained that the 2024 budget projects revenues to be higher than and cover operational expenditures. There was a general discussion on the proposed budget and recognition of meeting the goal of a department self-supporting budget submittal.

- *Automated Weather Observation System (AWOS)*

Regarding the AWOS system, Mr. Beaver reported that the MnDOT Office of Aeronautics has nearly completed the installation of the new weather reporting system. Mr. Beaver explained that this system is important for pilots obtaining real time on field weather information that is disseminated via dedicated frequency, phone line, and a number of monitors placed throughout the terminal complex. This new AWOS system will be the first of this make installed at a MN airport by MnDOT that will be verified by running concurrently with the existing system. The old system is dated and parts are no longer supported. Mr. Beaver explained that the cost has been removed from the local capital budget and is now fully funded by MnDOT Aeronautics.

- *Consultant Selection*

Airport Manager Beaver explained that submittals for the airport engineering consultant selection process are due by December 21st. This process is required by the FAA to ensure that a competitive process is utilized for professional airport engineering services and is typically completed every five years. Mr. Beaver explained that the draft schedule will involve a review and scoring of proposals by selection committee members in January with possible interviews to follow as part of the process. Mr. Beaver thanked Airport Commission members Louris and Tarpenning for volunteering to serve on the selection committee.

10-Unit T-Hangar and Taxilane Project Update

Chair Thurnau introduced Ron Roetzel with Bolton and Menk for an update on the T-Hangar project. Mr. Roetzel provided a brief update on the project and explained that a walk-through of the remaining punch list items has been completed. Mr. Roetzel presented Pay Estimate 6 (final) for work completed to date and recommended approval with the condition that the contractor submit payment as previously agreed to for project delay liquidated damages. After discussion, Commissioner Louris made a motion to recommend approval of Pay Estimate 6 (final) for the T-Hangar project in the amount of \$41,483.75 with the stipulation that this will be paid to the contractor when the City receives the liquidated damages payment from the contractor in the amount of \$25,600.00 and Commissioner McManimon seconded. The motion was approved.

Security Fencing Project Update

Airport Manager Beaver reported that the contractor will begin work on the installation within the next few days and that the contractor plans to work weather permitting on the fencing and posts. The contractor will likely place gates in the spring due to concerns about freezing temperatures and potential impact to existing pavement areas where the gates are to be installed. Any remaining work items would then be completed at that time. There was a brief discussion regarding the security fencing project.

6. Adjournment

The Airport Commission meeting was adjourned at 5:56 PM.

Unapproved Minutes of Owatonna Public Library

Board of Trustees

Owatonna Public Library, Gainey Room

105 North Elm Avenue

Thursday, December 21st, 2023 at 4:30p.m.

The Owatonna Public Library Board of Trustees held the monthly meeting on Thursday, December 21st, 2023. The meeting was held in the Owatonna Public Library Gainey Room. In attendance were President Trudy Severson, Trustee Karen Malin, Trustee Quinn Meyer, Trustee Julianna Skulzacek, Library Director Mark Blando and Administrative Technician Robin Spande. Absent was Vice President Amy Tapp.

1. Call to Order

The meeting was called to order by President Severson at 4:30pm.

2. Reminder of Open Meeting Law

The open meeting law applies to board meetings.

3. Public Comments

No Public Comments

4. Approve Minutes

Trustee Julianna Skulzacek moved and Trustee Karen Malin Tapp seconded to approve the minutes of the November 2023 meeting. All aye and the motion approved.

5. Children's Services Report November 2023

See attached

6. Financial Report

Blando reported that the budget is on track for the end of this year. We have large book and AV orders that are coming in this month. An eight percent levy increase has been approved by the city.

A new fulltime IT person and Assistant City Administrator will be hired soon. In order to accommodate the new hires it has been decided that Finance will be moving to the Park and Rec Offices and vice versa.

7. Library Use Report

CKI & CKO - physical items				Oct-23	CKI & CKO - physical items				Oct-22
bp	Checkin	Normal CKI		1,083	bp	Checkin	Normal CKI		1,219
bp	Checkin	Late Checkin		348	bp	Checkin	Late Checkin		268
		BP TOTAL CKI		1,431			BP TOTAL CKI		1,487
bp	Checkout	First Time CKO		1,086	bp	Checkout	First Time CKO		1,119
bp	Checkout	Phone Renewal		123	bp	Checkout	Phone Renewal		94
bp	Checkout	Other Renewal		33	bp	Checkout	Other Renewal		44
bp	Checkout	Opac Renewal		152	bp	Checkout	Opac Renewal		213
bp		BP TOTAL CKO		1,394	bp		BP TOTAL CKO		1,470
CKI & CKO - physical items				Oct-23	CKI & CKO - physical items				Oct-22
owat	Checkin	Normal CKI		9,773	owat	Checkin	Normal CKI		9,597
owat	Checkin	Late Checkin		2,219	owat	Checkin	Late Checkin		2,133
		OPL TOTAL CKI		11,992			OPL TOTAL CKI		11,730
owat	Checkout	First Time CKO		9,754	owat	Checkout	First Time CKO		10,236
owat	Checkout	Phone Renewal		255	owat	Checkout	Phone Renewal		240
owat	Checkout	Other Renewal		422	owat	Checkout	Other Renewal		297
owat	Checkout	Opac Renewal		980	owat	Checkout	Opac Renewal		844
owat		OPL TOTAL CKO		11,411	owat		OPL TOTAL CKO		11,617
New Borrowers Oct 2023				Library Visits Oct 2023					
bp		4		bp		710			
owat		87		owat		6,499			
ILL/Loaned Oct 2023				ILL/Borrowed Oct 2023	ILL/Loaned Oct 2022				ILL/Borrowed Oct 2022
bp		461		bp		239	bp		219
owat		1,291		owat		1,030	owat		1,067

8. Upcoming Programs

We are trying to ramp up some new programs. The Movie Trivia Night was well received and a lot of fun for all. We offered a hot chocolate bar and cookies for refreshments. Next week on Friday December 29th we will be featuring the Nintendo Switch Event from 12pm to 4:00 pm.

Coming up on Thursday December 28th at 2:00 pm we will be featuring the movie My Big Fat Greek Wedding 3.

In April, we have a possible program featuring Patty Wetterling that will be held at the Art Center.

In the near future we are planning a jigsaw puzzle swap for our Patrons.

9. SELCO Update

SELCO is working to streamline processing for loan periods. The mobile app is no longer available at this point. More to follow.

10. Library Updates

The City is holding an "All Hands Meeting" that will be held on January 17th at the Owatonna Arts Center. All staff will be issued a new shirt and a group picture will be taken.

The Lighted Parade was held and the Library submitted a float with the theme The Island of Misfit Toys. It was well attended and the weather was perfect for the parade.

Blando attended the Blooming Prairie Branch Library open house and stated that it was very well attended.

The long awaited Makerspace will be up and running next month. We will begin advertising in the near future.

The 125th Birthday of the Owatonna Public Library is coming up and we will be planning a birthday party in February 2025.

The traditional book sale will be returning this year during the City Gem Days (formerly Crazy Days).

We will also be launching our Library Podcast after the first of the year.

11. Renovation Updates

Nothing to report

Adjourn

A motion to adjourn was made by Malin and seconded by Skulzacek. All aye.
The meeting adjourned at 5:05 pm.

The next board meeting will be Thursday, January 18th, 2024 at 4:30pm.

Respectfully submitted by Robin Spande

Children's Services
November 2023

Storytime continued on Tuesday mornings at 9:30 AM and 10:30 AM throughout the month. It was held 8 times and attended by 154 children and adults.

Darla Lager visited Good Shepherd Preschool 3 times on November 8 and 9. She read stories to 60 students and teachers on those two days.

On November 29 and 30, Darla visited Early Childhood Family Education (ECFE) and the Owatonna Education Center (OEC) 10 times. She read stories to 243 students and teachers at two schools over those 2 days.

Darla Lager
12/21/23



CITY OF
OWATONNA

Department Reports

COMPARISON REPORT OF BUILDING DONE IN CITY OF OWATONNA IN YEARS 2022 AND 2023																Ken Beck, Building Official	
	DWELLINGS		ACCESSORY		COMMERCIAL		INDUSTRIAL		ADD. & ALT.		DUPLEX/APTS		DEMO	TOTAL			
Month	NO.	VALUE	NO.	VALUE	NO.	VALUE	NO.	VALUE	NO.	VALUE	NO.	VALUE	NO.	NO.	VALUE		
Jan '22	0	0	4	7,640	14	104,970	11	3,775,051	68	419,719	0	0	0	97	4,307,380		
Jan '23	0	0	5	16,600	8	443,880	7	5,117,850	66	494,614	0	0	0	86	6,072,944		
Feb '22	0	0	12	22,742	24	1,753,403	16	4,817,476	139	855,061	0	0	0	191	7,448,682		
Feb '23	0	0	8	24,850	22	1,113,838.30	11	25,861,730.75	136	834,982.70	0	0	0	177	27,835,401.75		
Mar '22	5	1,901,925	33	67,493	35	2,161,547	26	5,560,379	284	1,747,846	0	0	1	384	11,439,190		
Mar '23	1	200,000	17	44,100	42	2,497,648	20	26,251,710	243	\$ 7,323,261.26	0	0	0	323	\$ 36,316,719.26		
Apr '22	5	1,901,925	51	96,566	58	2,827,402	30	5,592,069	411	2,785,871	0	0.00	0.00	555	13,203,833		
Apr '23	4	1,968,586	26	96,900	74	31,047,283	**see below		329	8,699,343.89	0	0	1	434	41,812,112.89		
May '22	6	2,141,925	62	112,316	75	5,328,038	36	6,191,103	585	4,336,520	0	0	0	764	18,162,974		
May '23	4	1,968,586	37	132,400	94	36,206,219.51	**see below		463	11,204,959.76			1	599	49,512,165.27		
Jun '22	8	3,061,925	76	155,666	107	6,779,903	40	7,384,127	738	6,392,230	0	0	3	970	23,826,923		
Jun '23	4	1,968,586	52	189,068.67	113	45,164,773.51	**see below		594	12,314,075.39	0	0	8	771	59,636,503.57		
Jul '22	10	3,631,925	94	282,866	130	8,869,882	48	8,653,897	870	7,489,327	2	10,500,000	3	1,155	39,427,897		
Jul '23	5	2,168,586	69	242,168.67	132	46,905,945.51			714	13,185,484.99	2	400,000	8	930	62,902,185.17		
Aug '22	11	4,031,925	101	303,866	160	10,139,786	56	8,902,182	986	8,302,718	3	17,000,000	3	1,320	48,680,477		
Aug '23	6	2,568,586	75	257,168.67	162	51,045,367.26			847	14,208,880.97	4	12,400,000	9	1,103	80,480,004		
Sep '22	12	4,531,000	126	332,386	184	11,910,289	67	19,440,272	1,104	10,577,868	4	24,500,000	3	1,500	71,291,815		
Sep '23	9	3,587,126	83	333,668.67	197	64,081,192.67			990	15,576,116.82	4	12,400,000	9	1,292	95,978,104.16		
Oct '22	16	6,306,000	142	368,736	197	13,206,075	72	19,560,069	1,223	11,308,018	4	24,500,000	3	1,657	75,248,898		
Oct '23	16	6,739,916	94	382,984.89	217	66,611,382.67			1,153	17,005,042.02	4	12,400,000	10	1,494	103,139,325.55		
Nov '22	16	6,306,000	152	380,936	209	17,318,397	79	19,922,914	1,320	13,572,135	4	24,500,000	3	1,783	82,000,382		
Nov '23	21	8,119,916	101	424,984.89	235	69,172,169.67			1,281	17,958,715.07	4	12,400,000	13	1,655	108,075,785.63		
Dec '22	16	6,306,000	164	405,736	211	17,445,397	87	20,108,379	1,398	14,120,570	4	24,500,000	3	1,883	82,886,082		
Dec '23	21	8,119,916	106	430,584.89	252	71,144,770.64			1,365	18,435,507.88	4	12,400,000	13	1,761	110,530,779.41		

**Starting April 2023, Commerical and Industrial are combined

Owatonna Building Inspection Department Comparison Report- Construction to Date 2022/2023

Construction Report for Permits Issued through November, 2023

TYPE OF WORK	2022 PERMITS ISSUED	PERMITS ISSUED FOR CONSTRUCTION COST	Units	2023 PERMITS ISSUED	PERMITS ISSUED FOR CONSTRUCTION COST	Units
NEW DWELLINGS	16	6,306,000	0	21	8,119,916	0
ACCESSORY BUILDINGS (INCLUDES GARAGES, UTIL. BLDGS, SW. POOLS, ETC.)	164	405,736		106	430,584.89	
COMMERCIAL AND INDUSTRIAL PERMITS	298	37,553,776		252	71,144,770.64	
RESIDENTIAL ADD. & ALT.	1,398	14,120,570		1365	18,435,507.88	
DUPLEXES & APTS. (INCLUDES ATTACHED SF)	4	24,500,000	0	4	12,400,000	0
DEMOLITION PERMITS	3			13	0	
TOTAL PERMITS ISSUED	1,883	82,886,082	0	1,761	110,530,779	0



CITY OF
OWATONNA

Licenses Permits

LG220 Application for Exempt Permit

An exempt permit may be issued to a nonprofit organization that:

- conducts lawful gambling on five or fewer days, and
- awards less than \$50,000 in prizes during a calendar year.

If total raffle prize value for the calendar year will be \$1,500 or less, contact the Licensing Specialist assigned to your county by calling 651-539-1900.

Application Fee (non-refundable)

Applications are processed in the order received. If the application is postmarked or received 30 days or more before the event, the application fee is **\$100**; otherwise the fee is **\$150**.

Due to the high volume of exempt applications, payment of additional fees prior to 30 days before your event will not expedite service, nor are telephone requests for expedited service accepted.

ORGANIZATION INFORMATION

Organization

Name: Owatonna Area Chamber of Commerce and Tourism

Previous Gambling

Permit Number: X-74012-23-021

Minnesota Tax ID

Number, if any: 9124510

Federal Employer ID

Number (FEIN), if any: 41-0639369

Mailing Address: 120 South Oak AVE

City: Owatonna State: MN Zip: 55060 County: Steele

Name of Chief Executive Officer (CEO): Brad Meier

CEO Daytime Phone: 507-451-7970

CEO Email: bmeier@owatonna.org

(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

Attach a copy of 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.)

☒ **A current calendar year Certificate of Good Standing**

Don't have a copy? Obtain this certificate from:

MN Secretary of State, Business Services Division
60 Empire Drive, Suite 100
St. Paul, MN 55103

Secretary of State website, phone numbers:

www.sos.state.mn.us

651-296-2803, or toll free 1-877-551-6767

☐ **IRS income tax exemption (501(c)) letter in your organization's name**

Don't have a copy? To obtain a copy of your federal income tax exempt letter, have an organization officer contact the IRS toll free at 1-877-829-5500.

☐ **IRS - 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.

GAMBLING PREMISES INFORMATION

Name of premises where the gambling event will be conducted

(for raffles, list the site where the drawing will take place): Torey's Restaurant & Bar

Physical Address (do not use P.O. box): 208 N Cedar AVE

Check one:

☒ City: Owatonna Zip: MN County: Steele

☐ Township: _____ Zip: _____ County: _____

Date(s) of activity (for raffles, indicate the date of the drawing): Sunday, February 18, 2024

Check each type of gambling activity that your organization will conduct:

☐ Bingo ☐ Paddlewheels ☐ Pull-Tabs ☐ Tipboards ☒ Raffle

Gambling equipment for bingo paper, bingo boards, raffle boards, paddlewheels, pull-tabs, and tipboards must be obtained from a distributor licensed by the Minnesota Gambling Control Board. EXCEPTION: Bingo hard cards and bingo ball selection devices may be borrowed from another organization authorized to conduct bingo. 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.

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**

- ☒ The application is acknowledged with no waiting period.
- ☐ The application is acknowledged with a 30-day waiting period, and allows the Board to issue a permit after 30 days (60 days for a 1st class city).
- ☐ The application is denied.

Print City Name: Owatonna

Signature of City Personnel:

Jeannette ClawsonTitle: Adms Coordinator Date: 1/4/2024

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

**COUNTY APPROVAL
for a gambling premises
located in a township**

- ☐ The application is acknowledged with no waiting period.
- ☐ The application is acknowledged with a 30-day waiting period, and allows the Board to issue a permit after 30 days.
- ☐ The application is denied.

Print County Name: _____

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 exempted gambling activity within the township limits. (A township has no statutory authority to approve or deny an application, per Minn. 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. I acknowledge that the financial report will be completed and returned to the Board within 30 days of the event date.

Chief Executive Officer's Signature: Brad Meier Date: 12/31/23
(Signature must be CEO's signature; designee may not sign)

Print Name: Brad Meier**REQUIREMENTS****Complete a separate application for:**

- all gambling conducted on two or more consecutive days; or
- all gambling conducted on one day.

Only one application is required if one or more raffle drawings are conducted on the same day.

Financial report to be completed within 30 days after the gambling activity is done:

A financial report form will be mailed with your permit. Complete and return the financial report form to the Gambling Control Board.

Your organization must keep all exempt records and reports for 3-1/2 years (Minn. Statutes, section 349.166, subd. 2(f)).

MAIL APPLICATION AND ATTACHMENTS**Mail application with:**

- _____ a copy of your proof of nonprofit status; and
- _____ application fee (non-refundable). If the application is postmarked or received 30 days or more before the event, the application fee is **\$100**; otherwise the fee is **\$150**. Make check payable to **State of Minnesota**.

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

Questions?

Call the Licensing Section of the Gambling Control Board at 651-539-1900.

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 Depart-

ment 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

Business Record Details »

Minnesota Business Name

Owatonna Area Chamber of Commerce**Business Type**

Nonprofit Corporation (Domestic)

MN Statute

317A

File Number

4501-NP

Home Jurisdiction

Minnesota

Filing Date

01/28/1947

Status

Active / In Good Standing

Renewal Due Date

12/31/2024

Registered Office Address120 South Oak Ave
Owatonna, MN 55060
USA**Number of Shares**

NONE

Registered Agent(s)

(Optional) Currently No Agent

PresidentBradley Meier
120 South Oak Ave
Owatonna, MN 55060
USA

Filing History

Filing HistorySelect the item(s) you would like to order: ☐ Order Selected Copies

☐	Filing Date	Filing	Effective Date
☐	01/28/1947	Original Filing - Nonprofit Corporation (Domestic)	
☐	01/28/1947	Nonprofit Corporation (Domestic) Other	

Filing Date	Filing	Effective Date
01/28/1947	Nonprofit Corporation (Domestic) Business Name (Business Name: Owatonna Chamber of Commerce)	
☐ 04/03/1951	Amendment - Nonprofit Corporation (Domestic)	
☐ 04/03/1974	Nonprofit Corporation (Domestic) Business Name (Business Name: Owatonna Area Chamber of Commerce)	
☐ 10/26/1990	Registered Office and/or Agent - Nonprofit Corporation (Domestic)	
☐ 07/20/2004	Registered Office and/or Agent - Nonprofit Corporation (Domestic)	
☐ 5/6/2013	Registered Office - Nonprofit Corporation (Domestic)	
☐ 7/24/2023	Amendment - Nonprofit Corporation (Domestic)	

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of State - Terms & Conditions

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equal opportunity employer

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Vulnerability Disclosure

EP-24-1**Events Permit Application**

Status: Active

Submitted On: 1/8/2024

Applicant Molly Kerr 952-217-0985

@ mkerr.foremost@gmail.com

 131 W. Broadway St.
Owatonna, MN 55060

Event Information - Bob Fest - Foremost Brewery
Saturday - February 24, 2024
Outdoor service offered**Event Contact*** Molly Kerr**Location of Event*** 131 W. Broadway St., Owatonna, MN 55060**Description of Event* @**

On Saturday, February 24, 2023 (All day) Foremost Brewing Cooperative (131 West Broadway St. - Front & 136 West Bridge St - Back) will hold a special event to celebrate our collection of Bob beers. In Germany, festivals are held at the end of February or beginning of March as a welcoming of spring & we hope to do just that. Our event will give our patrons an opportunity to enjoy indoor music and the re-release of Bob's Bock.

While most of our event will take place inside our building, we would like to give our patrons the option to enjoy their alcoholic & non-alcoholic beverages outdoors by having a small outdoor patio on the day of the event. We are asking to extend our liquor license to the 5 parking spaces directly outback of our building. The spaces would be blocked off by street barricades and leave the sidewalk clear for foot traffic. The barricade would be in place for 1.5 days eliminating any inconvenience to weekday traffic and business. The space will be supervised by the staff of Foremost during the event. This event will give the Owatonna community another way to enjoy the winter weather and our beautiful downtown.

Event Set Up Date 02/24/2024

Event Set Up Time @ 8:00am

Actual Event Time @ 11:00am

Clean Up Date 02/24/2024

Clean Up Time @ 10:00pm

Rain Date: In the event of inclement weather, will the event be postponed or canceled?*

Canceled

Estimated Attendance* @ 400

Event Features

City Streets or Right-of-Way*

No

Alleys*

No

City Sidewalks or Trails*

No

Public Parking Lots or Spaces*

Yes

Start/End Time*

8:00am-10:00pm

Date*

02/24/2024

Will there be entertainment?*

Yes

Will sound amplification be used?*

No

Will there be temporary fencing?* Yes

Dimensions - 17 FT x 42.5 FT

Will alcohol be sold? Yes

Who will be providing the liquor license? Foremost Brewing Cooperative

Have adjacent property owners been notified of this event?*

No

Will the event need barricade(s)?

Yes

Number Needed

5

Size Needed*

Medium

Event organizer is responsible for pickup and return of barricades at the City Shop, 1100 Industrial Blvd., Monday-Friday 7 AM to 3 PM. Please call 507-774-7050 to make arrangements". *Fees may apply.*

Will the event need cones?*

Yes

Number Needed*

5

Size Needed*

Large

Event organizer is responsible for pickup and return of cones at the City Shop, 1100 Industrial Blvd., Monday-Friday 7 AM to 3 PM. Please call 507-774-7050 to make arrangements". *Fees may apply.*

Will Central Park Stage be used?*

No

Will there be any horses?*

No

Describe trash removal and cleanup plan during and after event*

We will provide trash removal and cleanup during and after the event.

Will event need traffic control?*

No

Describe crowd control procedure to ensure the safety of participants and spectators*

We will adhere to our standard crowd control practices and have extra staff on hand to monitor the crowd

Will "No Parking" signs be needed?*

Number Needed*

Yes

5

Fees may apply, show location(s) on site map.

Will event need security?*

Will event need Emergency Medical Services?*

No

No

Describe the emergency action plan if severe weather should arise?*

If severe weather occurs we close our cease our outdoor operation and encourage all patrons to come indoors to safety.

Please provide contact information for responsible party during event to advise of severe weather notifications:

Name*

Phone Number*

Molly Kerr

952-217-0985

Email*

mkerr.foremost@gmail.com

List any other pertinent information

Bob Fest will run the same as the event last year. The setup worked really well for us and our neighbors. Thank you for your time and please let me know if you have any quesitons or concerns.

CITY SERVICES - After reviewing the event application, City Services may be required for the event

Applicant Signature

*The sponsor(s) of this event hereby agrees to save the City, its agents, officials and employees harmless from and against all damages to persons or property, all expenses and other liability that may result from this activity. **Depending on the size of and scope of the event a "Certificate of Insurance" may be required.** If insurance is required, the policy must be kept in force during the event of at least the statutory limits for municipalities covering claims that might be brought against the event that arise out of the events authorized and to name the City as an additional insured on their policy "as their interest may appear." As the sponsor or authorized representative, I certify that the information provided is true to the best of my knowledge and agree to pay the permit fee for this event based upon the information provided in this application. I realize my submittal of this application request constitutes a contract between myself and the City of Owatonna and is a release of Liability.*

Signature of Applicant*

✓ Molly Elizabeth Kerr
Jan 8, 2024

Internal Use

Fire Department Approval / Comments / Notes
Approved, no impact

Park & Rec. Department Approval / Comments / Notes
Approved, no impact.

Public Works Department Approval / Comments / Notes
Contact 507-456-5028. 3 days prior to the event to schedule pickup cones etc.

Police Approval / Comments / Notes
Approved. No staffing or budget impact.

Building & Inspection Approval / Comments / Notes
Approved with no comment made.

Date to Council - January 16, 2024

-

Council Notes

Items Needed - 5 Parking spaces, 5 medium barricades, 5 large cones, 5 No Parking Signs, and Extension of On-Sale Liquor License to adjacent space.

Attachments



Site Plan
Bob Fest Temp. Patio Setup 2024.pdf
Uploaded by Molly Kerr on Jan 8, 2024 at 9:51 AM

REQUIRED

PATIO HEATERS

HIGH TOP TABLES

BARRICADE

Key

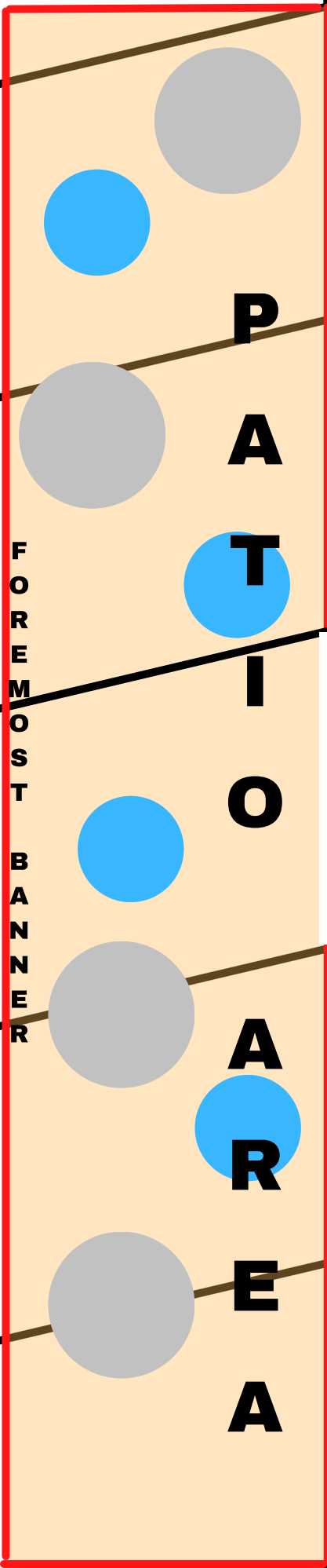
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Minnesota Department of Public Safety
Alcohol and Gambling Enforcement Division
445 Minnesota Street, Suite 1600, St. Paul, MN 55101
651-201-7507 TTY 651-282-6555

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

Name of organization		Date of organization		Tax exempt number	
Saint Mary's School of Owatonna		4/19/1990		41-0744379	
Organization Address (No PO Boxes)		City	State	Zip Code	
730 South Cedar Avenue		Owatonna	MN	55060	
Name of person making application		Business phone		Home phone	
Connie Lembke		507-446-2300		507-456-6498	
Date(s) of event		Type of organization ☐ Microdistillery ☐ Small Brewer			
04/20/2024		☐ Club ☐ Charitable ☐ Religious ☒ Other non-profit			
Organization officer's name		City	State	Zip Code	
Jen Swanson		Owatonna	MN	55060	
Organization officer's name		City	State	Zip Code	
			MN		
Organization officer's name		City	State	Zip Code	
			MN		

Location where permit will be used. If an outdoor area, describe.
Saint Mary's School, 730 South Cedar Avenue, Owatonna, MN 55060

If the applicant will contract for intoxicating liquor service give the name and address of the liquor license providing the service.
N/A

If the applicant will carry liquor liability insurance please provide the carrier's name and amount of coverage.
The Catholic Mutual Relief Society of America, \$500,000 Limit of Coverage

APPROVAL

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

City or County approving the license	Date Approved
Fee Amount	Permit Date
Event in conjunction with a community festival ☐ Yes ☐ No	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**



CITY OF
OWATONNA

Miscellaneous



McDonald Hopkins PLC
39533 Woodward Avenue
Suite 318
Bloomfield Hills, MI 48304

P 1.248.646.5070
F 1.248.646.5075

Dominic A. Paluzzi
Direct Dial: 248.220.1356
E-mail: dpaluzzi@mcdonaldhopkins.com

December 6, 2023

VIA EMAIL (kris.busse@ci.owatonna.mn.us)

Kris Busse – City Administrator
City of Owatonna, MN
540 West Hills Circle
Owatonna, MN 55060

Re: Engagement Terms: Business Email Compromise

Dear Mr. Busse:

Thank you for selecting McDonald Hopkins PLC to assist in analyzing and responding to the business email compromise at the City of Owatonna. We appreciate the opportunity to act as legal counsel for the City of Owatonna to evaluate your legal obligations to notify individuals or regulators with regard to the incident that may have resulted in disclosure of personal and/or health information. This is a contract for legal services and an effort to explain to you both the financial aspects of the attorney-client relationship and the responsibilities and expectations of both parties to the relationship. Please examine this letter carefully and let me know immediately if you have any questions or concerns before you sign it. No work will be performed on this matter and no attorney-client relationship is established until you have signed and returned this agreement.

Fees. Holm Belsheim and I will be the attorneys principally responsible for this matter. Because you are insured by League of MN Cities, you will receive the benefit of the League of MN Cities Preferred Rates. My hourly rate is \$530 and Holm's hourly rate is \$280. We will bill this matter at a 10% reduction in the aforementioned hourly rates. As appropriate, we may delegate work to other attorneys or legal assistants. Each attorney and legal assistant charges an hourly rate for his or her work. Their rates will also be reduced by 10%. Work is billed in a minimum of six-minute increments. If the Firm increases its hourly rates at any time during the course of this representation, the higher rates shall be deemed substituted for the initial rates described in this fee agreement.

We will make every effort to perform our services in a cost-efficient manner, including using services of people with the lowest rates who are capable of performing the task. These rates are subject to periodic and discretionary adjustment. We are often asked to estimate the total fees and expenses that may be charged for a matter. While we will attempt to give you a reasonable estimate based on past experience and what we might anticipate in this instance, unless we agree in writing otherwise, any such estimate does not represent a maximum,

December 6, 2023

Page 2

minimum or fixed-fee quotation. Ultimate fees and expenses may be more or less than the amount estimated.

Expenses. All expenses that this Firm advances or incurs in connection with this matter shall be reimbursed to us at our actual cost. Expenses which are to be reimbursed include, but are not limited to, filing fees, service fees, document procurement, photocopy charges, messenger fees, long distance telephone and fax charges, computer research charges, court reporter charges, expert and witness fees and, where necessary, travel, mileage, parking and accommodation expenses. These expenses will be identified and invoiced with each monthly bill. In the case of expert witnesses or other expenses that exceed \$1,000, we reserve the right to submit those fees directly to you for payment. Please note that any failure to pay expert witnesses will likely result in their refusal to perform any work and may severely prejudice the success of your matter.

Invoices. You and League of MN Cities will receive a monthly bill detailing the work that was performed on this matter, the identity of the person performing the work, the amount of time spent, the charge for that time and a description and amount of any expenses incurred. If you have any concerns about our representation or any bill, we ask you to notify us right away. We will try to resolve any such concerns to everyone's satisfaction. Invoices are due upon receipt. You agree to timely pay us for any fees or expenses invoiced and not covered by League of MN Cities.

What you should expect from us. The Firm will work diligently on this matter and will promptly keep you, or someone you designate, informed regarding the progress of your matter.

You should expect to be treated with respect and courtesy from all members of the Firm and you should promptly inform us of any transgression on our part.

We cannot guarantee the outcome of this matter. We shall advise you of the recommended technical and legal tactical issues as they arise so you may continue to evaluate whether and how you wish to continue the legal representation. However, attorneys are subject to independent ethical obligations and an attorney is not obligated to pursue objectives or employ means simply because the Client may wish the attorney do so if the attorney would be violating another duty by pursuing the requested action.

Generally, the information clients give to our Firm is subject to the attorney-client privilege. You should be aware that attorneys are under an independent ethical duty to reveal privileged information, such as illegal or fraudulent acts committed by clients in the course of the attorney-client relationship, the intention of the client to commit a crime, or when the lawyer is required to divulge the information by law or court order.

What we expect from the Client. In order for an attorney-client relationship to work effectively, the Client must be truthful in all discussions with us, even if, and especially when, they think the information is hurtful to the company's matter. We need to have all information in a timely manner. If we are missing part of the picture, we cannot represent a Client effectively.

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Files and Records. When the Firm's services are concluded or terminated, the Firm will close its file on the matter. At the time of closing or thereafter, you have the right to review the file and/or have a copy of anything from it you wish to retain, with the exception of the personal notes and memorandums of the legal staff, for a reasonable per page copy cost and, if in off-site storage, our retrieval cost. If a Client owes the Firm for expenses or fees, the Firm is not required to release the Client's file provided certain ethical requirements are met. The file will be maintained as long as legally required, but in no case can the Client expect that the Firm will keep the file beyond three (3) years after the representation of the Client in that matter has ended. Thereafter, the file may be destroyed without further notice to the Client. NOTE: This is the only notice you will receive regarding future destruction of your file. Please note that we reserve the right to maintain the closed file in an electronic format only and to destroy the hard copy of the file.

Discontinuing or Withdrawing from the Representation. The services of the Firm may be discontinued by the Client at any time. Note that in a litigation matter, your ability to substitute counsel may be subject to court approval. Under certain circumstances, the court may not grant the substitution of counsel or agree to delay the proceeding to accommodate the hiring of new counsel.

The Firm reserves the right to withdraw from this representation if invoices are not paid on a timely basis or retainers are not replenished per this agreement or if there has been a breakdown of the attorney-client relationship.

Discontinuing the representation does not affect the Client's responsibility to pay for the legal services rendered and the expenses incurred up to the date of termination.

You are engaging our Firm to provide legal services in connection with a specific matter. After completion of the matter, changes may occur in the applicable laws or regulations that could have an impact upon your future rights and liabilities. Unless you actually engage us after the completion to provide additional advice on issues arising from the matter, the Firm has no continuing obligation to advise you with respect to future legal or other developments.

Conflicts. Before preparing this engagement letter, we conducted an internal check of our records to determine whether or not a conflict existed with one or more of our existing clients. Based on that check, it appears no such conflict exists.

Under our profession's Rules of Professional Conduct, we must have undivided loyalty to our clients. This requirement means that an attorney must refuse to accept or continue employment if the interest of another client may impair the independent professional judgment of the attorney. In this regard, McDonald Hopkins PLC represents many other companies and individuals. It is possible that during the time we are representing you, some of our present or future clients will have disputes or transactions with you. As a result of these disputes or transactions, conflicts of interest may arise, and when they do, we will address them with you in a manner consistent with our obligations under the Rules. In circumstances in which the Rules relating to conflicts dictate that we do not represent the other client, we will not do so. In circumstances in which a waiver may be solicited, we may solicit a waiver from you. In

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circumstances in which a waiver is not required, we may represent the other client. We will protect, however, as required by these Rules, your confidential information or documents entrusted to our care.

Court awarded fees. If the court should order payment directed to you of attorneys fees by a third party, all court awarded fees will first be applied to any outstanding bill for fees and expenses owed to the Firm.

Attorney's Lien. The Firm shall have a lien on all funds obtained by judgment, settlement or award for all unpaid fees and expenses generated pursuant to this agreement.

Entire Agreement. This agreement is complete in its entirety between the Firm and the Client and supersedes all other verbal or written agreements. It may be modified only in writing signed by both a representative of the Firm and the Client. Any part of this agreement shall be severable and remain in effect if any other part or parts are held unenforceable for any reason.

If you are in agreement with the terms of this letter, please sign where indicated below and return to me. As always, please advise should you have any questions or concerns. We appreciate the opportunity to work with you on this important matter.

NOTE: By the signature below, you acknowledge that you have read this Agreement, understand its contents, and have had any questions answered to your satisfaction.

Very truly yours,



Dominic A. Paluzzi

DAP/ar

Agreed to as of _____, 2024

CITY OF OWATONNA

By: _____
Kris M. Busse, City Administrator



DATE: January 16, 2024
TO: Mayor and City Council
FROM: Sandra Bera, Accounting Specialist
SUBJECT: Resolution 5-24: Authorize Contract for Purchases - Fame Awards

Purpose:

Council to approve Resolution 5-24 authorizing purchases from Fame Awards.

Background:

The City purchased recognition products from Fame Awards. Doug Voss, a current Council Member At-Large for the City of Owatonna, owns this business. State Statute prohibits a City Council member from having a personal financial interest in a contract with the City unless it meets an exception included in the statute. By unanimous vote, the council may contract goods and services with an interested officer in certain enumerated situations, including “a contract for which competitive bids are *not* required by law.” Competitive bids are not required for contracts less than \$100,000.00.

When no competitive bid is required, these steps must be followed:

1. That the council adopt a resolution authorizing the contract which includes a statement that the contract price is as low as or lower than the price for which the commodity could be obtained elsewhere;
2. That before payment is made to the public official, the public official must file with the city clerk an affidavit stating that to the best of the officer’s knowledge, the contract’s price is as low as or lower than the price at which the commodity could be obtained from other sources;
3. That the council must approve the contract by unanimous vote; and
4. The public official must abstain from voting on the matter.

Budget Impact:

The amount of these purchases is \$717.50

Staff Recommendation:

Staff recommends approval of Resolution 5-24.

Attachments:

1. Resolution 3-24 Contract - Fame Award Purchases

RESOLUTION NO. 3-24

A RESOLUTION AUTHORIZING CONTRACT WITH FAME AWARDS

PURSUANT TO MINN. STAT. §§ 471.87-89

WHEREAS, the City of Owatonna desires to purchase certain recognition products; and

WHEREAS, Douglas V. Voss, owner of Fame Awards, is a City Council member of the City and will be financially interested in the contract; and

WHEREAS, the contract in the sum of \$3,571.58 is not one that is required to be competitively bid; and

WHEREAS, Councilmember Voss has signed an Affidavit of Official Interest in Claim as required by law. and

WHEREAS, the contract price of \$3,571.58 is as low as, or lower than, the price at which the goods can be obtained elsewhere at this time.

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

1. The City Clerk-Treasurer is directed to make the above-mentioned purchases on behalf of the City from Fame Awards for a price of \$3,571.58.
2. The Mayor and City Clerk-Treasurer are directed to issue an order-check to pay the claim upon the filing of an affidavit of official interest by the interested official pursuant to Minn. Stat. § 471.89.
3. This resolution is adopted pursuant to Minn. Stat. §§ 471.87-89.

Passed and adopted this 2nd day of January, 2024, with the following vote:

Aye 7 ; No 0 ; Absent 0 .

Approved and signed this 2nd day of January, 2024.

ATTEST:

Thomas A. Kuntz, Mayor

Kris M. Busse, City Administrator



DATE: January 16, 2024
TO: Mayor and City Council
FROM: Eric Anderson, Recreation Manager
Jenna Tuma, Parks, Trails, Recreation & Facilities Director
SUBJECT: Software Subscription Services Agreement - Club Caddie

Purpose:

Request approval of the software subscription services agreement with Club Caddie at Brooktree Golf Course.

Background:

This is a request to change software providers at Brooktree.

At Brooktree Golf Course, we have been utilizing the software, Club Prophet, for the past five seasons, which hosts the point of sale, tee time reservations, and the season pass holder database. This agreement with Club Caddie will replace the Club Prophet software with a better overall product, better customer service and a lower monthly subscription fee. We found Club Prophet had a variety of limitations and inefficiencies for staff and the customer.

The Club Caddie agreement is for one year, with an auto-renewal unless written notice is provided. Club Caddie is a cloud-based Golf Facility Management software system. It is part of an extensive network of clubs that are associated with Jonas Software that will help cross-market to other golf patrons. This software will include additional and improved functionality, including on-course communication with patrons and marketing options. This software will provide more efficiencies and ease of use, a better customer experience, and better customer support.

This agreement has been reviewed by the City Attorney.

Budget Impact:

There is an initial start-up cost of \$1500. All of our point-of-sale hardware/computers are compatible with Club Caddie, except new credit card terminals (approximate \$2000 total cost).

Club Caddie's monthly subscription is \$500 per month, which is about \$70 less per month than the previous one. There are no restrictions on the number of PC users, providing savings to the budget that will help offset initial start-up fees.

The agreement includes an annual 5% subscription renewal increase.

All setup and monthly fees are planned in the 2024 operating budget.

Staff Recommendation:

Staff Recommends approval of the agreement.

Attachments:

1. Club Caddie Brooktree Golf Course Agreement



This Agreement is made as of _____ (the "Effective Date"), between

Name and Address of Supplier:

Name and Address of Customer:

Club Caddie Holdings Inc., ("Supplier"), a Delaware Corporation. With offices at

18720 Mack Ave, Suite 210

Grosse Pointe, MI

48236

Brooktree Golf Course ("Customer") with its principal place of business

1369 Cherry Street.

Owatonna, MN

55060

This Agreement includes and incorporates the below Order Form, as well as the Terms and Conditions.

This Agreement represents the complete agreement between Supplier and Customer concerning Customer's use of the Subscription Services (as defined herein) and supersedes all prior agreements, negotiations, or understandings between Supplier and Customer in any way relating to these matters.

This Agreement may not be modified except by a later written agreement signed by both parties.

By executing a copy of this Agreement or by using or accessing the Subscription Services through any means, Customer acknowledges and agrees that: (i) it has reviewed and understands this Agreement; (ii) it agrees to be legally bound by the terms and conditions of this Agreement; and (iii) its use of the Subscription Services and any related products or services will be governed by this Agreement.

Supplier

Customer

By: _____

By: _____

Name: _____

Name: _____

Position: _____

Position: _____

ORDER FORM TO MASTER SERVICES AGREEMENT

1. CUSTOMER INFORMATION

Customer: Brooktree Golf Course

Contact: Kurt Stangler

Address: 1369 Cherry St. Owatonna, MN, 55060

Phone: (507) 774-7100 **Email:** kurt.stangler@ci.owatonna.mn.us

2. SUBSCRIPTION SERVICES

- a. Services:** In accordance with this Agreement, the proprietary golf facility management solutions listed below will be made available to Customer by Supplier as a “Subscription Service.”

Module	Included	Notes/Comments
Basic Public Course Suite: Retail/Snack Bar point of sale, Gift-Card, Raincheck/Refund Vouchers, Credit Book, Tee Sheet with Online Booking Engine, Profiles with Customer Classes, CRM with e-mail marketing through Mailchimp, Inventory Management, Reports and Accounting, Customizable Settings.	Yes	Included
Starter Sheet Add-On: Real-time view of tee-sheet enables Starters to record start times, turn times, and end times.	Yes	Included
Semi / Private Course Member Module Upgrade: All features included in the above Basic Public Course Suite with member charge accounts, minimums, discounts, automated customer/member invoicing, automated customer/member billing, sub-members, and online Members Portal website.	No	
Food and Beverage Add On: Bev Cart App Table Management Kitchen/Bar Fire Printer Ordering Kitchen Display System (Available at \$100 monthly add-on)	No	
Activities, Simulators, and Courts: Reservation System with Online Booking Engine and Activity Classes.	No	
Events and Venue Management: Digital and Exportable Event Calendar Online Event Registration Banquet Manager Golf Outing Manager Golf League Manager Venue Manager	Yes	Included

Module	Included	Notes/Comments
Employee Management Time Clock - Payroll Tracking	Yes	Included
Standard Marketing Package: Bulletin Board Online Event Promotion Email Marketing Integration with Mailchimp(Additional costs may apply) Text Message Marketing (Available at \$100/monthly add-on)	Yes	Included
Enhanced Marketing Add-Ons: Enhanced CRM with Automated Email Marketing Managed Marketing by Golfback	No	
Managed Revenue Services: Dynamic Pricing Powered by Golfback	No	
Mobile App: White Label Mobile Application with Course Information, Rangefinder, Weather, Scorecard, Messaging, Tee Times, Event Registration, Bulletin Board, Digital ID Cards, F/B Ordering, Push Button Notifications and Membership Portal & Directory (if semi/private suite is selected above).	No	
Web Connect Apps: Online Reservation Engine(s) Online Gift Cards and Voucher Balances Online Membership Sales Online Merchandise / Hardgoods Sales Online Event Registration Online Customer Portal	Yes	Included
GolfBack Website:	No	
Provided by Customer: Minimum Specifications: Windows 10 or 11, Ryzen 5 or Core I5/8GB / WIFI/ SSD Computers, Receipt Printers, Optional: Bar Code Scanners, Gift Card Readers, and EMV Credit Card Processing Machines.	Yes	
Credit Card Processing: <i>Customer's Choice of:</i> CardPoint by Fiserv Clover-Connect by Fiserv	Yes	
MONTHLY RECURRING SUBSCRIPTION SERVICE FEE:	<u>\$500/month</u> Customer Initials: _____	

3. ADDITIONAL SUBSCRIPTION SERVICE TERMS

- a. Messaging Services.** As part of the Services, Supplier may make available to Customer certain text and e-mail messaging services designed to allow Customer and Customer Users to send Messages to End Users (“Messaging Services”). References in the Agreement to “Services” shall be deemed to include the Messaging Services “End User” means any person who receives a Message from Customer or Customer Users via a Messaging Service, including Customer customers and members. “Message” means a text message, including any multimedia message, instant message, short message, or e-mail message. *Representation, Warranty, and Covenant.* Customer represents, warrant and covenants that (a) End Users of any Messages will contract directly with Customer for receipt of Messages (“End User Contract”); (b) End Users to whom Customer send any Messages have consented or otherwise opted-in, whether as part of the End User Contract or otherwise, to the receipt of such Messages as required by any applicable laws, rules, regulations, guidance’s, standards and industry codes; (c) Customer will include clear opt-out/unsubscribe information on all Messages when required to do so by any applicable laws, rules, regulations, guidance’s, standards and industry codes; (d) Customer will honor all such opt-outs/unsubscribes; and (e) Customer will, prior to sending any text Message to an End User, obtain from such End User, whether as part of the End User Contract or otherwise, express written agreement to the terms of the acknowledgment attached as Exhibit A to this Agreement, without modification. Customer agrees that Supplier is an intended third-party beneficiary of such terms of acknowledgment. *Third-Party Providers; Responsibility.* Customer acknowledge and agree: (a) that the Messaging Services are each provided by different third party providers (each, a “Third Party Provider”) and not by us, and that the control, availability, and provision of the Messaging Service are outside of our control; (b) that access to and use of any Messaging Services may cease or be suspended by us or any Third Party Provider at any time; (c) that neither us nor Third Party Provider is liable for or responsible for any Messaging Service; and (d) hereby to permit the transmission of and access to each Message, including the content of any Message.
- b. Merchant Services.** Although Club Caddie provides integration to a Merchant Services gateway for Credit and Debit Card Processing and ACH charges, Customer acknowledges that Club Caddie does not provide Credit Card Processing or recurring ACH charges as a service. Customer shall enter into a Merchant Service Agreement with a Merchant Service provider that shall determine the extent of services offered and independent fees that shall be charged to Customer in connection with Merchant Services.

4. PROFESSIONAL IMPLEMENTATION AND TRAINING IN CONNECTION WITH SUBSCRIPTION SERVICES

- a. Setup and Configuration Services.** Supplier will (i) set-up, up and configure the Golf Course Management Software, Applications, and Website Services outlined in this Agreement using the name, brand, copyright(s), trademark(s), artwork, tagline(s), insignia, indicia, logo(s) and/or graphic assets and other materials and content (collectively, “proprietary markings”) that Customer provides to Supplier for Supplier to include on the Services (ii) obtain, on Customer’s behalf, a domain name for the Website, provided that Customer (A) reimburse us for any domain name registration fees we pay on Customer behalf to the applicable domain name registrar, and (B) acknowledge and agree that we will not be responsible for Customer domain name registration and we will not take further any action to maintain Customer domain name registration or pay any fees in connection therewith, and (iii) provide to Customer training to demonstrate the Services and the Website features requested by Customer, at a mutually agreeable time and location. Supplier reserves the right to reject any of Customer Content if it is not consistent or compatible with a current template for Club Caddie websites. Supplier is not responsible under this Agreement for verifying the accuracy, suitability, or currency of Customer Content. Supplier will include on the Website those Services features requested by Customer, as set out on the signature page to this Agreement. Supplier will perform the Set-Up and Configuration Services in a diligent and professional manner in accordance with this Agreement. Other than Customer Content, we shall retain our ownership of the Website and all intellectual property therein. “Customer Content” means any content, data, information, files, software, records, Messages, and other materials that Customer or Customer Users load, transmit to, or through, or enter in or onto the Website, App, or Services, including, without limitation, any Messaging Services. If selected, Supplier will develop and execute Mobile Application(s) (“App”) for Customer that will interface with the Club Caddie Software and Website and will be available for download in a variety of app stores, including the Apple App Store and Google Play or another provider (collectively, “Provider”).
- b. Remote Implementation:** Unless otherwise indicated in this Agreement, in connection with remotely implementing Club Caddie’s Services, Customer will pay a one-time Professional Services fee of \$1,500.00. Implementation includes Cloud Server Provisioning, Software Environment Setup including Custom Setting Optimization, Department, Sub-Department and Category Creation, Location/Terminal Creation, Staff User Account Creation, Role Creation for Users, Customer Class Creation, Tax Rate Creation, Merchant Service / Payment Processing Integration, and Basic User Training. Additional remote implementation services that shall require additional time and effort on the part of Supplier may be available at an additional fee to Customer.
- c. On-Site Implementation:** Unless otherwise indicated in this Agreement, if Customer requests for Supplier to offer professional services on-site or at another Customer designated location (“On-Site Services”), the fee agreed for travel and related expenses incurred by Supplier shall be \$1,250.00 USD per facility, per day. Customer shall also be responsible for the actual cost of reasonable travel expenses in connection with an on-site implementation. If Customer cancels a scheduled and confirmed session within thirty (30) days prior to a session, then Licensee will be responsible for any airline ticket penalties that Licensor incurs, as well as any other purchased travel expenses.

Supplier and Customer responsibilities in connection with Customer's remote implementation are outlined in greater detail below.

Function	Service	Standard Service	Upgrade Available	Fee	Notes/Comments
Setup	Remote Implementation	Includes standard services identified below.		Standard Fee: \$1,500	
Setup	Onsite Implementation	Includes standard services identified below an onsite training and set up at \$1,250.00/day + the actual cost of travel.		\$1,250.00 Day + Actual Cost of Travel	Number of Days: 0
Accounting	Chart of Accounts	Club Caddie will provide training and guides on how to import and set up your chart of accounts.	Customer will provide a spreadsheet or matrix of chart of accounts information. Club Caddie shall create Customer's chart of accounts in Club Caddie for Customer.	<i>Upgrade Fee:</i> \$250	Standard Service
All	Data Export Services	Club Caddie shall provide templates to Customer and Customer shall provide a final version of all applicable golf course data in excel or CSV format. Customer shall review and sign off on the data and afterward Club Caddie shall import the data into Club Caddie's database.	Club Caddie will remotely log into Customer's Computer with Customer's assistance and extract available data from Customer's old system.	<i>Upgrade Fee:</i> \$750	Standard Service
All	Terminal Management Setup	Club Caddie will work with Customer to create locations and terminals and to configure pin lock and lock screen settings for each terminal.		Included	Standard Service
All	Customer Data - Up to 25K	Club Caddie shall provide templates to Customer and Customer shall provide a final version of all applicable golf course data with respect to its customer database in excel or CSV format. Customer shall review and sign off on the data and afterward Club Caddie shall import the data into Club Caddie's database.		Included	Standard Service

Function	Service	Standard Service	Upgrade Available	Fee	Notes/Comments
All	Customer Data - 25K+	Custom Upload		Custom	
All	Gift Card Balances	Club Caddie shall provide templates to Customer and Customer shall provide a final version of all applicable golf course data with respect to its gift card balance database in excel or CSV format. Customer shall review and sign off on data and afterward, Club Caddie shall import the data into Club Caddie's database.		Included	Standard Service
All	Tax Management	Club Caddie shall work with Customer to create tax lists and tax groups.		Included	Standard Service
All	Department/Sub-Department Setup	Club Caddie will work with Customer to create custom departments, sub-departments, and item categories for Customer.		Included	Standard Service
All	Register Setting Review	Club Caddie will review Register settings and options with Customer for Customer's optimal configuration. Club Caddie will also work with Customer to create Custom Payment Methods and/or Custom Discounts to be applied to the Register.		Included	Standard Service
All	General Course Info	Customer shall review General Course Info and input basic information about Customer's operation into Club Caddie. This information will populate in I-frames and Customer's mobile app, if applicable.		Included	Standard Service
All	Communication Center Setup	Configure sent from e-mail addresses and webhook integrations with 3P tools.		Included	Standard Service
All	Course User Setup	Club Caddie will provide training on how to set up golf course users. Customer shall create course users and distribute usernames and temporary passwords.		Included	Standard Service
All	Configure Roles	Club Caddie will provide training on how to configure Employee Roles. Customer shall set up Employee Roles within Club Caddie as per Customer's unique role requirements.		Included	Standard Service
Events	Venue Center Configuration	Club Caddie will provide training on how to manage Venue Center. Customer shall create Venue Types and Venues.		Included with Module	Standard Service
Events	Event Management Setup	Club Caddie will provide training on how to manage the Club Caddie event calendar, how to create an online event, how to create a banquet, how to create a golf outing, and how to create a golf league. Customer will be responsible for creating all event types within Club Caddie.		Included with Module	Standard Service

Function	Service	Standard Service	Upgrade Available	Fee	Notes / Comments
Food and Beverage	F&B Inventory	Club Caddie shall provide templates to Customer and Customer shall provide a final version of all applicable golf course data with respect to its customer database in excel or CSV format. Customer shall review and sign off on the data and afterward Club Caddie shall import the data into Club Caddie's database.		Included with Module	Standard Service
Food and Beverage	Table Management	Club Caddie will provide training on how to create a floor plan. Customer shall create its floor plans and floor plan templates.		Included with Module	Standard Service
Food and Beverage	On-Demand F&B Setup	Club Caddie will provide training on how to enable/disable delivery, set up order cancellation settings, and to select which menus are available for on-demand ordering. Customers will set up an on-demand menu.		Included with Module	Standard Service
Food and Beverage	KDS Setup	Club Caddie will provide training on how to select KDS item timers. Customers will set up KDS item timers.		Included with Module	Standard Service
Golf shop	Retail Inventory	Club Caddie shall provide templates to Customer and Customer shall provide a final version of all applicable golf course data with respect to its F&B inventory in excel or CSV format. Customer shall review and sign off on the data and afterward Club Caddie shall import the data into Club Caddie's database.		Included with Module	Standard Service
Golf shop	Golf Rack Rates	Club Caddie will provide training and guides on how to create golf rates. Customer will create all golf rates.	Customer will provide a spreadsheet or matrix of golf rates. Club Caddie shall create a golf rate in Club Caddie for Customers.	<i>Upgrade Fee:</i> \$250	Standard Service
Golf shop	Golf Class Rates	Club Caddie will provide training and guides on how to create class golf rates. Customer will create all class golf rates.	Customer will provide a spreadsheet or matrix of class golf rates. Club Caddie shall create class golf rates in Club Caddie for Customer.	<i>Upgrade Fee:</i> \$250	Standard Service

Function	Service	Standard Service	Upgrade Available	Fee	Notes / Comments
Golf shop	Activity Rack Rates	Club Caddie will provide training and guides on how to create activity rates. Customer will create all activity rates.	Customer will provide a spreadsheet or matrix of golf rates. Club Caddie shall create golf rates in Club Caddie for Customer.	<i>Upgrade Fee:</i> \$250	Standard Service
Golf shop	Activity Class Rates	Club Caddie will provide training and guides on how to create activity class rates. Customer will create all activity class rates.	Customer will provide a spreadsheet or matrix of activity class rates. Club Caddie shall create activity class rates in Club Caddie for Customer.	<i>Upgrade Fee:</i> \$250	Standard Service
Golf shop	Credit Book Balances	Club Caddie shall provide templates to Customer and Customer shall provide a final version of all applicable golf course data with respect to its Credit Book Balances in excel or CSV format. Customer shall review and sign off on the data and afterward Club Caddie shall import the data into Club Caddie's database.		Included with Module	Standard Service
Golf shop	Rainchecks	Club Caddie shall provide templates to Customer and Customer shall provide a final version of all applicable golf course data with respect to its Gift Card Balances in excel or CSV format. Customer shall review and sign off on the data and afterward Club Caddie shall import the data into Club Caddie's database.		Included with Module	Standard Service
Golf shop	Text Integration	Club Caddie shall configure Text Message Communications from Tee Sheet.		Custom	N/A
Golf shop	Tee Sheet Settings Review	Club Caddie will review Tee-Sheet settings and policies Customer for Customer's optimal configuration. Customer will be responsible for inputting Billing Policy, Cart Agreement Receipt Input, and Tee Time Booking Policies.		Included with Module	Standard Service
Human Resources	Payroll Center Settings	Club Caddie will review Payroll Period, Overtime, and Double Time Settings with Customer for optimal Configuration.		Included	Standard Service
Membership	Member Data - Up to 1K	Club Caddie shall provide templates to Customer and Customer shall provide a final version of all applicable golf course data with respect to its Member database in excel or CSV format. Customer shall review and sign off on		<i>Upgrade Fee:</i> \$500	Standard Service

Function	Service	Standard Service	Upgrade Available	Fee	Notes/Comments
		data and afterward Club Caddie shall import the Member data into Club Caddie's database.			
Membership	Member Data - Up to 2.5K	Club Caddie shall provide templates to Customer and Customer shall provide a final version of all applicable golf course data with respect to its Member database in excel or CSV format. Customer shall review and sign off on the data and afterward Club Caddie shall import the Member data into Club Caddie's database.		Upgrade Fee: \$1,000	N/A
Membership	Member Data - Up to 5K	Club Caddie shall provide templates to Customer and Customer shall provide a final version of all applicable golf course data with respect to its Member database in excel or CSV format. Customer shall review and sign off on data and afterward Club Caddie shall import the Member data into Club Caddie's database.		Upgrade Fee: \$1,500	N/A
Membership	Member Data - 5K+	Custom Upload		Custom	N/A
Membership	Membership Settings Review	Club Caddie will review Membership settings and policies Customer for Customer's optimal configuration. Customer shall be responsible for inputting an Autopay Billing Policy, Building Late Fee Types, and Configuring Customer's Member Portal.		Included with Module	Standard Service
Hardware Configuration	Computer and Credit Card Reader Setup	Customer and or Customer's IT department is responsible for setting up computer workstations, tablets, printers, and credit card processing stations. Third-party IT referrals are available.		Excluded	N/A
Network Configuration	Wired and Wireless Internet Access	Customer and or Customer's IT department is responsible for setting up all Wired and Wireless Internet Access. Third-party IT referrals are available.		Excluded	N/A
	TOTAL			\$1500 One Time	

5. CLUB CADDIE INTEGRATIONS WITH THIRD PARTY SOFTWARE APPLICATIONS

- a. Interfaces:** Supplier may utilize its API to build interfaces and integrations with 3P technology systems. If Customer shall require for Supplier to integrate Club Caddie's technology with any third-party technologies, then Customer agrees to pay Supplier an interface fee of \$250.00 per application that Supplier integrates with Club Caddie for Customer. Customer shall be billed for all third-party interfaces on Customer's monthly bill within 30 days of when a Customer requested integration is complete.

Integration	Brief Description	One Time Setup Fee	Included	Total
Barstool Golf	3P Distribution.	\$250	No	
Golf now	3P Distribution.	\$250	Yes	Waived
Supreme Golf	3P Distribution.	\$250	No	
Banner	Accounting	\$250	No	
Dynamics	Accounting	\$250	No	
Great Plains	Accounting	\$250	No	
Munis	Accounting	\$250	No	
Oracle	Accounting	\$250	No	
QuickBooks	Accounting	\$250	No	
Tee Time Central	Call Center Services.	\$250	No	
E-Range	Driving Range	\$250	No	
Range Express	Driving Range	\$250	No	
Select-Pi	Driving Range	\$250	No	
Mailchimp	Email/Text Marketing	\$250	No	
Club Core	HR/Member Communications	\$250	No	
PGA Benchmark/Sagacity	Reports / Benchmarking	\$250	No	
GMRC / Pellucid	Reports / Benchmarking	\$250	No	
Metolius BI	Reports / Business Intelligence	\$250	No	
Golf Genius	Scoring/Tournaments	\$250	No	
Course Logix	Website	\$250	No	
Golfback	Website, Managed Marketing, Dynamic Pricing.	\$250	No	
121-Marketing	Websites and Marketing.	\$250	No	
Twilio / Text Message Setup	Text Marketing	\$250	No	
Offline Credit Card Processor	Non-Integrated Credit Card Processing Solution.	\$250	No	
Yellow Dog	Inventory Management	\$250	No	
Tee Commerce	Ecommerce	\$250	No	
Other: _____		\$250	No	
Other: _____		\$250	No	
TOTAL				\$0

6. INITIAL SERVICE TERM AND RECURRING SUBSCRIPTION SERVICE FEES

a. Initial Service Term: 2/1/24-1/31/25

1. Subscription Service Fees	\$500
2. Professional Service / Implementation Fees	\$1500 One Time
3. Interface / Integration Fees	\$0 for GolfNow Integration
<i>Payable in advance, subject to the terms of Section 10, "Payment Terms" of the Terms and Conditions and consisting of Implementation Fee and First Month's Monthly Subscription Fee:</i>	\$2000 – One Time, Includes First Month's Subscription Services.
	\$500 – Monthly Recurring. Your first invoice will be due one month after the effective billing date for your second month of services.

- b. **Renewal Terms:** After the initial Service Term expires and unless otherwise expressly agreed in writing by Customer and Supplier, the Recurring Monthly Subscription Fee shall increase 5% each calendar year for renewal periods of this Agreement.
- c. **Effective Billing Date:** Unless Customer formally notifies Supplier in writing, Customer and Supplier agree that Customer's effective billing date for Subscription Service Fees shall be: February 1st, 2024.

7. CURRENCY: United States Dollars (\$)

8. TECHNICAL SUPPORT SERVICES

- a. **Training:** As part of the Services, Customer and Customer's staff shall have ongoing access to attend Club Caddie's weekly webinar training sessions. Club Caddie shall offer weekly, group training sessions for 1.) Golf, 2.) Food and Beverage and 3.) Back-Office and Marketing, each as separate training sessions. During each webinar, time will be reserved for general questions and answers.
- b. **Support:** Supplier will provide Customer with technical support services which shall include unlimited access to Club Caddie's knowledgebase, 24/7 access to online level one chat support, and access to level one phone support during Club Caddie's ordinary business hours of 8 AM to 8 PM Eastern, Monday through Friday. Level two phone support will also be available for escalation and emergency issues that level one chat support is unable to resolve outside of ordinary business hours ("Technical Support"). Customer acknowledges and agrees that Technical Support is intended to address specific problems experienced by Customer relating to the Subscription Services and is not intended to support third-party applications, hardware, or network issues, or to provide general training ("Other Assistance"). Should a problem reported by Customer to Supplier be the result of third-party software issues, hardware or network malfunction, or other causes external to the Subscription Services, Supplier will advise Customer to have the hardware/network repaired. Other Assistance may be available at an additional fee.

9. **TERMS AND CONDITIONS.** Customer and Supplier expressly acknowledge that this Agreement includes this Order Form and the Terms and Conditions located at: www.clubcaddie.com/termsconditions

This Order Form is only valid and binding on the parties when executed by both parties and is contingent on Supplier and Customer executing Supplier's form of Master Services Agreement, either in connection herewith or previously. This Order Form is subject to the terms and conditions of such Master Services Agreement. This Order Form will become effective when all the parties have signed it. The date this Order Form is signed by the last party to sign it (as indicated by the date stated or under that party's signature) will be deemed the date of this Order Form.

Supplier

Customer

By: _____

By: _____

Name: _____

Name: _____

Position: _____

Position: _____

TERMS AND CONDITIONS

IN WITNESS WHEREOF, the parties agree hereto have caused this Agreement to be executed as of the Effective Date. The parties agree as follows:

1. Rights Granted & Permitted Use

Upon and subject to receipt of payment by Supplier of the applicable initial subscription, set-up and training fees set out in the Order Form(s), Supplier grants to Customer for use in connection with its internal business operations a limited, non-exclusive, non-transferrable, license to the Software and Documentation, subject to the Permitted Use and the terms set forth in this Agreement. Customer's rights to use the Software and Documentation are limited to the Subscription Term and subject to the payment of the applicable subscription fee. Updates (provided pursuant to Section 7 (Subscription License, Updates and Technical Support)) will be provided as part of the Subscription, will form part of the Software and will be subject to rights granted in this Agreement. Customer may permit its employees, agents and contractors to use the Software for purposes permitted pursuant to this Agreement and Customer will be responsible for their compliance in accordance with the terms of this Agreement. Customer may make a reasonable number of copies of the Software for testing, archival and/or back-up purposes, to be used only when the primary copies of the Software are not operational. All legends, trademarks, trade names, copyright marks and other proprietary notices included in the original copies of the Software must be maintained as part of any and all testing, archival, back-up or other copies of the Software made by Customer. All rights not expressly granted to Customer hereunder are reserved by Supplier. Customer acknowledges that the Software may require activation by way of an activation key on initial installation and from time to time based on certain events, including, without limitation, Updates and changes to hardware on which the Software is installed. Customer acknowledges that the activation keys and internal controls in the Software do not necessarily restrict usage to the Permitted Use and do not necessarily ensure compliance with this Agreement.

2. License Restrictions

Customer agrees (a) subject to any non-waivable rights Customer may enjoy under applicable law, not to decompile, disassemble, reverse engineer, or otherwise attempt to derive the Software's source code from the object code; (b) not to modify, enhance, change the data structures for or create derivative works from, the Software, (c) not to rent, lease, sell, sublicense or otherwise transfer the Software to third parties; (d) not to make the Software available in any form to any person other than Customer's employees, agents and contractors whose job performance requires such access; and (e) to use reasonable care and protection to prevent the unauthorized use, copying, publication or dissemination of the Software. Customer shall not allow access to the Software by any service bureau, third party outsourcer, or other similar third party service provider unless Supplier consents to such access in writing.

3. Ownership of Intellectual Property; Customer Input

As between Supplier and Customer, Supplier retains all title, ownership, and intellectual property rights in and to the Software and Documentation, and all developments by Supplier in connection with this Agreement. Customer acknowledges and agrees that it is only licensing the right to use Supplier's Software and Documentation and that no sale or other transfer of any title or

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ownership or any proprietary interest of any kind to such Software or Documentation is contemplated hereunder, other than the sale of the limited licenses as expressly granted herein. Except as specified in Section 1 (Rights Granted & Permitted Use) or as expressly authorized in writing by Supplier and, subject to any non-waivable rights Customer may enjoy under applicable law, Customer shall not allow for any duplicates or reproduction of the Software to be made and, upon the termination of this Agreement, shall promptly (and no later than within thirty (30) days of termination) return to Supplier all originals and copies of the Software or provide validation that the Software has been permanently deleted from all of Customer's systems and destroyed.

Supplier shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into the Software any Customer Input. Supplier shall have no obligation to make Customer Input an Update. Customer shall have no obligation to provide Customer Input.

4. Use of Logo for Promotional and Marketing Materials

Unless indicated otherwise in the applicable Order Form, Customer provides Supplier with permission to use its trademark, logo and trade name ("Branding") within Supplier's promotional and marketing materials. Supplier is granted no other right to the Branding and acknowledges that it shall not gain any proprietary interest in the same. Supplier is under no obligation to make use of, or to provide compensation for, the right or permission granted by Customer to the Branding. Supplier shall be the exclusive owner of all right, title, and interest, including copyright in its promotional and marketing materials. The permission to use the Branding may be terminated at any time by Customer by providing thirty (30) days' written notice to Supplier. Upon such termination, Supplier shall refrain from future use of the Branding; however, Supplier may continue to distribute and use the

promotional and marketing materials where Customer's Branding has been previously printed prior to the notice of termination and where such placements cannot be discontinued or altered without Supplier incurring a penalty.

5. Implementation, Training and Consulting

If so indicated in the Order Form(s), Supplier will provide to Customer implementation, training services and/or consulting services to Customer. Unless otherwise specifically noted in the applicable Order Form, training will be held during weekdays. Supplier's installation and training personnel will have expertise and actual experience in the application area designed for installation at Customer's site. Customer acknowledges that Supplier's services are scheduled on a first come, first served basis, and shall be mutually agreed upon by Supplier and Customer subject to Supplier's availability. Should Customer require rescheduling of confirmed installation and training service appointment, Supplier will make commercially reasonable efforts to accommodate Customer's request. If Customer cancels a scheduled and confirmed training session, Customer will be responsible for Supplier's standard cancellation fees and any other charges as specified in the applicable Order Form. If the parties agree that training will be provided on-site at Customer's facility, Customer will: (i) provide and have properly prepared and set up an adequate training room or space; and (ii) at least one (1) week prior to scheduled training, have the hardware loaded with the operating system software and the Software, with all being adequately tested on-site. All travel and related expenses necessitated by training, implementation, and/or consulting services being rendered by Supplier hereunder at Customer designated sites will be reimbursed by Customer to Supplier. Such travel and related expenses will include reasonable coach class airfare, transportation to and from Customer site, lodging, meals and miscellaneous (e.g. tips, tolls, etc.) and may include travel time at Supplier's standard travel rate. Unless otherwise specified in the Order Form, all phases/sessions of training must be completed within six (6) months from receipt of the Software, or all prepaid training fees will be forfeit. Upon Customer's request, Supplier will provide further services to train any additional Customer personnel on the features, operation, and use of the Software, at Supplier's standard price list per diem rates in effect at the time such training is requested by Customer. Additional services that are required as a result of Customer's action, inaction or failure to meet its obligations, including delays or wait time caused by issues related to Customer's hardware and software, shall be billable to Customer and will be invoiced at Supplier's then-current rates.

6. Customer Responsibilities

Within a reasonable period of time following the execution of this Agreement, and prior to the commencement of installation of the Software, Customer shall appoint a member of its staff to act as its project lead. The project lead will serve as the main contact for Supplier's personnel in connection with any installation activities, disseminate information from Supplier to the various departments at Customer's operation, as applicable and relay any required information to Customer personnel in a timely manner. If the implementation affects multiple areas of Customer's operations, then it shall also appoint a team comprised of management level staff from those operational areas involved in the installation to act as its project team. The project lead and/or project team, as applicable, shall have primary responsibility for the coordination and execution of the installation. The project lead and/or the project team shall: (a) have a clear understanding of the general

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manager's or other top-ranking executive's vision and purchasing decision for the installation of the Software and shall communicate this vision to all levels of Customer's staff; (b) be familiar with and involved in Customer's daily operations; (c) be Customer's primary decision-makers, within their respective areas of operational responsibility, for any policies and procedures which may be involved in the implementation of the Software; (d) report to the general manager or other top-ranking manager as it relates to the responsibilities of installation coordination; (e) ensure that the minimum system requirements set forth in the Order Form(s), related Documentation and/or the applicable exhibit have been met or exceeded;

(f) serve as liaison with other third party vendors who are involved in the installation process; and (g) be present during all phases of the installation and training process to include attendance at all designated training classes and ensure attendance of staff at scheduled training sessions.

Unless expressly agreed otherwise in the Order Form, Customer shall enter all data required for installation of the Software and shall be responsible for the integrity of such data. Supplier shall not have any liability for any Customer data, including for data that Supplier personnel may enter in an effort to assist Customer or any errors made in such efforts to assist Customer. Supplier reserves the right to refuse to do data entry and Customer agrees that Customer is solely responsible for providing sufficient staff to perform any data entry required for the installation of the Software.

Customer shall assume full responsibility for (i) the content of any database, (ii) the selection and implementation of controls on its access and use of the Software, (iii) the security of stored data and (iv) configuration data associated with the implementation of the Software.

7. Subscription License, Updates and Technical Support

During the Subscription Term, and in consideration of the Fees being paid by Customer in accordance with the terms of this Agreement, Supplier will provide, in a timely manner and

without additional charge to the subscription fee, the following to Customer:

- (a) The right to “use” under license, as provided in Section 1 (Rights Granted & Permitted Use), the Software, Documentation, and related materials;
- (b) Commercially reasonable efforts to correct any Errors reported to it by Customer, provided such Errors relate to the proper functioning of the Software and have not been caused by negligence on the part of Customer, a computer malfunction, Third Party Materials or other causes external to the Software; and further provided that Customer acknowledges and agrees that not all Errors are capable of being corrected;
- (c) Updates to the Software that Supplier makes generally available to its Customers, and Documentation as reasonably necessary for the proper function and continued material conformity of the Software with the applicable Documentation. Customer agrees to install all Updates to the Software made available by Supplier within ninety (90) days following such availability. If Customer fails to install any such Update, Supplier reserves the right to stop all implementation, training and support services until Customer installs such Update. Any programs which provides new functionality or expand the function of the Software and are regarded as New Products by Supplier, and for which Supplier separately charges other customers, are not covered by this Agreement, but may be offered to Customer for license on terms consistent with this Agreement; and
- (d) Access to Supplier’s technical support hotline during the hours set out in the applicable Order Form, subject to any other terms and conditions indicated in the applicable Order Form.

Outside of the hours set out in the applicable Order Form, non-emergency telephone support will be charged to Customer at Supplier’s then-current rates and any additional terms and conditions set forth in the Order Form will apply. Customer acknowledges and agrees that telephone support is intended to address specific problems experienced by Customer relating to the Software, and is not intended to train Customer’s employees or to support third party products (“Other Assistance”). Supplier will advise Customer during a telephone support session if Supplier considers such telephone support to constitute Other Assistance. Following such notice, if Customer wishes for the telephone support session to continue, Customer will pay for such Other Assistance based on Supplier’s then-current rates. In connection with the provision of technical support, Supplier may be required to access Customer’s system to diagnose, and to resolve, certain issues. To the extent Customer supplies remote access facilities, Customer will be responsible to ensure such facilities are secure and readily available. Customer hereby consents and agrees that Supplier may access the Software by way of remote access for such purposes. Unless otherwise provided for in the Order Form, Supplier will not be responsible for providing technical support of Hardware or the related operating system and configuration. Customer agrees that Supplier will not be responsible for providing Hardware installation specifications (including those regarding cabling, power, space, etc.), or for the installation, operation, maintenance or technical support of Hardware.

Supplier’s obligation to provide support is subject to the following conditions: (i) Customer uses the Software only in accordance with the terms and conditions of the Agreement; (ii) Software implementation, training, re-implementation, and system audit services must be provided by Supplier’s employees or Supplier’s Authorized Representatives; (iii) Customer has not modified or altered the Software; (iv) Customer has not authorized independent interfacing of third party components to the Software, or relevant database, particularly third party components that write to the database, without the express prior written consent of Supplier; (v) the Software, and the equipment on which it operates, is operated in accordance with the Documentation; (vi) the equipment on which the Software operates is in good operating condition; (vii) Customer implements all Updates on a timely basis and no later than ninety

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(90) days subsequent to the availability of the Updates; (viii) Customer obtains, maintains, and updates, as required, third party programs and such other software as is necessary for the proper operation of the Software; and (ix) Customer provides reasonable access to its systems (and, if applicable, such access is to be provided in accordance with the specifications set forth in the Documentation and the applicable exhibits) so as to enable Supplier to provide the technical support services, including, but not limited to, by way of telecommunications, internet or other remote access to the server environment in which the Software resides or such other method reasonably acceptable to Supplier. All time and materials expended by Supplier resulting from Customer’s breach of such conditions shall be billed to Customer at Supplier’s standard time and materials rates. Support provided pursuant to this Section relates to the Software and the Updates only. Unless, and only to the extent that, Supplier and Customer have expressly agreed for Supplier to provide hardware support pursuant to the Order Form, should the problems that arise be the result of hardware malfunction, Supplier will advise Customer to have the hardware/network repaired. Support resulting from hardware/network problems will be billed to Customer at Supplier’s then-current hourly rates.

The subscription fee for the first subscription period is set out in the Order Form.

8. Interfaces

Software interfaces to third party vendor systems may be available, as indicated in the Documentation. To the extent such third party vendor system interfaces are available, Supplier shall install the Software interfaces as agreed between the parties on the Order Form. Customer shall act as a liaison between Supplier and any third party vendor(s) with

which the Software shall interface. Customer shall have its third party vendor available at the time that Supplier is scheduled to install the interface and in order to assist with installation, as required by Supplier. Transactions processed by a third party vendor system may be subject to separate licensing requirements. Customer acknowledges and agrees that it has the sole obligation to obtain, or cause its third party vendor to obtain, any and all such licenses.

9. Custom Development and Enhancement Requests

This Agreement does not include any programming services for new software development or software modifications. Such work, if negotiated and agreed to between Supplier and Customer, shall be the subject of a separate agreement for development services between the parties. The fees, payment terms and delivery schedules related to such work shall be as outlined in such agreement for development services, and are independent of Software or services provided under this Agreement. Customer acknowledges that Supplier is not a contract development organization, but rather Supplier is a software developer that licenses its Software within specified industries. As such, Customer further acknowledges that the Software is a major and valuable asset of Supplier's business and, as such, Supplier shall have complete control of the design and development of the Software, including Updates to the Software. Therefore, Supplier has the right, and sole discretion, to reject any request for enhancement or modification to the Software by Customer. Should Customer require modification of any standard forms incorporated into the Software or design of new forms, any such customization work shall be contracted for separately at Supplier's then-current rates.

10. Payment Terms

Customer agrees to pay to Supplier all Fees as set out in the Order Form(s). All Fees are payable in accordance with the terms set out in, and in the currency specified in, the Order Form(s). Unless otherwise indicated on the invoice, all invoices are due upon receipt. Fees stated in the Order Form are exclusive of Taxes. Supplier will provide a refund in respect of prepaid Fees in the event that this Agreement is terminated by Customer during the Subscription Term pursuant to Section 18(d). If Customer wishes to decrease its Permitted Use of the Software, Customer must notify Supplier sixty (60) days in advance of the conclusion of the Initial Subscription Term or the then-current Renewal Term. In such case, such reduction in Permitted Use of the Software will take effect upon the next Renewal Term. If Customer wishes to increase its Permitted Use of the Software, Customer must notify Supplier in advance and pay any applicable Fees.

Any invoice disputes must be initiated by Customer in good faith and in writing; Customer will be entitled to notify Supplier of any invoice dispute by the date that is thirty (30) days following the date of the applicable invoice, after which time the invoice shall be deemed to be accepted by Customer and will be due and payable in full. If Customer initiates a dispute with regard to a particular invoice, any undisputed amounts charged on such invoice will continue to be due and payable. Supplier and Customer agree to use reasonable efforts to address and attempt to resolve any invoice dispute within thirty (30) days after Supplier's receipt of Customer's notice to Supplier regarding such dispute.

With regard to any undisputed invoiced amount that is not paid when due, Supplier reserves the right to charge, and Customer agrees to pay, a late payment fee on the unpaid balance from the due date until paid (whether before or after judgment) equal to the

lesser of one and one half percent (1.5%) per month, or the maximum amount allowable by law. If it is determined that Supplier properly charged any amount disputed and withheld by Customer, the late fee will be assessed and paid on the disputed, withheld amount.

Customer acknowledges that Supplier reserves the right to suspend or interrupt Customer's use of the Software, cease providing Updates and/or suspend delivery of technical support to Customer for any period during which any Fees due in accordance with the terms of this Agreement remain unpaid for fifteen (15) days after Supplier provides advanced written notice (including by way of email) of such unpaid Fees to Customer. In such event, Supplier shall not be precluded from exercising any additional remedies that might be available to it under the terms of this Agreement or otherwise.

11. Taxes; Customs

Customer will be responsible for paying all Taxes (other than taxes associated with Supplier's net income or Supplier's authority to do business in a particular jurisdiction), as well as for obtaining any necessary permissions related to the importation and use of the Software, Third Party Software and/or Hardware. If Supplier has a legal obligation to pay or collect Taxes for which Customer is responsible under this Agreement, the appropriate amount shall be computed based on Customer's address listed in the Order Form and invoiced to and paid by Customer, unless Customer provides Supplier with a valid tax exemption certificate authorized by the applicable governmental authority at least five (5) business days prior to the due date of the applicable Supplier invoice. All Fees are payable in full and without reduction or withholding for Taxes. If, for whatever reason, Customer is required by law to withhold any Taxes from Fees, Customer shall gross up its payments to Supplier so that Supplier receives Fees in full and free of any such deductions. Customer shall, upon request of Supplier, provide to Supplier proof that Taxes have been paid, if such payment is not made to Supplier directly. If Supplier pays any costs or expenses incurred in relation to any import duties, customs, formalities, permissions or other requirements,

then Customer shall promptly reimburse Supplier for all such amounts in full.

12. **Hardware Purchase**

If Customer so elects, Customer shall purchase Hardware at the price indicated in the Order Form or, if at a later date, at the then-current standard prices in effect at the time the order is placed. All Hardware will be shipped F.O.B. origin. Customer shall be responsible for all Delivery Costs. Payment by Customer of Delivery Costs shall be due and payable upon its receipt of Supplier's invoice.

13. **Title to the Products**

Subject to the second paragraph of this Section 13, with respect to Third Party Software and/or Hardware purchased from Supplier by Customer hereunder (collectively, the "Products"), and in the case of Third Party Software, the media on which such Products are contained and the license thereto, all risk therein shall pass to Customer upon shipment F.O.B. from the manufacturer's facility. Supplier reserves, and Customer hereby grants to Supplier, a security interest in all Products sold under this Agreement to secure payment of all applicable Fees until the applicable Fees have been paid in full. A copy of this Agreement may be filed, or Supplier may apply for any registration, or give any notification, in connection with the security interest, with, to or on appropriate authorities or registers in any jurisdiction at any time before or after execution by Customer including a financing statement in order to perfect and/or register Supplier's security interest in the Products. Customer agrees to execute and deliver any additional document or instrument and provide all other assistance as Supplier may reasonably request from time to time to establish, perfect, register, give effect to and/or enforce Supplier's security interest in the Products applicable in Customer's place of business. Supplier shall not, unless any requirement or obligation cannot be lawfully excluded, be obliged to comply with any requirement or obligation of any law in connection with the security interest, including without limitation giving to Customer any notice of any form or making any disclosure. Customer shall maintain sufficient insurance and shall bear the responsibility of insurance for Products from the time it leaves the manufacturer's facility until the applicable Fees have been paid in full. For greater certainty, Customer acknowledges and agrees that Supplier never sells but only licenses the right to "use" its Software, Documentation, and related materials, and that no sale or other transfer of any title or ownership or any proprietary interest of any kind whatsoever in or to such Software, Documentation, or related materials is contemplated hereunder.

Where the governing law of this Agreement is that of England and Wales, then this second paragraph of Section 13 shall apply in place of the first paragraph of Section 13. The legal and beneficial title to the Products, or in the case of Third Party Software, legal and beneficial title to the media, shall remain vested in Supplier and shall not pass to Customer until the purchase price for such Products has been paid in full and received by Supplier. Until payment in full has been received by Supplier and title to the Products passes: Supplier may require Customer to deliver up to Supplier all Products in its possession and if Customer fails to do so promptly, Supplier shall have authority to retake, sell or otherwise deal with and/or dispose of all or any part of the Products; Supplier and its agents and employees shall be entitled for such purpose at any time and without the need to give notice enter upon any property upon which the Products or any part are stored, or upon which Supplier reasonably

believes them to be kept; Customer shall hold the Products as bailee and store or mark the Products in a manner reasonably satisfactory to Supplier indicating that title to the Products remains vested in Supplier; Customer shall take all reasonable care of the Products; and Customer shall insure the Products to their full replacement value, and arrange for Supplier to be noted on the policy of insurance as the loss payee. Irrespective of whether title to the Products remains vested in Supplier, risk in the Products shall pass to Customer upon delivery.

14. **Confidentiality**

By virtue of this Agreement, the parties may have access to the other party's Confidential Information. The parties will hold each other's Confidential Information in confidence. With respect to all Confidential Information other than Software and Documentation provided by Supplier, such obligation shall terminate three (3) years after termination of this Agreement. With respect to the Software and Documentation provided by Supplier, such obligation is perpetual. The parties will not make each other's Confidential Information available in any form to any third-party for any purpose except to the extent necessary to exercise its rights under this Agreement and will treat Confidential Information of the other party with the same degree of care with which it would treat its own confidential information of a like nature, and in no case less than a reasonable degree of care. The parties agree that the limitations of liability contained herein shall not apply to any disclosure of Software or Documentation in breach of this provision and that any such breach shall terminate the rights to such Software and Documentation granted to Customer under this Agreement.

Confidential Information may only be disclosed to those employees or agents who are required to access it in furtherance of this Agreement and who are required to protect such Confidential Information against unauthorized disclosure. Supplier and Customer shall each implement and enforce policies and contractual obligations with its employees, agents and subcontractors to ensure its employees, agents and subcontractors protect the

Confidential Information as required pursuant to this Section 14. It shall not be a breach of this Section 14 if Confidential Information is disclosed pursuant to subpoena or other compulsory judicial or administrative process, provided that the party served with such process promptly notifies, to the extent legally permissible, the other party and provides reasonable assistance so that the other party may seek, at its own cost and expense, a protective order against public disclosure.

The parties recognize and agree that monetary damages are an inadequate remedy for breach of the obligations set forth in this Section 14 and further recognize that any breach would result in irreparable harm to the non-breaching party. In the event of such a breach, the non-breaching party may seek injunctive relief from a court of competent jurisdiction to pursue those remedies available to it.

15. Indemnification

Supplier will indemnify, defend and hold Customer Indemnified Parties harmless from, at its expense, any action brought against Customer Indemnified Parties by a third party based upon a claim that Customer's use of the Software within the scope of these Terms and Conditions and the Order Form(s) infringes a United States, Canadian, United Kingdom, European Union, Australian or New Zealand patent or copyright issued to or held by a third party, or misappropriates a trade secret of such third party; provided that Customer notifies Supplier promptly in writing of such claim, provides Supplier with the sole control and authority to defend or settle such action or claim, and gives Supplier the authority, information and assistance necessary to settle or defend such claim.

In the event a claim of infringement is made, or Supplier believes that such a claim is likely to be made, then Supplier shall at its expense: (a) procure the right for Customer to continue using the Software; (b) replace or modify the Software so that it becomes non-infringing, without materially decreasing the functionality of the Software; or (c) if neither

(a) or (b) above is commercially practical, then at Supplier's sole option, terminate this Agreement upon three (3) months written notice, and either issue to Customer a credit equal to, or promptly refund to Customer, the subscription fee for the then-current subscription period, less an appropriately prorated amount for use, reflecting the number of months during which Customer enjoyed uninterrupted use of the Software during that subscription period.

Notwithstanding the foregoing, Supplier shall have no obligation to defend Customer or to pay any costs or legal fees for any action, claim or settlement, based upon: (a) use of a version of the Software that was not, at the time that the claim arose, the current unaltered version of the Software provided by Supplier hereunder, including, without limitation, failure of Customer to install Updates containing modifications to make the Software non-infringing; (b) combination, operation, integration or interfacing of the Software with Third Party Materials, other than Third Party Materials or Third Party Software with which the Software was intended to operate as specified in the Documentation associated with the Software if such claim would not have arisen but for such combination, operation, integration or interfacing (regardless of whether or not Supplier has advised Customer that such use would likely result in a claim of infringement by a third party); (c) use of the Software in a manner other than as authorized by the Documentation, the Order Form(s) or these Terms and Conditions; (d) Supplier's compliance with the designs, plans, or specifications furnished by or on behalf of Customer; (e) modifications to the Software by any person other than Supplier or its authorized agents or subcontractors; or (f) Customer's failure to accept any procured right to continue using the Software.

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THE FOREGOING STATES SUPPLIER'S SOLE AND EXCLUSIVE LIABILITY AND THE SOLE AND EXCLUSIVE REMEDY OF CUSTOMER INDEMNIFIED PARTIES WITH RESPECT TO ANY CLAIM OF INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OR PROPRIETARY RIGHTS OF ANY THIRD PARTY.

Customer shall defend, indemnify and hold harmless Supplier Indemnified Parties from and against any and all third party claims, actions, causes of action, liabilities, damages, costs and expenses, including reasonable legal fees, arising from or related to the exclusions (a) through (f) set out in the third paragraph of this Section 15.

16. Warranties; Disclaimer of Warranties

For a period of ninety (90) days after the Go-Live Date, Supplier warrants that the Software will operate substantially in accordance with the specifications set forth in the Documentation, provided that the Software is used on the computer hardware equipment and with third party software programs which meet Supplier's minimum requirements as set forth in the Order Form(s) or exhibit, as applicable. Customer's exclusive remedy and Supplier's sole liability for breach of this warranty shall be for Supplier to use commercially reasonable efforts to modify the Software so that it conforms to the warranty described above. Without limitation, Supplier shall have no liability to Customer or any third party arising out of Customer's failure to back-up the Software and the related data.

Supplier hereby represents that it has the authority of each manufacturer or producer of Hardware and Third Party Software which are, if applicable, subject to this Agreement to sell the same to Customer. Customer acknowledges that Supplier is not the manufacturer or producer and therefore makes no warranties, conditions, representations or guarantees, express or implied, concerning Hardware or Third Party Software, as applicable. So far as possible, Supplier hereby assigns to Customer the manufacturer's and producer's

warranties, if any, applicable to the Hardware and Third Party Software, and Customer hereby accepts such assignment and agrees that its sole remedies are included thereunder. Supplier makes no representations regarding the validity or enforceability of any such manufacturer's or producer's warranty.

EXCEPT FOR THE WARRANTIES PROVIDED IN THIS SECTION 16 AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SOFTWARE, THIRD PARTY SOFTWARE AND HARDWARE, AS APPLICABLE, ARE PROVIDED "AS IS" AND "WITH ALL FAULTS", AND SUPPLIER DISCLAIMS ALL OTHER WARRANTIES, REPRESENTATIONS, GUARANTEES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTY AND CONDITION OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE OR THE USE OF REASONABLE SKILL AND CARE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SUPPLIER MAKES NO EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS, GUARANTEES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, THE USE OF REASONABLE SKILL AND CARE, NON-INFRINGEMENT, SATISFACTORY QUALITY, ACCURACY, FREEDOM FROM ERROR OR THAT THE SOFTWARE, THIRD PARTY SOFTWARE, SUPPORT, MAINTENANCE OR HARDWARE WILL MEET ALL OF CUSTOMER'S REQUIREMENTS. SUPPLIER MAKES NO EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS, GUARANTEES OR CONDITIONS WITH RESPECT TO ANY THIRD PARTY SOFTWARE OR THIRD PARTY SERVICES PROVIDED WITH OR AS PART OF THE SOFTWARE, HARDWARE OR RELATED SERVICES. SUPPLIER'S LIMITED WARRANTIES DO NOT APPLY TO ANY SOFTWARE WHICH HAS BEEN MODIFIED OR ALTERED IN ANY MANNER BY ANYONE OTHER THAN SUPPLIER OR ITS AUTHORIZED AGENT. SOME STATES OR JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OF CERTAIN OR ANY EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS, GUARANTEES OR CONDITIONS, SO THE ABOVE EXCLUSION MAY NOT APPLY TO CUSTOMER. IN THAT EVENT, SUCH WARRANTIES, REPRESENTATIONS, GUARANTEES OR CONDITIONS ARE LIMITED IN DURATION TO THE WARRANTY PERIOD TO THE EXTENT LEGALLY PERMISSIBLE.

Nothing in this Agreement excludes, restricts, or modifies any right or remedy, or any guarantee, representation, warranty, condition or other term, implied or imposed by any applicable law which cannot lawfully be excluded or limited. This may include any consumer law which contains guarantees that protect the purchasers of goods and services in certain circumstances. If any guarantee, representation, warranty, condition or other term is implied or imposed concerning this Agreement under any consumer law or any other applicable law and cannot be excluded (a "Non-Excludable Provision"), and Supplier is able to limit Customer's remedy for a breach of the Non-Excludable Provision, then the liability of Supplier for breach of the Non-Excludable Provision is limited to one or more of the following, at Supplier's option: (a) in the case of goods, the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired; or (b) in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.

The parties agree that it is Customer's responsibility to determine whether the Software is suitable for Customer's requirements. No other terms, conditions, representations, warranties or guarantees, whether written or oral, express or implied, will form a part of this Agreement or have any legal effect whatsoever.

17. Limitation of Liability

EXCEPT FOR LIABILITY ARISING (i) FROM CUSTOMER'S BREACH OF SECTION 2 (LICENSE RESTRICTIONS) AND ANY DISCLOSURE BY CUSTOMER OF SOFTWARE OR DOCUMENTATION IN BREACH OF SECTION 14 (CONFIDENTIALITY), (ii) UNDER SECTION 15 (INDEMNIFICATION) OR (iii) FOR PERSONAL INJURY, DEATH, FRAUD OR FRAUDULENT MISREPRESENTATION:

(A) SUPPLIER'S ENTIRE LIABILITY UNDER THIS AGREEMENT OR IN ANY WAY RELATED TO THE SOFTWARE, THE THIRD PARTY SOFTWARE, THE HARDWARE OR ANY RELATED SERVICES WILL BE LIMITED TO DIRECT DAMAGES IN AN AMOUNT EQUAL TO THE FEES PAID BY CUSTOMER TO SUPPLIER PURSUANT TO THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD

Version: Nov 12, 2018 (Subscription

IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO THE CLAIM; AND

(B) NEITHER PARTY WILL BE LIABLE FOR:

(i) ANY SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT OR IN ANY WAY RELATED TO THE SOFTWARE, THE THIRD PARTY SOFTWARE, THE HARDWARE OR ANY RELATED SERVICES; OR

(ii) ANY LOSS OF REVENUE, PROFITS, GOODWILL OR DATA, OR DATA USE (INCLUDING AS A RESULT OF A VIRUS), BUSINESS INTERRUPTION, FAILURE TO REALIZE AN EXPECTED SAVING, CORRUPTION OF DATA, OR CLAIMS AGAINST THEM BY ANY THIRD PARTY,

EVEN IF THE PARTIES ARE ADVISED, OR MAY REASONABLY SUPPOSED TO HAVE BEEN AWARE, OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

SUCH LIMITATIONS WILL APPLY REGARDLESS OF HOW THE CLAIM ARISES, WHETHER ARISING BASED ON CONTRACT, TORT, NEGLIGENCE, OR OTHERWISE AND WILL APPLY TO ALL ORDER FORMS, SCHEDULES, ADDENDA, AGREEMENTS AND ATTACHMENTS RELATED TO THIS AGREEMENT.

THE FOREGOING LIMITATIONS OF LIABILITY ALLOCATE THE RISKS BETWEEN SUPPLIER AND CUSTOMER AND FORM A MATERIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.

18. Term and Termination

- (a) Term. The subscription will continue until the conclusion of the Subscription Term, unless earlier terminated in accordance with Section 18(c) or Section 18(d). This Agreement will automatically renew for additional subscription periods (each being a "Renewal Term" and, collectively, with the Initial Subscription Term, the "Subscription Term") unless either party provides the other party with ninety (90) days written notice prior to the conclusion of the Initial Subscription Term or the Renewal Term, as applicable. All terms and conditions hereof shall remain in effect during any Renewal Term, except as the parties otherwise expressly agree to in writing.
- (b) Failure to Pay Subscription Fee. In the event that Customer fails to pay the applicable subscription fee when due, Supplier reserves the right to elect to take one of the following courses of action (without limiting Supplier's other available remedies): (i) notify Customer that this Agreement will immediately expire (or has expired) effective as of the expiration of the then-current Subscription Term; or (ii) allow this Agreement to renew for another renewal period, in which event, the applicable subscription fee for such renewal period will continue to be payable; provided, however, that if Supplier does not affirmatively notify Customer that alternative (i) or (ii) has been selected, then alternative (ii) will apply.
- (c) Termination by Supplier. Subject to Section 18(b) (Failure to Pay Subscription Fee), and the remedies set out in the last paragraph of Section 10, Supplier has the right to terminate the license granted under this Agreement if Customer is in default of any term or condition of this Agreement, and fails to cure such default within thirty (30) days after receipt of written notice of such default. Without limitation, it will be deemed a Customer default under this Agreement if Customer fails to pay any amount when due hereunder. Supplier may terminate this Agreement immediately if: (i) Customer breaches Section 2 (License Restrictions); or (ii) Customer becomes insolvent, a receiver, administrator, controller or a liquidator is appointed to Customer, Customer assigns any of its property for the benefit of creditors or any class of them or any proceedings have been commenced by or against Customer under any bankruptcy, insolvency or similar laws.
- (d) Termination by Customer. Customer has the right to terminate this Agreement effective immediately upon written notice to the Supplier.
- (e) Effect of Termination. Upon termination of this Agreement for any reason, any and all amounts owed to Supplier pursuant to this Agreement will be immediately due and payable, and all license rights granted to Customer hereunder will be immediately revoked and terminated. Following the termination of this Agreement, the Sections titled "Ownership of Intellectual Property; Customer Input," "Payment Terms," "Taxes; Customs," "Confidentiality," "Indemnification," "Warranties; Disclaimer of Warranties," "Limitation of Liability," "Audit," "Governing Law" and "General" will continue in full force and effect in accordance with their terms. Within ten (10) days following termination, Customer will cease using and will securely destroy or return to Supplier all copies of the Software, Documentation and any applicable copies thereof in accordance with Section 3 (Ownership of Intellectual Property; Customer Input; Data) and confirm the same to Supplier in writing by a duly authorized officer.

19. Audit

During the Subscription Term, Customer shall maintain complete and accurate books, records, policies, and procedures (collectively "Books and Records") sufficient to confirm Customer's compliance with these Terms and Conditions and the Order Form(s), including without limitation compliance with Permitted Use, and payment of Fees to Supplier. During the Subscription Term and for a period of one (1) year thereafter, Customer shall permit Supplier (or an independent representative engaged by Supplier), upon thirty (30) days prior written notice, to audit (each an "Audit") Customer's Books and Records and deployment of the Software to the extent reasonably necessary to verify Customer's compliance with the terms, conditions, and restrictions of this Agreement, at such times during Customer's regular business hours as Supplier may reasonably request. Supplier may exercise its right to audit no more frequently than one (1) time each calendar year. If any Audit should disclose any underpayment of Fees, Customer shall promptly pay Supplier such underpaid amount (whether before or after judgment), together with interest thereon at a rate of one and one-half percent

(1.5%) per month during which each such amount was owed and unpaid, or the highest interest rate allowed by law, whichever is lower. If the amount of such underpayment exceeds five percent (5%) of amounts otherwise payable, then Customer shall reimburse Supplier for Supplier's reasonable and customary audit expenses. The rights and obligations set forth in this Section 19 shall survive termination or expiration of the Subscription Term (as such term is defined in Section 18(a)) for a period of one (1) year from such termination or expiration.

20. Assignment

Neither party may assign any of its rights or obligations hereunder, whether by operation

of law or otherwise, without the other party’s prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety (including all schedules and Order Forms), without the other party’s consent in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement with immediate effect upon written notice. Any purported assignment in violation of this section shall be void and of no effect. Any permitted assignee shall assume all assigned obligations of its assignor under the Agreement.

21. **Governing Law**

The law that will apply to any question of interpretation regarding this Agreement, any question of the existence of this Agreement, or a lawsuit arising out of or in connection with this Agreement, and which courts have jurisdiction over any such lawsuit, depend on the country of incorporation or organization, as applicable, of Customer, and will be determined as follows:

Customer Country of Incorporation:	Governing Law:	Courts Having Jurisdiction:
The United States of America, Mexico or a Country in Central or South America or the Caribbean	The laws of the State of Minnesota and the federal laws of the United States applicable in that state.	(a) The United States District Court for the District of Minnesota (to the extent it has subject matter jurisdiction), or (b) the Minnesota State District Court, Steele County, Minnesota(or, if such court lacks subject matter jurisdiction, in the courts of the State of Minnesota)
Canada	The laws of the Province of Ontario and the laws of Canada applicable in that province.	Toronto, Ontario
The United Kingdom or Another Country in Europe, the Middle East or Africa	The laws of England and Wales.	England and Wales
Australia or a Country in Asia or the Pacific Region	The laws of the State of New South Wales and the laws of the Commonwealth of Australia applicable in that state.	Sydney, Australia

Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and, subject to the availability of injunctive relief pursuant to Section 14 (Confidentiality) and to Section 22 (Dispute Resolution), to the jurisdiction of the applicable courts above. The parties exclude the operation of the United Nations Convention on Contracts for the International Sale of Goods.

22. **Dispute Resolution**

Upon any dispute, controversy or claim between the parties, each of the parties will designate a representative from senior management to attempt to resolve such dispute. The designated representatives will negotiate in good faith in an effort to resolve the dispute over a period of thirty (30) days. If the dispute is not resolved in this thirty (30) day period, a party may submit the dispute to binding arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Selection of the arbitrator shall be appointed pursuant to rule R-12. The arbitrator shall be skilled in the legal and business aspects of the software industry. The parties agree that the arbitrator’s fee shall be shared equally between the parties and that each party shall be responsible for its costs, legal and otherwise, in relation to the arbitration, unless the arbitrator decides that the circumstances justify an award of costs, excluding awards of attorneys fees. The arbitration shall be conducted in the English language and shall take place in accordance with arbitration rules at the Minneapolis regional office of the American Arbitration Association. 2355 Highway 36 West, Ste 400, Roseville, MN, 55113, or via Zoom or other comparable system.

Customer Country of Incorporation:	Applicable Arbitration Rules:	Location of Arbitration:
The United States of America, Mexico or a Country in Central or South America or the Caribbean	Commercial Arbitration Rules of the American Arbitration Association	St Paul, Minnesota
Canada	Canadian Arbitration Association	Toronto, Ontario
The United Kingdom or Another Country in Europe, the Middle East or Africa	London Court of International Arbitration	London, England
Australia or a Country in Asia or the Pacific Region	Australian Centre for Commercial Arbitration	Sydney, Australia

The foregoing provision shall not limit the ability of a party to seek injunctive relief.

23. General.

- (a) Export Compliance. The Software, Products and related services, and derivatives thereof may be subject to export laws and regulations. Each party represents that it is not named on any U.S. government denied-party list. Customer shall not permit access or use of the Software or Products in a U.S.-embargoed country, EU-embargoed country, or United Nations-embargoed country or in violation of any other applicable embargo, export law or regulation.
- (b) Anti-Corruption. Customer has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Supplier's employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If Customer learns of any violation of the above restriction, Customer will use reasonable efforts to promptly notify Supplier.
- (c) Modifications. This Agreement may not be modified except in writing signed by both parties.
- (d) Subcontractors. Supplier reserves the right to make use of subcontractors to provide services and to use such means as Supplier, in its sole discretion, considers appropriate. Supplier's use of subcontractors shall not relieve it of its obligations under this Agreement.
- (e) Independent Contractor. The relationship of the parties established by this Agreement is that of independent contractors. This Agreement does not establish an agency, joint venture or partnership relationship between Supplier and Customer. Supplier and its personnel, agents, Suppliers, and Supplier's Authorized Representatives, are acting as independent contractors and not as employees or agents of Customer. Nothing in this Agreement will be construed to permit either party to bind the other or to enter into obligations on behalf of the other party.
- (f) Non-Solicitation. During the Term of this Agreement and for a period of one (1) year following the termination of this Agreement, each party hereto agrees not to solicit, recruit or employ any employee of the other party without the prior written consent of the Chief Executive Officer, President or Director of the other party. For purposes of this section, the term "employee," shall include any person with such status at any time during the six (6) months preceding any solicitation in question. For the avoidance of doubt, the foregoing restriction shall not apply to the following forms of solicitation (and resulting employment): (i) a party using general bona fide solicitations directed at the public or industry participation in general in publications or internet resources not specifically targeted at employees of the other party, or employing any person who responds to such solicitations; (ii) using search firms, or hiring any persons solicited by such search firms, so long as such firms are not advised

by a party to solicit employees of the other party; or (iii) soliciting any person who has left the employment of the other party prior to the date of this Agreement.

- (g) Severability. If any provision contained herein or part thereof is determined to be void or unenforceable in whole or in part by a court of competent jurisdiction, such invalid provision or part thereof shall be deemed not to affect or impair the validity or enforceability of any other provision or part thereof contained herein, all of which remaining provisions or parts thereof shall be and remain in full force and effect.
- (h) Headings. The headings and subheadings contained herein are inserted for convenience of reference only and shall in no way be construed to be interpretations of terms.
- (i) Notices. All notices under this Agreement shall be in writing and shall be deemed to have been given upon: (i) personal delivery; (ii) the third business day after being sent by pre-paid recorded post; or (iii) the second business day after sending by facsimile with telephonic confirmation of receipt. Notices to Supplier shall be sent to the address shown in the introductory paragraph of this Agreement addressed to Supplier's signatory of this Agreement. Notices to Customer shall be sent to the address shown in the introductory paragraph of this Agreement addressed to Customer's signatory of this Agreement. Each party may modify its recipient of notices by providing notice pursuant to this Agreement.
- (j) Waiver. No delay by either party in enforcing any of the terms or conditions of this Agreement will affect or restrict such party's rights and powers arising under this Agreement. No waiver of any term or condition of this Agreement will be effective unless made in writing. The waiver by any party of a breach of this Agreement does not constitute a waiver of a repeat of the same breach or of other breach of rights or obligations under this Agreement.
- (k) Entire Agreement. This Agreement constitutes the entire Agreement between the parties with respect to the subject matter of this Agreement and supersedes all proposals, oral and written, and all previous negotiations and communications

between the parties and their representatives with respect to the subject matter of this Agreement. For greater certainty, this Agreement will prevail over terms and conditions of any Customer-issued purchase order, which will have no force and effect, even if Supplier accepts or does not otherwise reject the purchase order. Each party acknowledges that, in entering into this Agreement, it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to this Agreement or not) other than as expressly set out in this Agreement.

- (l) Third party rights. A person who is not a party to this Agreement shall not have any rights to enforce any term of this Agreement.
- (m) Force Majeure. Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control provided that the party affected by such failure or delay gives the other party prompt written notice of the cause and uses commercially reasonable efforts to correct such failure or delay within a reasonable period of time.
- (n) Counterparts. This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a Portable Document Format (PDF), or by using a web-based e-signature platform such as DocuSign or Echosign, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page or e-signature was an original thereof.

24. Definitions and Interpretation.

The definitions and rules of interpretation in this Section shall apply to this Agreement.

- (a) The following capitalized terms shall have the meanings ascribed to them in this section:

"Affiliate"	Includes any entity or association controlled by, controlling or under common control with a party and for the purposes of this definition, the term "control" shall mean (i) the ownership of more than fifty percent (50%) of the voting shares of the subject entity or association; (ii) the right or power, directly or indirectly, to elect or remove directors; or (iii) the right or power to control management.
"Audit"	Has the meaning set out in Section 19.
"Branding"	Has the meaning set out in Section 4.
"Books and Records"	Has the meaning set out in Section 19.
"Confidential Information"	All tangible or intangible information and materials, in any form or medium, including, but not limited to, all of the following, whether or not patentable: information that is clearly designated or identified as confidential by appropriate letter or by a proprietary stamp or legend; all information disclosed orally or visually, or other form of tangible information without an appropriate letter or a proprietary stamp or legend, if it would be apparent to a reasonable person familiar with the party's business and industry in which it operates, that such information is of a confidential nature; Software and the Documentation; documentation and other information related to hardware specifications, components lists, suppliers and the like; any scientific or technical design, drawing, process, technique or procedure; trade secrets; information related to business plans, forecasts, sales and marketing plans, Customers, pricing and finances; Customer data contained in the Software databases; the conduct of the other party in performing this Agreement; and the terms and conditions of this Agreement. Confidential Information will not include information that: (i) is or becomes generally known to the public through no act or omission of the other party; (ii) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (iii) is lawfully disclosed to the other party by a third-party without restriction on disclosure; or (iv) is independently developed by or for the other party without use of or reference to the other party's Confidential Information, as evidenced by files from the time of such independent development.
"Customer Indemnified Parties"	Customer and its Affiliates and any of their respective officers, directors, employees, agents, successors and permitted assigns.
"Customer Input"	Suggestions, enhancement requests, recommendations or other feedback provided by Customer, its employees, contractors and agents relating to the operation or functionality of the Software.
"Customer Sites"	The physical location or address where Customer utilizes the Software for the Permitted Use, as set out on the applicable Order Form(s).
"Delivery Costs"	Costs related to the delivery of Hardware or Third Party Software, including insurance, packaging, shipping, freight and other delivery-related costs.
"Documentation"	Supplier-supplied related hard-copy or electronically reproducible technical and user documents associated and provided with the Software.

“Error”	Reproducible error of the Software which prevents the use of the Software substantially as described in the specifications set forth in the Documentation.
“Fees”	Subscription fees, implementation and training fees, amounts payable in respect of Hardware and all other fees due hereunder.
“Go-Live Date”	The date on which Customer first uses the Software to process its daily business relative to the functions that the Software automates.
“Hardware”	Hardware products produced by third party manufacturers which Supplier buys from such manufacturers or distributors for resale to its Customers (to the extent available), including, but not limited computer hardware and point of sale devices.
“Initial Subscription Term”	The fixed term designated on the Order Form beginning on the later of (i) the Effective Date or (ii) the start date of the Subscription Term indicated on the Order Form. If no Initial Subscription Term is indicated on the Order Form, the Initial Subscription Term shall be a period of one (1) year from the Effective Date.
“New Product”	Any new feature, module or enhancement to the Software that Supplier markets and licenses for additional fees separately from Updates.
“Order Form”	A separate document provided by Supplier, agreed to by the parties to, and governed by, this Agreement, by which Customer orders licenses and services. Additional Order Forms executed by the parties with respect to additional licenses, Products and services will form part of this Agreement.
“Other Assistance”	Has the meaning set out in Section 7.
“Permitted Use”	The quantity or extent of a license to the Software or particular modules thereof, as specified in the Order Form. The Order Form may specify that the license is measured by number of Users, number of Workstations or limited to specific Customer Sites.
“Products”	Has the meaning set out in Section 13.
“Renewal Term”	Has the meaning set out in Section 18(a).
“Software”	The (i) machine-readable instructions and data, (ii) components, files, and modules, (iii) audio-visual content (such as images, text, recordings or pictures) and (iv) related licensed materials, such as activation keys, as applicable, as further described in the Order Form(s), as well as any Updates.
“Subscription”	The agreement for Customer’s use of the Software for the Subscription Term pursuant to this Agreement and the commercial terms specified in the Order Form.
“Subscription Term”	Has the meaning set out in Section 18(a).
“Supplier Authorized Representatives”	Supplier’s authorized representatives who, by written authorization from Supplier, may have authorization to sell, install, or provide training in respect of the Software.
“Supplier Indemnified Parties”	Supplier and its Affiliates and any of their respective officers, directors, employees, agents, successors and permitted assigns.
“Taxes”	Any local, state, provincial, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including, but not limited to, value-added taxes, excise, use, goods and services taxes, consumption taxes or similar taxes, export and import fees, customs duties and similar charges, in each case, associated with the Software, Third Party Software and/or Hardware, imposed upon the Fees or otherwise arising out of, or in connection with, the transactions contemplated by this Agreement.
“Third Party Materials”	Any software, hardware, data, or other materials or products not provided by Supplier.
“Third Party Software”	Software owned by third party producers which Supplier distributes or resells to its customers.
“Updates”	The latest updates, modifications, improvements to the Software, including corrections of Errors, which relate to the operating performance but do not change the basic functionality of the Software.
“User”	A person or machine that utilizes the Software for the Permitted Use, as authorized pursuant to an Order Form, as applicable.
“Workstation”	A personal computer or device providing equivalent functionality which is capable of executing the Software and which is linked to a computer network from which the Software is accessible, as authorized pursuant to an Order Form, as applicable.

- (b) Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- (c) Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- (d) A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.
- (e) Any words following the terms including, include, in particular, or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

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DATE: January 16, 2024
TO: Mayor and City Council
FROM: Emily Thamert, Human Resources Director
SUBJECT: Employee Assistance Program (EAP) Agreement - TELUS Health

Purpose:

Approve the agreement for enhanced EAP services with TELUS Health.

Background:

The City has been utilizing the TELUS Health embedded Employee Assistance Program (EAP) for employees with Life or Disability Insurance through National Insurance Services. This agreement for enhanced, client centered (clinically appropriate) EAP services with TELUS Health will expand the scope of coverage and be available to all employees. Services will include 24-hours a day, 7 days a week toll-free phone access to EAP for crisis counseling, risk assessment, and matching to appropriate providers. Topics include but are not limited to: stress & life management, mental health support, resiliency coaching, financial consultation, and online self-directed wellness programs. The coverage will also include manager and key personnel consultations (24/7/365). This enhanced EAP coverage was included in the 2024 budget and supports the key goal 'Become an employer of choice' in the strategic plan.

Budget Impact:

The annual budget impact for the enhanced EAP service is \$5,200.

Staff Recommendation:

Staff recommends approval of the proposed enhanced EAP agreement with TELUS Health.

Attachments:

1. TELUS Health 1.2024



TELUS Health EAP

The following services shall be included in the Sponsoring Organization's TELUS Health EAP offering:

Essential Services	Service Type
24-hours, 7 days a week, toll-free telephone access to Employee Assistance Program ("EAP") for crisis counseling, risk assessment and matching to appropriate service(s)	TELUS Health EAP Services
Professional EAP Counseling: Face-to-face, Telephonic, Video Counseling, Chat, and Self-Directed and Counselor-Assisted Online Programs. <u>Session Limit:</u> ☒ Short Term, Client-Centered (Clinically Appropriate) In no event shall TELUS Health provide more than six (6) sessions per Nevada Eligible User, regardless of issue or topic, within a rolling six (6) month period. Topics including but not limited to: ○ Stress & Life Management ○ Depression, Anxiety, Grief, Loss, Anger, & Violence ○ Relationships, Life Changes, Family Matters, Parenting ○ Substance Use, Addictions, Smoking Cessation ○ Career Support & Resiliency Coaching ○ Pre-Retirement Planning (Lifestyle Planning) ○ Personal Traumatic Events	TELUS Health EAP Services
WorkLife Services: ○ Eldercare Consultation ○ Childcare Consultation ○ Community Referrals ○ Health & Wellbeing Online ○ Financial Consultation ○ Legal Consultation ○ Workplace Referral (Monitored/Mandated) and non-DOT Substance Abuse Program – 1:1 based on EAP counseling model EAP Services	TELUS Health EAP Services
EAP Platform Services* (TELUS Health One): ○ Organization Posts – Wellness community feed ○ Digital EAP Content ○ Online Self-Directed Programs ○ Health Assessment ○ Colleague Directory ○ TELUS Health Community	EAP Platform Services
Manager / Key Personnel Consultations (24/7/365)	EAP Services
Digital Promotional Materials	EAP Services & EAP Platform Services
Annual Statistical Reports	EAP Services & EAP Platform Services

*Feature availability may require personal accounts.



Notwithstanding anything to the contrary in this Agreement, and subject to applicable law, TELUS Health reserves the right to modify or amend the Eligible User Documentation at any time.

7. Sponsoring Organization's Administrator Account. By sponsoring the EAP Platform Services, Sponsoring Organization will have access to an administrator account (the "**Administrator Account**") and Sponsoring Organization and all Administrators must comply with the portions of the Eligible User Documentation applicable to Administrators when using the Administrator Account. Sponsoring Organization represents and warrants to TELUS Health that: (i) it has obtained all consents necessary for Administrator to have access to the information accessible via the Administrator Account (which includes without limitation Eligible User names, email addresses and enrollment status) (collectively "**Admin Info**"); (2) Administrator shall only use the Admin Info as permitted under this Agreement and the Eligible User Documentation and related to the provision or cessation of the Services; and (3) Sponsoring Organization shall indemnify and hold harmless TELUS Health for any losses or damages that result from any actions or omissions of an Administrator.



SERVICES SCHEDULE (UNITED STATES OF AMERICA)

The TELUS Health EAP Services and EAP Platform Services contracted for under the Agreement (and selected on the Order Form) are described in detail in this Services Schedule. The Sponsoring Organization and TELUS Health acknowledge and agree that the following additional services terms shall apply to the Services contracted for hereunder:

1. **User Lists.** If Sponsoring Organization's purchased Services require Sponsoring Organization's Eligible Users to create individual accounts on the Wellbeing Platform, then prior to commencing the Services, Sponsoring Organization must provide a User List so that TELUS Health may directly contact Sponsoring Organization's Direct Eligible Users and invite them to access the EAP Platform Services. Sponsoring Organization shall not disclose any other information to TELUS Health in Sponsoring Organization's User List, including any other Personal Information (including but not limited to social insurance numbers, social security numbers or other government issued identification numbers or any other personal information such as gender, religion, ethnicity, race, creed, sexuality, marital status, or similar information) concerning any Eligible User. As between the Parties, Sponsoring Organization assumes sole responsibility for the accuracy of any information Sponsoring Organization discloses to TELUS Health in Sponsoring Organization's User List. Sponsoring Organization acknowledges that Sponsoring Organization has obtained all consents necessary to disclose the information in Sponsoring Organization's User List to TELUS Health.

If Sponsoring Organization's purchased Services do not require Sponsoring Organization's Eligible Users to create individual accounts on the Wellbeing Platform, then Sponsoring Organization will not need to provide a User List. Sponsoring Organization shall update its Direct Eligible User population at least once per year, and more frequently if directed by TELUS Health, by providing updated population counts to TELUS Health via the designated Customer Success Manager or TELUS Health Contract Administration Team, as directed. Updates must be received no later than the fifth (5th) day of the calendar month in order to apply to the following month.

2. **Updating Sponsoring Organization's User List.** In order to add new Direct Eligible Users or to remove Direct Eligible Users that are no longer part of Sponsoring Organization or otherwise eligible to receive EAP Platform Services, Sponsoring Organization must either: (i) deliver an updated User List to TELUS Health no later than the fifth (5th) day of each calendar month during the Term of this Agreement; or (ii) Sponsoring Organization must update Sponsoring Organization's population of Direct Eligible Users in Sponsoring Organization's service profile through Sponsoring Organization's Administrator Account on TELUS Health's Wellbeing Platform.

3. **Reduction in Number of Eligible Users.** Sponsoring Organization agrees not to reduce its Direct Eligible Users by more than five percent (5%) in any month except as otherwise agreed by the Parties.

4. **Using Services: Affiliates.** The Services may be accessed only by Direct Eligible Users and their associated Indirect Eligible Users. Direct Eligible Users of Sponsoring Organization's Affiliates (and their associated Indirect Eligible Users) may use the Services only if authorized by Sponsoring Organization (for example, by identifying Sponsoring Organization's Affiliates to TELUS Health or identifying Sponsoring Organization's Direct Eligible Users to TELUS Health in Sponsoring Organization's User List). If the Services are used by Eligible Users of any of Sponsoring Organization's permitted Affiliates then each such Affiliate shall be deemed to be bound by this Agreement and shall be jointly and severally responsible for all payments owed to TELUS Health hereunder; *provided, however*, that only Sponsoring Organization (and not Sponsoring Organization's Affiliates) shall be entitled to bring an action under this Agreement against TELUS Health. In order for Sponsoring Organization's Affiliates to be eligible to provide the Services to their Eligible Users pursuant to this Agreement Sponsoring Organization must identify them on the Order Form. Notwithstanding the foregoing, this Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

5. **Consent to EAP Services.** Sponsoring Organization's Eligible Users will request access to the EAP Services by telephone, or through an alternative modality (such as chat or video) offered on TELUS Health's EAP Platform if available in Sponsoring Organization's jurisdiction. Before receiving any EAP Services (including when calling into TELUS Health's call centers to request EAP Services), Eligible Users will receive information about their privacy rights and shall be required to consent to terms and conditions applicable to TELUS Health's EAP Services prior to being able to access the EAP Services. EAP Services may be provided through in-person counseling sessions, a referral to a community-based resource, or through telephonic or video-based services, in all cases subject to what is available locally under Sponsoring Organization's service plan.

6. **EAP Platform Services User Documentation.** Except for certain EAP Platform Services that do not require Eligible Users to create an individual account on TELUS Health's EAP Platform (such as instructions on how to access the EAP Services or access TELUS Health's Life Content Library), Sponsoring Organization's Eligible Users will each be required to create an account on TELUS Health's EAP Platform and consent to the Eligible User Documentation to access the EAP Platform Services. Copies of the Eligible User Documentation are publicly available on the Website.



Closing Accounts), Section 5 (Confidentiality and Data Privacy), Section 6 (Intellectual Property), Section 8 (Limitation of Liability), Section 10 (Applicable Law), Section 12 (Waiver), Section 14 (Severability), and Section 17 (Assignment).

Section 17. Assignment. This Agreement shall be binding upon both Parties and their respective, successors and permitted assigns. Neither Party may assign or transfer this Agreement to any third-party; *provided, however*, that TELUS Health may assign (including an assignment by operation of law), transfer or delegate any of TELUS Health's rights or obligations to any of TELUS Health's Affiliates or any successor in interest to all or substantially all of the assets or business of any TELUS Health line of business, without Sponsoring Organization's consent, in which case, such Affiliate or successor in interest shall be bound by and entitled to the benefit of the terms, conditions and obligations of this Agreement.

Section 18. Electronic Signatures; Counterparts. Signatures may be provided in digital form (such as DocuSign™) or transmitted by electronic means (such as via email confirmation, .PDF or facsimile). This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same Agreement. No counterpart shall be effective until each Party has executed at least one counterpart.



licensed discipline. TELUS Health does not provide separate insurance for the actions or inaction of any such professionals.

7.4. Disclaimer Regarding External Links. The EAP Platform may include links to third-party websites, including websites of TELUS Health's commercial partners or websites promoted by their respective commercial partners. TELUS Health is not responsible for: (i) the operation or content of these other websites; (ii) any act or omission of their commercial partners or other third parties promoted on these other websites; and (iii) any links provided (or not provided) by such third parties.

7.5. Exclusions. The warranties provided in this Agreement comprise all the warranties made with respect to the Services pursuant to this Agreement. Any other representations, warranties, conditions or other terms, whether express or implied and including, without limitation, implied warranties, conditions and other terms of merchantability, satisfactory quality or fitness for a particular purpose, are expressly excluded to the extent permitted by law. Without limiting the foregoing, TELUS Health does not warrant that, to the extent the Services require computers, computer software, mobile devices, mobile network technology or other third-party hardware, software, or technology, the provision of those Services will be entirely error free or will run uninterrupted.

Section 8. Limitation of Liability.

8.1. Liability Limits; No Consequential Damages. TELUS Health's liability (including the liability of any of TELUS Health's Affiliates), if any, to any person, arising out of or in any way related to this Agreement or the performance of TELUS Health's duties and obligations hereunder, shall for all purposes in total be limited to direct damages in an amount not to exceed an amount equivalent to twelve (12) months of Fees paid by Sponsoring Organization in the period prior to the event giving rise to the claim. In no event shall TELUS Health have any liability at any time for any loss of profits, loss of business revenue, failure to realize expected savings, or for any indirect, special, or consequential damages, even if advised of the possibility of such damages.

Section 9. Notices. All notices given under this Agreement shall be in writing and shall be sent to the Parties at the address set forth on the Order Form, attention to their respective Legal Departments. Each such notice, request or communication shall be effective upon receipt or if not received on a Business Day, on the next succeeding Business Day.

Section 10. Applicable Law. This Agreement shall be governed by and construed in accordance with substantive law of the State of Delaware and the federal laws of the United States applicable therein and each Party agrees to submit to the exclusive jurisdiction of the courts in New Castle County, Delaware, but each Party is also entitled to apply to any court worldwide for injunctive relief or other remedies in order to protect or enforce its Intellectual Property rights or confidential information.

Section 11. Force Majeure. If either Party to this Agreement (the "Non-Performing Party") is prevented from performing, or is unable to perform, any of its obligations under this Agreement due to any Force Majeure Event, and if the Non-Performing Party has used commercially reasonable efforts to avoid the impact of the applicable Force Majeure Event and minimize its duration, then the Non-Performing Party's failure to perform its obligations will be excused and will not give rise to any liability

for losses or other damages, and the time for performance of such obligations will be extended for the period of delay or inability to perform due to such Force Majeure Event. In order to be excused from its obligations as a result of a Force Majeure Event, the Non-Performing Party shall be required to (i) promptly notify the other Party of the circumstances creating the failure or delay to meet its obligations, and (ii) for so long as it is continuing to excuse its obligations under the Agreement, use commercially reasonable efforts to re-commence performance of its obligations as soon as reasonably possible. Any payment obligations of either Party hereunder shall not be excused as the result of any Force Majeure Event provided that the banking systems used by the Parties in the ordinary course of business are functioning normally notwithstanding the Force Majeure Event. "**Force Majeure Event**" shall mean any (i) act of God, fire, casualty, flood, hurricanes, earthquakes or other natural disasters, (ii) war, riots, terrorism, insurrection, hostilities (whether declared or not) or acts of foreign enemies, (iii) failure of public utilities, loss of electrical or other power or telecommunications equipment not attributable to a Party's negligence, or destruction of production facilities (iv) pandemic, epidemic or other public health emergency, (v) act, exercise, assertion or requirement of any Governmental and Regulatory Authority, or (vi) any other similar cause as those listed herein that are beyond the reasonable control of a Party.

Section 12. Waiver. No delay or indulgence by either Party at any time, to enforce any of the provisions of this Agreement, or any right with respect thereto, shall be construed as a waiver of such provision or right, nor shall it prejudice or restrict the rights of that Party. A waiver of its rights shall not operate as a waiver of any subsequent breach. No right, power or remedy conferred upon or reserved for either Party is exclusive of any other right, power or remedy available to that Party and the rights, powers and remedies shall be cumulative.

Section 13. English Language. The Parties have expressly requested that this Agreement be drawn up in the English language.

Section 14. Severability. Any provision of this Agreement, which is unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 15. Entire Agreement. The Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings regarding the subject matter hereof, whether written or verbal and each of the Parties acknowledges that it has not been induced to enter into this Agreement by reason of any other representation made by or on behalf of the other Party. Nothing in the preceding sentence shall limit or exclude any liability for fraud or fraudulent misrepresentation. Any amendment to this Agreement must be in writing and signed by authorized representatives of both Parties.

Section 16. Survival. Terms which by their nature survive expiration or Non-Renewal of this Agreement shall survive, including but not limited to Section 2.4 (Nature of TELUS Health's Relationship With Sponsoring Organization's Eligible Users), Section 3 (Fees; Taxes), Section 4.3 (Effect of Termination or Expiration; Unfinished Counseling Sessions;



Services. Sponsoring Organization acknowledges that TELUS Health may use, process, transfer, or disclose Eligible Users' Personal Information to TELUS Health's subcontractors and vendors to the extent TELUS Health is authorized to do so by the consents Eligible Users provide to TELUS Health, including without limitation pursuant to the Eligible User Documentation, but only to the extent reasonably necessary for TELUS Health to perform its obligations under this Agreement.

5.4. Injunctive Relief. The Receiving Party agrees that any breach by it or by any of its agents, representatives or employees of the provisions hereof may cause irreparable harm to the Disclosing Party and that actual damages may be difficult to ascertain and, in any event, may be inadequate. Accordingly, in the event of such breach, the Disclosing Party shall be entitled to seek temporary and/or permanent injunctive relief against the Receiving Party and/or its agents, representatives, and employees (in addition to such other legal or equitable remedies as may be available), without the necessity of proving irreparable harm or actual damage to the Disclosing Party.

Section 6. Intellectual Property.

6.1. Ownership. Each Party owns all Intellectual Property it owned prior to the Effective Date and that which it creates in the performance of its obligations under this Agreement. As between the Parties and vis à vis any third party, TELUS Health is and shall remain the sole and exclusive owner of all Intellectual Property in the EAP Platform and in any materials TELUS Health prepares for Sponsoring Organization in order for TELUS Health to advertise TELUS Health's services to Sponsoring Organization's Eligible Users (together with any related goodwill, whether owned by TELUS Health or licensed to TELUS Health, on the Effective Date or acquired thereafter); *provided, however*, that Sponsoring Organization shall remain the sole owner of any Intellectual Property Sponsoring Organization provides to TELUS Health to customize the EAP Platform for Sponsoring Organization's Eligible Users or to create any such advertising materials for Sponsoring Organization's Eligible Users. For clarity, the reports TELUS Health delivers to Sponsoring Organization as part of the Services (but not the underlying data) shall become Sponsoring Organization's property upon delivery. Sponsoring Organization will not (and Sponsoring Organization's Eligible Users will not) acquire any ownership of, or other rights in relation to, any of TELUS Health's Intellectual Property by using or receiving any Services. Upon the expiration or termination of this Agreement each Party shall promptly return to the other Party, any Intellectual Property of the other Party in its possession or control.

6.2. License. TELUS Health hereby grants to Sponsoring Organization and Sponsoring Organization's Eligible Users, starting on the Effective Date and continuing throughout the Term, a non-exclusive, non-transferable license to access and use the EAP Platform and TELUS Health's other Intellectual Property as may be required to receive and use the Services for the duration of this Agreement. TELUS Health's license grant is subject to the following conditions:

(a) Sponsoring Organization shall not assign, transfer, sublicense, charge or otherwise deal in, encumber, or make available to any third party the Services, the EAP Platform, or any of TELUS Health's other Intellectual Property, and any attempt to do so shall be null and void and shall constitute Sponsoring Organization's material breach of this Agreement; and

(b) Sponsoring Organization shall not (and shall not attempt to) modify, merge, copy, disseminate, display, disassemble, reverse engineer, tamper with, or otherwise attempt to decrypt or derive any source code, digital content, trade secrets or proprietary information included in TELUS Health's EAP Platform or create any websites or mobile applications similar to TELUS Health's EAP Platform.

6.3. Feedback. Notwithstanding any other provision of the Agreement, if the Sponsoring Organization provides any ideas, suggestions, or recommendations, whether confidential or not, to TELUS Health in which any Intellectual Property may arise (the "Feedback"), TELUS Health may use such Feedback and incorporate it in TELUS Health's products, technologies, and services without any obligations or restrictions. The Sponsoring Organization hereby waives all rights it may have in the Feedback, and hereby assigns all such Intellectual Property to TELUS Health. The Sponsoring Organization will execute all documents necessary to assign such Intellectual Property rights that are subject of Intellectual Property right applications by TELUS Health claiming the Feedback, within thirty (30) days after written notice by TELUS Health. The Sponsoring Organization will require all of its personnel and affiliates to assign to TELUS Health all their Intellectual Property rights associated with the Feedback.

Section 7. Warranties; Disclaimers.

7.1. By TELUS Health. TELUS Health warrants to Sponsoring Organization that: (i) TELUS Health shall perform the services in a professional and workmanlike manner in accordance with this Agreement; (ii) TELUS Health's Intellectual Property does not now, and shall not during the Term, infringe on the rights of any third-party; (iii) TELUS Health has the requisite authority to enter into this Agreement and is lawfully entitled to supply the Services to Sponsoring Organization and Sponsoring Organization's Eligible Users; (iv) TELUS Health will use reasonable skill and care to perform the Services in accordance with industry practice; (v) TELUS Health will comply with all laws and regulations applicable to TELUS Health relating to TELUS Health's provision of the Services; and (vi) TELUS Health shall maintain amounts and types of insurance coverage appropriate to similarly situated businesses in TELUS Health's industry and Sponsoring Organization may request from TELUS Health, and TELUS Health shall provide, a certificate of insurance from TELUS Health's insurers no more frequently than once per year.

7.2. By Sponsoring Organization. Sponsoring Organization warrants to TELUS Health that: (i) Sponsoring Organization has all the requisite authority to enter into this Agreement and is lawfully entitled to enter into this Agreement; (ii) Sponsoring Organization is solely responsible for the accuracy and completeness of all information Sponsoring Organization provides to TELUS Health pursuant to this Agreement; (iii) Sponsoring Organization will comply with the limitations, restrictions and obligations as set out in this Agreement; and (iv) Sponsoring Organization will provide all reasonable cooperation to TELUS Health in the performance of this Agreement.

7.3. Disclaimer Regarding Licensed Professionals and Fiduciaries. TELUS Health's Services are not intended to replace disciplines requiring professional licensure such as the practice of law, psychiatry, medicine or financial advisory services. An independently licensed lawyer, doctor, fiduciary or other applicable licensed professional will be involved whenever TELUS Health's Services could constitute the practice of law, psychiatry, medicine, financial advisory services or other



Direct Debit. Payment will be processed on the invoice due date or the first business day following the invoice due date if the due date is on a weekend or a holiday. Sponsoring Organization shall complete all documentation requested by TELUS Health to set up the payment method concurrently with the execution of this Agreement.

3.8. Overdue Payments. Interest on overdue invoices will accrue at a rate of 1.5% monthly starting five (5) calendar days after the due date of the invoice. Payment will be deemed to be made on the date that Sponsoring Organization's payment is credited to TELUS Health's designated bank account.

3.9. Taxes Applicable to Eligible Users. Notwithstanding anything to the contrary in this Agreement, Sponsoring Organization (or Sponsoring Organization's applicable Affiliates) shall be responsible for calculating, withholding, and paying to the applicable taxing authority, any amounts that arise in respect of fringe benefit, social security, social welfare, and other applicable taxes or when Sponsoring Organization is deemed to have provided anything of taxable value to Sponsoring Organization's Eligible Users, including when Sponsoring Organization directly pays any amounts to Eligible Users through the EAP Platform (such as advantages and rewards programs, as applicable). Notwithstanding the foregoing, TELUS Health acknowledges that TELUS Health shall remain responsible for all income taxes TELUS Health incurs because of TELUS Health's providing the Services pursuant to this Agreement.

Section 4. Term and Termination.

4.1. Initial Term; Automatic Renewal. This Agreement will be effective when signed by both Parties and shall continue until the end of the Initial Term identified on the Order Form. This Agreement shall automatically renew for successive one-year periods ("**Renewal Term**") unless either Party delivers to the other, at least ninety (90) days prior to the end of the Initial Term or the applicable Renewal Term (collectively referred to as the "**Term**"), written notice of the Party's intention not to renew the Agreement ("**Non-Renewal**").

4.2. Termination. Notwithstanding [Section 4.1](#) above:

(a) TELUS Health may terminate this Agreement at any time if Sponsoring Organization fails to pay Fees when due and for thirty (30) days thereafter (other than Fees being disputed in good faith by Sponsoring Organization).

(b) Either Party may terminate this Agreement immediately upon written notice if a material breach remains uncured by the breaching Party for more than thirty (30) days after the breaching Party's receipt of a notice from the non-breaching Party describing the breach with reasonable specificity.

(c) After the Initial Term, each Party shall have the right to terminate this Agreement by giving at least ninety (90) days prior written notice of termination to the other Party.

(d) This Agreement shall automatically terminate, without notice: (i) upon the institution by or against either Party of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of either Party's debts; (ii) upon either Party making an assignment for the benefit of creditors; or (iii) upon either Party's dissolution or ceasing to do business.

4.3. Effect of Termination or Expiration; Unfinished Counseling Sessions; Closing Accounts. Upon the expiration or termination of this Agreement:

(a) Sponsoring Organization shall pay all outstanding Fees within thirty (30) days after the date of such expiration or termination;

(b) TELUS Health shall cease to provide Services on such expiration or termination date except that Eligible Users who have not completed their course of counseling sessions (which began before such expiration or termination date) shall be able to complete any planned course of counseling sessions under this Agreement; and

(c) Each Eligible User's Account (as defined in the Eligible User Documentation) on the EAP Platform will be closed and the Eligible Users shall have a reasonable opportunity to withdraw or redeem unused amounts in their CashBack Wallets or Rewards Accounts, in each case in accordance with the terms and conditions set forth in the Eligible User Documentation.

Section 5. Confidentiality and Data Privacy.

5.1. Confidentiality. Neither Party shall use or disclose confidential information of the other Party except as required in accordance with such Party's obligations under this Agreement. The terms and conditions of this Agreement (including pricing provisions) shall be kept confidential at all times. Any Party receiving confidential information under this Agreement (the "**Receiving Party**") shall use the same degree of care as it uses to protect its own confidential information of like nature, but no less than a reasonable degree of care, to maintain in confidence the confidential information of the Party that has disclosed such confidential information (the "**Disclosing Party**"). The foregoing obligations shall not apply to any information that: (i) is at the time of disclosure, or thereafter becomes, part of the public domain through a source other than the Receiving Party; (ii) is subsequently disclosed to the Receiving Party by a third party that does not impose an obligation of confidentiality on the Receiving Party; (iii) was known to the Receiving Party at the time of disclosure; (iv) was generated independently by the Receiving Party; or (v) is required or permitted to be disclosed by law, subpoena or other legal process. In the absence of a separate written agreement, TELUS Health may share Sponsoring Organization's confidential information with TELUS Health's third-party subcontractors or vendors who are bound by obligations of confidentiality to TELUS Health at least as stringent as those in this Agreement, but only to the extent reasonably necessary for TELUS Health to perform TELUS Health's obligations under this Agreement.

5.2. Data Privacy. TELUS Health shall comply with all applicable Federal, Provincial, and State laws concerning information or data privacy. Where applicable the Parties may be required by applicable law to enter into a data protection agreement. TELUS Health's standard agreements will be separately provided to Sponsoring Organization and, if executed, shall be incorporated into this Agreement as if set forth herein.

5.3. Receipt and Use of Personal Information. Except for information disclosed by Sponsoring Organization in its User List, TELUS Health does not expect, need, or desire to receive, and Sponsoring Organization shall not disclose, any Personal Information about Sponsoring Organization's Eligible Users to TELUS Health. Instead, TELUS Health expects to collect such information (if at all) directly from the Eligible Users who use the



provided that such modification is set forth in writing signed by both Parties.

2.6. Responsibility for Eligible Users Using the EAP Platform Services. Sponsoring Organization acknowledges that, as between the Parties, Sponsoring Organization is in a better position to restrict access to the EAP Platform Services and to manage and discipline Sponsoring Organization's Eligible Users who abuse the EAP Platform Services or breach the terms and conditions in the Eligible User Documentation. By sponsoring the EAP Platform Services Sponsoring Organization shall be responsible for and agrees to hold harmless and indemnify TELUS Health from any loss, damage, cost or expense (including reasonable legal fees and expenses) suffered, incurred or paid by TELUS Health arising from or relating to: (a) illegal, discriminatory, harassing, libelous, slanderous, or other legally offensive content posted on the EAP Platform by Sponsoring Organization's Direct Eligible Users ("User Content"), and (b) illegal, criminal, or fraudulent activity (perpetrated against TELUS Health or any of TELUS Health's affiliates, contractors or vendors) by Sponsoring Organization's Direct Eligible Users ("User Activity"). TELUS Health does not monitor or moderate User Content or User Activity and TELUS Health hereby disclaims any responsibility or liability to Sponsoring Organization for any User Content or User Activity.

2.7. Unauthorized Access to Sponsoring Organization's Services. Sponsoring Organization shall use reasonable efforts to prevent unauthorized persons from accessing or using the Services and Sponsoring Organization must notify TELUS Health promptly if Sponsoring Organization becomes aware of any unauthorized access to or use of the Services; *provided, however*, that this paragraph does not limit TELUS Health's responsibility to maintain and enforce the security features TELUS Health uses to prevent unauthorized persons from accessing or using the Services.

2.8. Ancillary Services. If Sponsoring Organization has elected to receive any Ancillary Services (as set out on the Order Form) such Ancillary Services shall be considered "Services" under this Agreement and the additional terms and conditions applicable to such Ancillary Services that are included in the **Ancillary Services Schedule** attached hereto shall apply.

Section 3. Fees; Taxes.

3.1. Calculation of Fees. Sponsoring Organization shall pay the fees equal to the Unit Price multiplied by the Minimum Quantity of Direct Eligible Users (or Sponsoring Organization's actual Direct Eligible User population as updated (the "Fees"). Fees do not include any applicable Federal, Provincial, State or jurisdictional taxes or levies, or any other sales tax, VAT, or GST, as applicable.

If the Sponsoring Organization has elected to purchase any Ancillary Services, such Ancillary Services will be provided at an additional cost beyond the price that is set out in the Order Form. The fees for such Ancillary Services shall be as set out in the schedules that describe the applicable Ancillary Service in the **Ancillary Services Schedule** attached hereto, and all such fees shall be considered "Fees" for purposes of this Agreement.

If other rates apply to any part of Sponsoring Organization's user population, such as a different Unit Price per Non-Territorial Eligible User, such rates are described in and calculated in the manner set forth on the **Non-Territorial Eligible Users Exhibit** and any amounts payable thereunder constitute Fees for purposes of this Agreement. The Parties acknowledge and

agree that the fees set out on the Order Form are an estimate and that the actual Fees may vary according to the Sponsoring Organization's population of Direct Eligible Users.

3.2. Incurring Fees. Sponsoring Organization shall not begin to incur Fees until the earlier of (a) the first day TELUS Health actually begins to perform Services for Direct Eligible Users, or (b) the first day of the calendar month immediately following the date on which TELUS Health has completed all of TELUS Health's implementation or onboarding activities, even if Sponsoring Organization has not communicated that the Services are available to Sponsoring Organization's Eligible Users or (where applicable) provided TELUS Health with an User List (through no fault of TELUS Health), in which case TELUS Health shall use the Minimum Quantity to calculate Sponsoring Organization's Fees.

3.3. Invoicing: The Fees will be invoiced *in advance* on the frequency identified on the Order Form and will be calculated based on the number of Direct Eligible Users as of the Effective Date and shall reflect timely updates to Direct Eligible Users. TELUS Health reserves the right to invoice the Sponsoring Organization less frequently if Sponsoring Organization's estimated periodic invoice amount is below 1,000.00 per month or 3000.00 per quarter in the specified Currency. Any Ancillary Services will be invoiced and payable monthly *in arrears* unless otherwise agreed.

3.4. Expenses. TELUS Health reserves the right to charge the Sponsoring Organization for expenses related to the delivery of Services on-site that are incurred by TELUS Health, including but not limited to transportation and accommodation costs. Such expenses are not included as part of the fees set out on the Order Form and will be invoiced separately.

3.5. Pricing Adjustments. Except as set forth in Section 3.6, if TELUS Health wants to adjust the Unit Price or the rates for any Ancillary Services ("**Pricing Adjustment**"), TELUS Health may do so by notifying Sponsoring Organization at the email address set forth on the Order Form. If no objection is received by TELUS Health from Sponsoring Organization within thirty (30) days, then Sponsoring Organization will be deemed to have accepted the Pricing Adjustment and it will become effective.

3.6. Excess Utilization Rate Adjustment. If Sponsoring Organization's actual Utilization Rate over any 12-month period exceeds the Budgeted Utilization Rate by one percentage point or more, TELUS Health will adjust the Unit Price ("**Adjusted Rate**"), establish an adjusted BUR, and notify Sponsoring Organization of the Adjusted Rate and adjusted BUR. The Adjusted Rate and the adjusted BUR will remain in effect for the balance of the Term. Any such increase in Fees will not be retroactive. If Sponsoring Organization objects to the Adjusted Rate or adjusted BUR, Sponsoring Organization shall provide notice of such objections to TELUS Health within thirty (30) days and the Parties shall attempt in good faith to resolve the dispute. If the parties do not agree on the Adjusted Rate and adjusted BUR, then TELUS Health shall have the right to (a) terminate this Agreement upon ninety (90) days advance written notice; or (b) continue to provide Services for the Fees in effect immediately prior to the Excess Utilization Rate Adjustment.

3.7. Payments. Sponsoring Organization must pay TELUS Health all Fees plus applicable Taxes and expenses, in the currency specified on the Order Form. All Fees shall be paid to TELUS Health within thirty (30) days of the date of an invoice. Sponsoring Organization shall pay all invoices via pre-authorized debit (PAD), recurring credit card (PAP) payments or



Utilization Rate	A percentage rate measured over a defined time period, calculated as the number of Cases delivered during such time period divided by the Sponsoring Organization's average monthly population of Direct Eligible Users during such time period
Website	The website listed on the Order Form and all subdomains thereof as well as any other future domains through which TELUS Health makes the Services available

Section 2. Services.

2.1. Performance of Services. TELUS Health shall be responsible for providing the Services specified on the Order Form and in any applicable Schedule to Sponsoring Organization's Eligible Users. TELUS Health may, in TELUS Health's sole discretion, subcontract any of the Services to TELUS Health's Affiliates or to TELUS Health's network of local affiliate counselors (as independent contractors). TELUS Health relies on a variety of third-party digital content providers and TELUS Health's global business partners where applicable to provide the Wellbeing Platform Services. Notwithstanding the foregoing, as between TELUS Health and Sponsoring Organization, TELUS Health shall be responsible for the Services performed by any such third parties as if TELUS Health performed those Services subject to the terms and conditions set out in this Agreement.

2.2. Location of Eligible Users.

(a) **Territorial Eligible Users.** TELUS Health's Services are based in the Territory, which is a jurisdiction or geographic location where TELUS Health agrees that TELUS Health is in compliance with applicable data storage laws for individual persons within that Territory. This Agreement assumes that Eligible Users are residents of the Territory and are using the Services from within the Territory ("**Territorial Eligible Users**"). Notwithstanding the foregoing, TELUS Health accepts that TELUS Health's Services may be accessed from outside the Territory by Eligible Users who are travelling or who are temporarily (less than 6 months in any 12-month period) based outside the Territory. In those cases, TELUS Health expects Sponsoring Organization's Eligible Users to access TELUS Health's EAP Services telephonically and Sponsoring Organization acknowledges that the Wellbeing Platform Services may not be fully accessible outside the Territory (for example, certain retail offers may not be available to Territorial Eligible Users who are accessing the EAP Platform Services from outside the Territory).

(b) **Non-Territorial Eligible Users.** Unless otherwise stated in this Agreement, if Sponsoring Organization wishes to sponsor Services for Direct Eligible Users who permanently reside outside of the Territory or who desire to use or access the Services primarily from outside the Territory ("**Non-Territorial Eligible Users**"), the Parties shall separately address the Services available to such Non-Territorial Eligible Users, as well as any other specific terms and conditions applicable to such Non-Territorial Eligible Users, in the **Non-Territorial Eligible Users Exhibit**, which may include session limits, service delivery modalities and pricing that differ from comparable Services applicable to Territorial Eligible Users. In the absence of any other agreement between the Parties, global Services for

multinational Sponsoring Organizations will be addressed in one or more addendums to the **Non-Territorial Eligible Users Exhibit**. Unless otherwise set forth in the **Non-Territorial Eligible Users Exhibit**, or if no such Schedule is included in this Agreement, Sponsoring Organization acknowledges that TELUS Health is not obligated to provide any Services outside of the Territory.

(c) **California EAP Services.** Notwithstanding any other provision in this Agreement, Sponsoring Organization must inform TELUS Health in writing if any of Sponsoring Organization's Eligible Users reside in or expect to receive any EAP Services in California. TELUS Health has no obligation to provide any EAP Services in California until the Parties have complied with applicable California laws.

2.3. Minimum Age of Eligible Users; Valid Legal Consent Requirement. Except as otherwise restricted or required by locally applicable law, Eligible Users must be legally eligible to independently use the EAP Services and must otherwise legally be able to independently accept and comply with the eligibility requirements set forth in the Eligible User Documentation to access the EAP Platform Services. If Eligible Users are not legally eligible to independently use the Services, such Eligible Users may only use or access the Services with the consent of a parent or other legal guardian capable of providing legally acceptable consent.

2.4. Nature of TELUS Health's Relationship with Sponsoring Organization's Eligible Users. Due to the sensitive nature of the Services TELUS Health provides, Sponsoring Organization acknowledges that TELUS Health has the right to communicate directly and privately with Eligible Users as necessary to provide the Services to Eligible Users. The relationship between Sponsoring Organization's Eligible Users and TELUS Health will remain confidential in the absence of an Eligible User's consent to release information about the Eligible User and TELUS Health shall be under no obligation to disclose any Personal Information TELUS Health possesses about Sponsoring Organization's Eligible Users to Sponsoring Organization, even if that information might be beneficial to Sponsoring Organization.

2.5. Changes to Services, Supplemental Services; Amendments. TELUS Health reserves the right to make changes to the Services (including, but not limited to, upgrades, EAP Services delivery protocols or the features and services available on TELUS Health's EAP Platform including the specific inclusion or exclusion of user advantages and rewards services), or to other aspects of the Services that affect TELUS Health's customers generally and that are reasonable and necessary to TELUS Health's business operations; *provided, however*, that if a change is made to Sponsoring Organization's Services that Sponsoring Organization reasonably and in good faith determines to substantially degrade the value of the Services Sponsoring Organization contracted for under this Agreement, then Sponsoring Organization may terminate this Agreement as if TELUS Health had materially breached this Agreement pursuant to the procedures set forth in Section 4.2(b) of these Standard Terms & Conditions. TELUS Health shall have the opportunity to cure TELUS Health's deemed breach or show that the changes TELUS Health made did not substantially degrade the value of the Services Sponsoring Organization contracted for under this Agreement. Notwithstanding the foregoing, the Parties may enter into amendments, addendums or other modifications at any time



STANDARD TERMS & CONDITIONS (USA)

In this Agreement the TELUS Health entity identified on the Order Form is referred to as "**TELUS Health**" and the Sponsoring Organization identified on the Order Form is referred to as "**Sponsoring Organization**." Each party may also be referred to as a "**Party**" or collectively as the "**Parties**".

Section 1. Defined Terms.

Defined Term	Definition
Administrator	Any individuals that the Sponsoring Organization elects, in its sole discretion, to grant access to its Administrator Account
Affiliate	With respect to any person, an Affiliate means any other entity that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, that person
Agreement	The Order Form, these Standard Terms & Conditions, and any other schedules, addendums, or exhibits
Ancillary Services	Those Services agreed between the parties which have been selected as applicable services on the Order Form; these services shall be subject to additional fees in accordance with Section 3.1 and shall be subject to additional terms as set out in Section 2.8
App	The TELUS Health mobile application available for download from third party mobile application stores or from the TELUS Health Website
Budgeted Utilization Rate (BUR)	The estimated annual Utilization Rate reflected on the Order Form which is based on the Sponsoring Organization's historical Utilization Rate or, if Sponsoring Organization is a new client, the Utilization Rate of a comparable client
Business Day	Any day other than a Saturday, Sunday or statutory holiday in the jurisdiction in which this Agreement is governed.
Case	The use of EAP Services by Eligible Users for a presenting issue related to a topic identified on the Services Schedule
Direct Eligible User	An employee or other sponsored member of Sponsoring Organization who has the primary direct relationship with Sponsoring Organization. Sponsoring Organization is ultimately responsible for determining who is a Direct Eligible User and, if required in this Agreement, for disclosing that information to TELUS Health
EAP Platform	The digital environment on which the EAP Platform Services are provided to Eligible Users
EAP Platform Services	The services available through the Website and App that are categorized as "EAP Platform Services" on the Services Schedule
EAP Services	The counseling services categorized as "EAP Services" on the Services Schedule

Effective Date	The effective date set out on the Order Form
Eligible User Documentation	The Privacy Policy, Privacy Policy for the European Union and United Kingdom, Mobile Applications Privacy Policy, Cookie Policy, and User Terms, each as amended from time to time, available on the Website or through the App
Eligible Users	Collectively, Direct Eligible Users and Indirect Eligible Users
Indirect Eligible User	The spouses, domestic partners, lineal decedents or antecedents, or household dependents, whose relationship with Sponsoring Organization is solely through one of Sponsoring Organization's Direct Eligible Users
Initial Term	The initial term set out on Order Form
Intellectual Property	All patent rights, moral rights, copyrights, software code, source code, applications, tools, digital content, service marks, trademarks, registered and unregistered designs, rights in databases, trade secrets and other intellectual property
Life Content Library	A library of digital EAP content that provides Eligible Users with access to TELUS Health's standard array of fitness support and other activity resources such as virtual workouts
Minimum Quantity	The number of Direct Eligible Users set out on the Order Form
Personal Information	Information about an identifiable individual which is protected by any applicable privacy or data protection law, statute, or regulation applicable to such individual in the Territory
Services	Collectively, EAP Services, and EAP Platform Services, as well as any Ancillary Services being contracted for hereunder, each as applicable
Territory	The territory where Services are based, set out on the Order Form
Unit Price	The unit price for Services set out on the Order Form, which may be adjusted as provided herein
User List	File provided by Sponsoring Organization to TELUS Health that includes information required by TELUS Health to provide the Services (e.g., employee name, ID number, email address, country code and grouping information (where applicable)) in a format acceptable to TELUS Health

This Agreement to sponsor Services for Sponsoring Organization's Eligible Users is being entered into between you, as the Sponsoring Organization defined above, and the TELUS Health party identified in the signature block below. This Order Form, together with the Standard Terms and Conditions, and any schedules, exhibits, attachments, annexes and appendices shall collectively constitute the Agreement between the parties. IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date written above.

TELUS HEALTH

TELUS Health (US) Ltd., a Delaware corporation

Per: _____

Name: _____

Title: _____

I have the authority to bind TELUS Health

SPONSORING ORGANIZATION

City of Owatonna

Per: _____

Name: Kris Busse

Title: City Administrator

I have the authority to bind the Sponsoring Organization



250 Royall Street
Suite 210W
Canton, MA 02021

SERVICES AGREEMENT ORDER FORM (USA)

Sponsoring Organization Order No.: Q-79427
Initial Term: 36 Months
Territory: United States
Currency: \$/USD

Sponsoring Organization Information				
Sponsoring Organization Legal Name	Entity Type	Jurisdiction of Formation	Registration Number	
City of Owatonna	Gov.	MN	41-6005444	
Sponsoring Organization Service Contact	Phone No.	e-mail		
Emily Thamert	507-774-7345	Emily.thamert@owatonna.gov		
Sponsoring Organization BILLING Address (please insert full and complete mailing address including applicable postal codes and county)				
540 West Hills Circle, Owatonna, MN 55060				
Sponsoring Organization NOTICE Address – if different from billing address above (please insert full and complete mailing address including applicable postal codes and county) (optional)				
Standard Service Package [*] (check all that apply)	Budgeted Utilization Rate (BUR)	Unit Price	Minimum Quantity	Estimated Recurring Fees & Invoice Frequency
☒ TELUS Health EAP ☐ TELUS Health Critical Incident (THCI) Value Add-On ☐ TELUS Health Learning (THL) Value Add-On ☐ TELUS Health Workplace Support (THWS) Value Add-On ☐ Health Assessment Add-On ☐ Telemedicine Services ☐ TELUS Health CBT ☐ TELUS Complex Mental Health ☐ TELUS Health Wellbeing Platform Add-On	2.5%	\$5200 flat rate annual fee	240 (# of current Direct Eligible Users)	\$5200 per invoice, annual invoicing
California EAP	Non-Territorial EAP	Session Model [*]		Website
☐ Yes _____ ☒ No	☐ Yes ☒ No	Clinically Appropriate Model		www.one.telushealth.com
Effective Date	Summary of Estimated Totals (not including Ancillary Services)			Total
February 1, 2024	Total Estimated Implementation Fees			Waived
	Total Estimated Annual Contract Value (recurring Fees)			\$5200 per year
Ancillary Services (check all that apply)				
☐ Breaking Free by TELUS Health ☐ CoachNow ☐ COVID-19 Screening by Mail ☐ Health Coaching ☐ Onsite Counseling ☐ Onsite COVID Screening ☐ TELUS Complex Mental Health ☐ TELUS Health CBT ☐ TELUS Health Critical Incident (THCI) ☐ TELUS Health Learning (THL) ☐ TELUS Health Virtual Tutoring ☐ TELUS Health Wellbeing Platform Add-On ☐ TELUS Health Workplace Support (THWS)				
Affiliates or Associated Legal Entities Receiving Services				

All prices on this Order Form are exclusive of all Taxes

* See Services Schedule for more details

[Signature page follows]

RECAP:

\$	63,854.00	Coalition of Greater MN Cities - 2024 CGMC General Dues Assessment
	24,323.00	League of MN Cities - 2023/2024 membership dues \$22,953.00
		- Mn Cities Stormwater Coalition Contributions \$1,370.00
	42,610.27	Owatonna Public Utilities - WWTP New Electric Svce Line Ext/Transformer \$39,426.73
		- monthly utility expenses \$3,183.54
	21,474.75	PVS Technologies Inc - chemicals for WWTP
	337,759.36	RDO Equipment Co - 2023 John Deere 772G Motor Grader \$337,600.00
		- Painting supplies \$159.36
	1,124,583.01	Rice Lake Construction Group - WWTP Expansion Est 19
	<u>330,538.43</u>	OTHER EXPENDITURES
\$	<u><u>1,945,142.82</u></u>	TOTAL EXPENDITURES PRESENTED FOR APPROVAL

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

Check Number	Check Date	Vendor Name	Net Check Amount	Check Status	Check Type
Cash Account: 999-19100-000-000-000000					
376351	01/02/24	MARCO TECHNOLOGIES LLC	219.22	R	ACH
376352	01/02/24	T-MOBILE	724.79	0	Regular
376353	01/02/24	VERIZON WIRELESS	2,704.48	0	Regular
376354	01/08/24	METRONET SYSTEMS HOLDINGS LLC	1,832.50	R	ACH
376355	01/16/24	ALEXANDER LUMBER COMPANY	3,870.94	0	Regular
376356	01/16/24	ALS GROUP USA CORP	125.00	R	ACH
376357	01/16/24	APG MEDIA OF SO MINNESOTA LLC	580.56	0	Regular
376358	01/16/24	ARAMARK UNIFORM SERVICES INC	412.55	0	Regular
376359	01/16/24	ARCHIVE SOCIAL LLC	5,990.00	R	ACH
376360	01/16/24	ASPEN MILLS INCORPORATED	3,723.77	0	Regular
376361	01/16/24	BAKER & TAYLOR BOOKS	908.13	R	ACH
376362	01/16/24	BENJAMIN R JOHNSON	39.03	0	Regular
376363	01/16/24	BOLTON & MENK INC	15,925.00	R	ACH
376364	01/16/24	CARQUEST	4,211.04	0	Regular
376365	01/16/24	CDW GOVERNMENT INC	680.90	0	Regular
376366	01/16/24	CEMSTONE PRODUCTS CO	23.10	0	Regular
376367	01/16/24	CENGAGE LEARNING INC/GALE	74.79	R	ACH
376368	01/16/24	CENTRAL FARM SERVICE	4,268.18	0	Regular
376369	01/16/24	CENTURY LEATHER PRODUCTS	90.00	0	Regular
376370	01/16/24	CHRISTIAN SKJEVELAND	173.75	0	Regular
376371	01/16/24	CINTAS	79.18	0	Regular
376372	01/16/24	CITY OF OWATONNA	48.75	0	Regular
376373	01/16/24	CIVICPLUS LLC	10,979.80	R	ACH
376374	01/16/24	CLAREYS SAFETY EQUIPMENT	4,211.78	R	ACH
376375	01/16/24	CLIFTONLARSONALLEN LLP	4,252.50	0	Regular
376376	01/16/24	COALITION OF GREATER MN CITIES	63,854.00	0	Regular
376377	01/16/24	COLE'S ELECTRIC INC	6,000.00	0	Regular
376378	01/16/24	CONTINENTAL RESEARCH CORP	1,497.91	R	ACH
376379	01/16/24	COSTAS CANDIES	10,000.00	0	Regular
376380	01/16/24	COVERALL OF THE TWIN CITIES	2,455.00	0	Regular
376381	01/16/24	COVERTTRACK GROUP, INC.	600.00	0	Regular
376382	01/16/24	CRW ARCHITECTURE + DESIGN INC	12,200.00	0	Regular
376383	01/16/24	CURT'S TRUCK & DIESEL SERVICE	73.62	R	ACH
376384	01/16/24	CUSTOM COMMUNICATIONS	2,693.94	0	Regular
376385	01/16/24	DLT SOLUTIONS LLC	6,627.60	R	ACH
376386	01/16/24	EARL F ANDERSEN & ASSOC	1,034.75	0	Regular
376387	01/16/24	EMPLOYEE STRATEGIES INC	7,699.91	R	ACH
376388	01/16/24	ENVIRONMENTAL EQUIP & SERV INC	252.00	0	Regular
376389	01/16/24	FAME AWARDS	717.50	0	Regular
376390	01/16/24	FARMERS FEED AND PET SUPPLY	203.99	0	Regular
376391	01/16/24	FASTENAL COMPANY	728.30	R	ACH
376392	01/16/24	FEMA	327.30	0	Regular
376393	01/16/24	FIRST SUPPLY OWATONNA	675.33	R	ACH
376394	01/16/24	FOUR SEASONS ELECTRIC	926.70	R	ACH

Check Number	Check Date	Vendor Name	Net Check Amount	Check Status	Check Type
376395	01/16/24	FULLSTEAM HOLDINGS LLC	571.00	R	ACH
376396	01/16/24	GAMEHAVEN COUNCIL-BS OF AMER	360.00	0	Regular
376397	01/16/24	GRAINGER	37.22	R	ACH
376398	01/16/24	GREATER MN PARKS & TRAILS	330.00	0	Regular
376399	01/16/24	HAWKINS INC	20.00	R	ACH
376400	01/16/24	HEIMAN INC	1,596.00	R	ACH
376401	01/16/24	HISTORIC THEATRE GROUP	1,584.00	0	Regular
376402	01/16/24	HORIZON COMMERCIAL POOL SUPPLY	714.15	R	ACH
376403	01/16/24	HUBER SUPPLY CO INC	17.05	0	Regular
376404	01/16/24	IFACS	1.07	R	ACH
376405	01/16/24	INGERSOLL RAND INDUSTRIAL TECH	980.00	0	Regular
376406	01/16/24	INNOVATIVE OFFICE SOLUTIONS	479.56	0	Regular
376407	01/16/24	JO-ANN STORES LLC	1,100.00	0	Regular
376408	01/16/24	JONES & BARTLETT LEARNING LLC	329.55	0	Regular
376409	01/16/24	KOWZ-FM	417.00	R	ACH
376410	01/16/24	L & M BOILER SYSTEMS INC	952.50	0	Regular
376411	01/16/24	LARRY THORNHILL	224.00	0	Regular
376412	01/16/24	LAWSON AUTOMOTIVE LLC	2,828.95	0	Regular
376413	01/16/24	LEAGUE OF MN CITIES	24,323.00	0	Regular
376414	01/16/24	LEGACY SIGNS INC	25.00	R	ACH
376415	01/16/24	LEGENCE SUBSIDIARY HOLDINGS LL	11,625.00	R	ACH
376416	01/16/24	LINDER DIGITAL	1,000.00	0	Regular
376417	01/16/24	MACQUEEN EQUIPMENT CO	5,819.85	R	ACH
376418	01/16/24	MADISON NATL LIF INS CO INC	991.25	0	Regular
376419	01/16/24	MARCO TECHNOLOGIES LLC	20.11	R	ACH
376420	01/16/24	MATTHEW R HOKANSON	8,005.67	R	ACH
376421	01/16/24	MID-STATES ORGANIZED CRIME	5,000.00	R	ACH
376422	01/16/24	MIKE JOHNSON	25.25	0	Regular
376423	01/16/24	MIKE'S MARINE & SMALL ENG REP	145.39	0	Regular
376424	01/16/24	MINA ADSIT ARCHITECTURE & PLAN	14,034.99	0	Regular
376425	01/16/24	MINNESOTA PAVING & MATERIALS	1,017.96	0	Regular
376426	01/16/24	MINNESOTA PUMP WORKS	464.30	R	ACH
376427	01/16/24	MINNESOTA SECURITY CONSORTIUM	9,200.00	R	ACH
376428	01/16/24	MN DEPT OF HEALTH	1,325.00	0	Regular
376429	01/16/24	MN DRIVER & VEHICLE SERVICES	15.25	0	Regular
376430	01/16/24	MN FIRE SERVICE CERT BOARD	25.00	0	Regular
376431	01/16/24	MN MAYORS ASSOCIATION	30.00	0	Regular
376432	01/16/24	MN MUNICIPAL UTILITIES ASSN	1,380.00	0	Regular
376433	01/16/24	MN PETROLEUM SERVICE	1,339.00	0	Regular
376434	01/16/24	MN SC INVESTIGATOR'S COALITION	1,050.00	0	Regular
376435	01/16/24	MN STATE FIRE DEPT ASSOCIATION	495.00	0	Regular
376436	01/16/24	MRI SOFTWARE LLC	50.00	R	ACH
376437	01/16/24	NAPA AUTO PARTS	952.94	R	ACH
376438	01/16/24	NELROD COMPANY	2,486.00	0	Regular
376439	01/16/24	NORTH RISK PARTNERS LLC	16,500.00	0	Regular

Check Number	Check Date	Vendor Name	Net Check Amount	Check Status	Check Type
376440	01/16/24	NORTH STAR	3,200.00	0	Regular
376441	01/16/24	NORTHLAND FARM SYSTEMS	131.35	0	Regular
376442	01/16/24	OAK GLENN	4,737.00	0	Regular
376443	01/16/24	OFFICE OF MNIT SERVICES	409.50	0	Regular
376444	01/16/24	OWATONNA AREA CHAMBER OF COMM	800.00	0	Regular
376445	01/16/24	OWATONNA HEATING & COOLING INC	11,330.00	0	Regular
376446	01/16/24	OWATONNA MOTOR COMPANY	1,329.47	0	Regular
376447	01/16/24	OWATONNA PUBLIC UTILITIES	42,610.27	R	ACH
376448	01/16/24	OWATONNA RENT N SAVE	140.40	0	Regular
376449	01/16/24	PAAPE COMPANIES INC	4,390.00	R	ACH
376450	01/16/24	PARKS & TRAILS COUNCIL OF MN	35.00	0	Regular
376451	01/16/24	PERFORMANCE FOODSERVICE-TWIN C	287.77	0	Regular
376452	01/16/24	PHONE STATION INC	2,261.00	0	Regular
376453	01/16/24	PRIME GARAGE DOOR & MORE LLC	250.00	0	Regular
376454	01/16/24	PVS TECHNOLOGIES INC	21,474.75	0	Regular
376455	01/16/24	RDO EQUIPMENT CO	337,759.36	0	Regular
376456	01/16/24	RICE LAKE CONSTRUCTION GROUP	1,124,583.01	R	ACH
376457	01/16/24	SASCS	650.00	0	Regular
376458	01/16/24	SAUL MINEROFF ELECTRONICS INC	3,925.00	0	Regular
376459	01/16/24	SCHMIDT GOODMAN OFFICE PRODUCT	8,944.61	R	ACH
376460	01/16/24	SCOTT F LIMBERG	650.00	R	ACH
376461	01/16/24	SHI INTERNATIONAL CORP	840.77	0	Regular
376462	01/16/24	SHRED RIGHT	40.00	R	ACH
376463	01/16/24	SPECIAL OPS TRAINING ASSN	250.00	0	Regular
376464	01/16/24	SPHERION STAFFING LLC	1,283.25	0	Regular
376465	01/16/24	STANDARD SPRING PARTS	270.44	0	Regular
376466	01/16/24	STEELE COUNTY HIGHWAY DEPT	16,416.63	0	Regular
376467	01/16/24	STEELE COUNTY TREASURER	6,225.27	0	Regular
376468	01/16/24	STEWART COMPANIES INC	65.71	0	Regular
376469	01/16/24	STEWART DENISE	211.22	0	Regular
376470	01/16/24	STEWART SANITATION	1,413.61	0	Regular
376471	01/16/24	STORM TRAINING GROUP LLC	2,198.00	0	Regular
376472	01/16/24	SWEET TOWING	135.00	0	Regular
376473	01/16/24	T-MOBILE	1,274.37	0	Regular
376474	01/16/24	TEMPLE ELECTRIC MOTOR SERV INC	909.00	R	ACH
376475	01/16/24	TEREX SERVICE	5,579.60	0	Regular
376476	01/16/24	TERMINIX	68.00	0	Regular
376477	01/16/24	TERRACON CONSULTANTS INC	2,227.50	R	ACH
376478	01/16/24	TIMOTHY LUECK PHOTOGRAPHY	1,738.00	0	Regular
376479	01/16/24	TJD REPAIR & SERVICE	33.50	0	Regular
376480	01/16/24	TONY'S FLOORING - OWATONNA LLC	942.97	R	ACH
376481	01/16/24	TRAF-SYS INC	360.00	0	Regular
376482	01/16/24	TRI-COUNTY LAW ENFORCE ASSN	90.00	0	Regular
376483	01/16/24	UKG INC	4,830.00	R	ACH
376484	01/16/24	UTILITY CONSULTANTS INC	1,108.40	R	ACH

Check Number	Check Date	Vendor Name	Net Check Amount	Check Status	Check Type
376485	01/16/24	VENTURE HYDRAULICS INC	134.31	R	ACH
376486	01/16/24	VERTEX UNMANNED SOLUTIONS LLC	2,612.00	0	Regular
376487	01/16/24	VIA ACTUARIAL SOLUTIONS	5,700.00	0	Regular
376488	01/16/24	VISUAL LABS INC	600.00	0	Regular
376489	01/16/24	WALBRAN & FURNESS CHARTERED	5,792.47	R	ACH
376490	01/16/24	WENCL PLUMBING	701.37	0	Regular
376491	01/16/24	WEST PUBLISHING CORPORATION	581.43	R	ACH
376492	01/16/24	WHKS & CO	3,795.00	R	ACH
376493	01/16/24	XCEL ENERGY	319.66	0	Regular
376494	01/16/24	RANDALL'S LICENSE BUREAU	63.75	0	Regular
376495	01/16/24	RANDALL'S LICENSE BUREAU	63.75	0	Regular
376496	01/16/24	RANDALL'S LICENSE BUREAU	21.25	0	Regular
376497	01/16/24	RANDALL'S LICENSE BUREAU	127.50	0	Regular
376498	01/16/24	RANDALL'S LICENSE BUREAU	170.00	0	Regular
376499	01/16/24	RANDALL'S LICENSE BUREAU	63.75	0	Regular
376500	01/16/24	RANDALL'S LICENSE BUREAU	595.00	0	Regular
376501	01/16/24	RANDALL'S LICENSE BUREAU	616.25	0	Regular
376502	01/16/24	RANDALL'S LICENSE BUREAU	170.00	0	Regular

104	Checks total:	640,588.95
48	ACH total:	1,304,553.87
0	EFTPS total:	
0	Wire transfer total:	
0	Payment Manager total:	
152	GRAND TOTALS	1,945,142.82



CITY OF
OWATONNA

Resolutions



DATE: January 16, 2024
TO: Mayor and City Council
FROM: Sean Murphy, Public Works Director
SUBJECT: Resolution 6-24: Order Feasibility Report - 2024 Street & Utility Project

Purpose:

Requesting City Council approval of Resolution 6-24: Ordering the preparation of the 2024 Street & Utility Project Feasibility Report.

Background:

The 2024 Street & Utility Project involves work on the following streets:

- McKinley Street SW - Linn Avenue SW to Lilac Avenue
- Anderson Place SW

The project involves various levels of reconstruction as needed.

Budget Impact:

The project will be paid for by a combination of assessments, sanitary sewer funds, stormwater funds, OPU funds and the general fund.

Staff Recommendation:

Staff recommends approval.

Attachments:

1. Resolution 6-24 Order Feasibility Report 2024 Street & Utility

RESOLUTION NO. 6-24

RESOLUTION ORDERING PREPARATION OF REPORT ON
IMPROVEMENT ON THE 2024 STREET AND UTILITY PROJECT

WHEREAS, it is proposed to improve the following streets as part of the 2024 Street & Utility Project.

The 2024 Street and Utility Project includes:

- McKinley Street SW - Linn Avenue SW to Lilac Avenue
- Anderson Place SW

and to assess the benefited property for all or a portion of the cost of the improvements, pursuant to Minnesota Statutes, Chapter 429,

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

That the proposed improvement, called the 2024 Street & Utility Project, be referred to Sean Murphy, City Engineer for the City of Owatonna, Minnesota, for study and that that person is instructed to report to the council will all convenient speed advising the council in a preliminary way as to whether the proposed improvement is necessary, cost-effective, and feasible; whether it should best be made as proposed or in connection with some other improvement; the estimated cost of the improvement as recommended; and a description of the methodology used to calculate individual assessments for affected parcels.

Passed and adopted this _____ day of _____ 2024, with the following vote:

Aye _____; No _____; Absent _____.

Approved and signed this _____ day of _____, 2024.

Thomas A. Kuntz, Mayor

ATTEST:

Kris M. Busse, City Administrator/City Clerk



DATE: January 16, 2024
TO: Mayor and City Council
FROM: Sean Murphy, Public Works Director
SUBJECT: Resolution 7-24: Lakeside Foods Violation

Purpose:

Requesting City Council approval to issue a Notice of Violation and Administrative Order to Lakeside Foods for violations of the City's Code of Ordinances and the Industrial Wastewater Discharge Permit (the "Permit") that the City issued to Lakeside Foods with the effective date of January 1, 2021.

Background:

As detailed in the Notice of Violation ("NOV"), the City has determined that Lakeside Foods violated City Code and the Permit by discharging untreated industrial wastewater to the City's treatment system via an unauthorized connection during August and September of 2023. The unauthorized discharge substantially exceeded the Permit limits for Biochemical Oxygen Demand ("BOD") and Total Suspended Solids ("TSS") and caused the City to incur substantial additional costs and damages to identify the cause of and treat the excessive pollutant loadings to maintain compliance with the City's National Pollutant Discharge Elimination System ("NPDES") permit.

The City intends to enforce the violations by imposing total penalties and costs in the amount of \$301,000 and requires Lakeside Foods to complete specified corrective actions to ensure ongoing and future compliance with the Permit and City Code.

Budget Impact:

Pursuant to the City of Owatonna's Ordinance itemizing heavy industrial user rates, the City is imposing a surcharge of \$282,319.02 as a result of excess BOD and TSS loads that Lakeside Foods discharged to the City's system.

In addition, as detailed in the attached proposed Administrative Order, the City intends to enforce the violations detailed in the NOV by imposing total penalties and costs in the amount of \$301,000 and requires Lakeside Foods to complete specified corrective actions to ensure ongoing and future compliance with the Permit and City Code. Upon demonstration of completion of the corrective actions included in the Administrative Order, the City may partially or wholly forgive \$216,000 of the penalties. The invoice for costs totaling \$85,000 is attached.

Staff Recommendation:

Staff recommends approval.

Attachments:

1. Resolution 7-24 Lakeside Foods Notice of Violation and Administrative Order
2. Notice of Violation and Administrative Order

RESOLUTION NO. 7-24

A RESOLUTION AUTHORIZING THE CITY TO DELIVER NOTICE OF VIOLATION AND ORDER TO LAKESIDE FOODS, INC. FOR VIOLATIONS OF SECTIONS 50 and 51 OF THE CITY CODE OF ORDINANCES AND THE CITY'S NATIONAL POLLU-TANT DISCHARGE ELIMINATION SYSTEM PERMIT NO. MN0051284 AND THE AUTHORITY DELEGATED TO THE CITY BY THE MINNESOTA POLLUTION CONTROL AGENCY AND THE UNITED STATES ENVIRONMENTAL PROTEC-TION AGENCY PURSUANT TO MINN. R. CH. 7049 AND 40 C.F.R. PART 403.

WHEREAS, pursuant to Section 50 and 51 of the City of Owatonna Code of Ordinances, the City's National Pollutant Discharge Elimination System Permit No. MN0051284, (the "Permit"), and the authority delegated to the City by the Minnesota Pollution Control Agency and the United States Environmental Protection Agency pursuant to Minn. R. ch. 7049 and 40 C.F.R. Part 403, (herein collectively the "Laws"), the City is authorized to issue permits to Significant Industrial Users and to enforce the Laws related to industrial wastewater; and

WHEREAS, Lakeside Foods, Inc., a vegetable canning facility in Owatonna, is a Significant Industrial User and permit holder which typically sends pretreated wastewater to the City's wastewater treatment system during the winter months (mid-November to mid-May);

WHEREAS, the above Laws authorize the City to impose fines, penalties, costs, and also require permit holders to complete and correct actions to address violations of the Laws and ensure ongoing and future compliance with the same; and

WHEREAS, in August of 2023 the City's wastewater treatment facility began receiving more than double the historical daily average of pounds per day (lbs/day) of Biochemical Oxygen Demand (BOD) and Total Suspended Solids (TSS) as confirmed by routine influ-ent testing; and

WHEREAS, upon investigation by the City it was discovered that Lakeside Foods, Inc. had operated its facility at least 48 days between August and September of 2023 and in-creased loads of BOD and TSS were entering the City's treatment system via a previously unknown and unpermitted connection between the Lakeside Foods, Inc. processing facility and the City's collection system; and

WHEREAS, the City's investigation and analysis found that between August and September 2023 Lakeside Foods, Inc. violated the limits for BOD and TSS at least forty-eight (48) individual days; and

WHEREAS, the City's investigation and analysis further found that Lakeside Foods, Inc.:

- (a) failed to pretreat its wastewater discharge as required by the permit before it entered the City's system on at least forty-eight (48) individual days between August and September 2023;
- (b) failed to conduct the required sampling on a minimum of twenty-four (24) days during its facility operations from August and September 2023; and
- (c) discharged the following loads of BOD and TSS from August to September of 2023 resulting in a surcharge of \$282,319.02 pursuant to the City's heavy industrial user rates:

Based upon the investigation the City made Findings of Fact which are fully set forth in the NOTICE OF VIOLATION AND ORDER which is attached hereto and incorporated herein by reference.

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

That the City Administrator is authorized to execute and deliver the NOTICE OF VIOLATION AND ORDER to Lakeside Foods, Inc. and, further, to execute any other documents and do all other acts necessary to effectuate this Resolution.

Passed and adopted this _____ day of _____, 2024, with the following vote:

Aye _____; No _____; Absent _____.

Approved and signed this _____ day of _____, 2024.

Thomas A. Kuntz, Mayor

ATTEST:

Kris M. Busse, City Administrator



January 16, 2024

VIA EMAIL & CERTIFIED MAIL

Jeromy Nickelsen
Lakeside Foods
900 N Cedar Ave
Owatonna, MN 55060

**RE: Notice of Violation and Administrative Order
Lakeside Foods, Industrial Wastewater Discharge Permit**

Dear Mr. Nickelsen:

The City of Owatonna is issuing the attached Notice of Violation and Administrative Order to Lakeside Foods for violations of the City's Code of Ordinances and the Industrial Wastewater Discharge Permit (the "Permit") that the City issued to Lakeside Foods with the effective date of January 1, 2021.

As detailed in the Notice of Violation ("NOV"), the City has determined that Lakeside Foods violated City Code and the Permit by discharging untreated industrial wastewater to the City's treatment system via an unauthorized connection during August and September of 2023. The unauthorized discharge substantially exceeded the Permit limits for Biochemical Oxygen Demand ("BOD") and Total Suspended Solids ("TSS") and caused the City to incur substantial additional costs and damages to identify the cause of and treat the excessive pollutant loadings to maintain compliance with the City's National Pollutant Discharge Elimination System ("NPDES") permit.

Pursuant to the City of Owatonna's Ordinance itemizing heavy industrial user rates, the City is imposing a surcharge of **\$282,319.02** as a result of excess BOD and TSS loads that Lakeside Foods discharged to the City's system. The invoice for this surcharge is attached and is **due within 30 days**.

In addition, as detailed in the attached proposed Administrative Order, the City intends to enforce the violations detailed in the NOV by imposing total penalties and costs in the amount of **\$301,000** and requires Lakeside Foods to complete specified corrective actions to ensure ongoing and future compliance with the Permit and City Code. Upon demonstration of completion of the corrective actions included in the Administrative Order, the City may partially or wholly forgive **\$216,000** of the penalties. The invoice for costs totaling **\$85,000** is attached and is **due within 30 days**.

In summary, Lakeside Foods must take the following actions:

- Pay the enclosed surcharge invoice for **\$282,319.02** and additional costs invoice for **\$85,000** within 30 days of the date of this letter.
- Complete the specified Corrective Actions required within the timeframe identified in the Administrative Order.

PUBLIC WORKS DEPARTMENT
540 WEST HILLS CIRCLE | OWATONNA, MN 55060-4701 | OWATONNA.GOV | 507.444.4350

- If Lakeside Foods fails to complete the corrective actions within the timeframe, the City will impose the full penalty and may initiate proceedings to terminate the connection between Lakeside Foods and the City's wastewater treatment facility.

The City values its relationship with Lakeside Foods and is committed to an open and transparent compliance and enforcement process. City staff are available to meet to discuss this enforcement action and the Administrative Order.

Lakeside Foods also has the **right to request a hearing** before the City Council to show why this enforcement action should not be taken. This request must be made in writing within 30 days of receiving this letter. The attached Administrative Order becomes a final order after 30 days unless you request a hearing. Lakeside Foods also has the **right to appeal** the final Order to the City Council within 30 days after the Order becomes final.

If you have questions or to schedule a meeting, please contact Andrew Fischer at 507-444-2542 or via email at Andrew.Fischer@ci.owatonna.mn.us.

Sincerely,

Kris Busse, City Administrator
City of Owatonna

Cc:

Mark Walbran, City Attorney
Sean Murphy, Public Works Director
Andrew Fischer, Wastewater Manager

(Enclosure)



INVOICE

Bill To: Lakeside Foods
900 Cedar Avenue N
Owatonna, MN 55060

Invoice Number: 2024-04
Invoice Date: 1/16/2024
Payment Terms: Due upon receipt

LAKE SIDE FOODS VIOLATION

Description	Total:
TSS BOD Surcharge	\$282,319.02
Additional City Costs for Unauthorized Connection	
Electricity - Blower	
Ferric Chloride	
Chlorine	
Solids Trucking	
Additional Sampling	
City Staff Additional Time	
Engineering Services	
Legal Services	
	\$85,000.00
Remittance:	
Make all checks payable to City of Owatonna	
Mail to: City of Owatonna Public Works	
540 West Hills Circle	
Owatonna, MN 55061	
Office Use Only	
Date Paid:	
Amount Paid:	
Receipt Number:	
Account Code:	
Total Due:	\$367,319.02

PUBLIC WORKS DEPARTMENT

540 WEST HILLS CIRCLE | OWATONNA, MN 55060 | OWATONNA.GOV/PUBLICWORKS | 507-444-4350

NOTICE OF VIOLATION

IN THE MATTER OF

Lakeside Foods Industrial Wastewater Discharge Permit
*900 North Cedar Ave
Owatonna, MN 55060*

I. LEGAL AUTHORITY

1. WHEREAS, pursuant to Sections 50 and 51 of its Code of Ordinances, the Council of the City of Owatonna (the “City”), and its authorized agents and representatives, have the authority to regulate and control connections to its wastewater treatment system and all domestic and industrial wastewater discharges to that system;
2. WHEREAS, pursuant to Sections 50 and 51 of its Code of Ordinances, the City’s National Pollutant Discharge Elimination System Permit No. MN0051284 and the authorities delegated to the City by the Minnesota Pollution Control Agency and the United States Environmental Protection Agency pursuant to Minn. R. ch. 7049 and 40 C.F.R. Part 403, the City is authorized and required to issue permits to Significant Industrial Users and enforce its Code of Ordinances, permits and all applicable local, state, and federal regulations related to industrial wastewater;
3. WHEREAS, Lakeside Foods is a Significant Industrial User and operates a vegetable canning facility in the City and typically sends pretreated wastewater to the City’s wastewater treatment system during the winter months (mid-November to mid-May);
4. WHEREAS, pursuant to the above referenced authorities the City issued Lakeside Foods Inc., an Industrial Wastewater Discharge Permit (the “Permit”) effective date of January 1, 2021.
5. WHEREAS, the City’s Industrial Pretreatment Ordinance and the Permit requires that Lakeside Foods shall pretreat industrial wastewater with a Dissolved Air Flotation System prior to being discharged to the City’s wastewater treatment system (§ 50.18; § 51.11; Permit at p. 3);
6. WHEREAS, the City’s Industrial Pretreatment Ordinance and the Permit requires Lakeside Foods to collect representative composite samples during plant operations a minimum of 3 days per week for the following parameters: pH, 5-day CBOD, and TSS (§ 51.11; Permit at p. 3);

7. WHEREAS the City's Industrial Pretreatment Ordinance and the Permit requires Lakeside Foods to comply with the following specific effluent limits (§ 51.11; Permit at p. 3);

Parameter	Daily Max
Biochemical Oxygen Demand (BOD)	2919 lbs/day or 1400 mg/L
Total Suspended Solids (TSS)	834 lbs/day or 400 mg/l

8. WHEREAS, the City's Industrial Pretreatment Ordinance and the Permit prohibits unlawful and unpermitted discharges to the City's system (§ 50.21(A)(4));
9. WHEREAS, the City's Industrial Pretreatment Ordinance and the Permit prohibits the discharge of slug loads to the City's system, which means "any pollutant, including oxygen demand pollutants (BOD and the like), released in a discharge of such volume or strength as to cause inhibition or disruption in the wastewater treatment system" (§51.03(A)(9));
10. WHEREAS the City's Code of Ordinances and the permit authorizes the City to impose surcharges on industrial users for discharging excessive loadings of BOD and TSS;
11. WHEREAS, the City's Code of Ordinances and the permit authorize the City to impose fines, penalties, costs, and require the completion of corrective actions to address violations of the Code or Permit and ensure ongoing and future compliance with the same;

II. FINDINGS OF FACT

1. WHEREAS, in August of 2023 the City's wastewater treatment facility began receiving more than double the historical daily average of pounds per day (lbs/day) of BOD and TSS as confirmed by routine influent testing;
2. WHEREAS, the significant increase in loading of BOD and TSS started causing problems for the City's wastewater treatment facility and required the City to use additional treatment chemicals, commence the use of a second blower for the first time in the 35 years substantially increasing energy costs, and necessitated significant additional staff and consultant time to address the issue and determine its cause;
3. WHEREAS, upon investigation by the City it was discovered that Lakeside Foods had operated its facility at least 48 days between August and September of 2023 and these increased loads of BOD and TSS were entering the City's treatment system via a previously unknown and unpermitted connection between the Lakeside Foods processing facility and the City's collection system;
4. WHEREAS, the City's investigation and analysis found that between August – September 2023 Lakeside Foods violated the above referenced effluent limit for BOD at least forty-eight (48) individual days;
5. WHEREAS, the City's investigation and analysis found that between August – September 2023 Lakeside Foods violated the above referenced effluent limit for TSS on at least forty-eight (48) individual days;

6. WHEREAS, the City's investigation and analysis found that Lakeside Foods failed to pretreat its wastewater discharge as required by the permit before it entered the City's system on at least forty-eight (48) individual days between August – September 2023;
7. WHEREAS, the City's investigation and analysis found that Lakeside Foods failed to conduct the required sampling on a minimum of twenty four (24) days during its facility operations from August – September 2023;
8. WHEREAS, the City determined that Lakeside Foods discharged the following loads of BOD and TSS from August to September of 2023 resulting in a surcharge of \$282,319.02 pursuant to the City's heavy industrial user rates:

Lakeside Foods Contribution		CBOD (lb/month)	TSS (lb/month)
Monthly Total (Avg*31)	8/2023	136,975	163,606
Monthly Total (Avg*30)	9/2023	168,796	294,108

Surcharge Determination		CBOD	TSS
Heavy Industrial Surcharge Rate (per 1000 lb/parameter)		\$481.95	\$294.84
Monthly Surcharge	8/2023	\$66,015.06	\$48,237.62
	9/2023	\$81,351.41	\$86,714.94
Total Surcharge by Parameter		\$147,366.46	\$134,952.56
Total Surcharge		\$282,319.02	

(See Exhibit A for details)

III. NOTICE

THEREFORE, BASED ON THE ABOVE FINDINGS LAKESIDE FOODS IS HEREBY NOTIFIED THAT:

1. Lakeside Foods violated the BOD effluent limit in its permit on forty-eight (48) individual days between August and September of 2023;
2. Lakeside Foods violated the TSS effluent limit in its permit on forty-eight (48) individual days between August and September of 2023;
3. Lakeside Foods violated the prohibition against discharging slug loads to the City's system on forty-eight (48) individual days between August and September of 2023;
4. Lakeside Foods violated the pretreatment requirement in its permit and the City Code of Ordinance on forty-eight (48) individual days between August and September of 2023;
5. Lakeside Foods violated the sampling requirements in its permit on twenty-four (24) individual days between August and September of 2023.

IV. ENFORCEMENT AND CORRECTIVE ACTION

THEREFORE, BASED ON THE ABOVE FINDINGS AND NOTICE:

1. The City has determined that Lakeside Foods has violated its Permit and the City's Code of Ordinances **216 times** between August and September of 2023 and intends to exercise its authority to enforce those violations by an Administrative Order, which imposes surcharges, fines, penalties, costs, and requires Lakeside Foods to complete certain corrective actions in a manner consistent with the Permit and City's Code of Ordinances.
2. Pursuant to City's heavy industrial user rates the City is imposing a surcharge of **\$282,319.02** as a result of excess BOD and TSS loads that Lakeside Foods discharged to the City's system.
3. Pursuant to the City's Code and the Permit the City is imposing total penalties and costs in the amount of \$301,000; however, \$216,000 of the penalty assessment may be partially or wholly forgivable upon demonstration of completion of the corrective actions identified in the Administrative Order. The City is imposing a charge for costs of **\$85,000** for above referenced violations.

Signed:

Date:

Kris Busse,
City Administrator
City of Owatonna

Cc.

Mark Walbran, City Attorney
Sean Murphy, Public Works Director
Andrew Fischer, Wastewater Manager

Exhibit A

Memorandum



7135 MADISON AVENUE W/
MINNEAPOLIS, MN 55427
www.neroeng.com
(612) 240-0524

Date: December 21, 2023

To: Kris Busse (City of Owatonna)

Copy: Sean Murphy, Andrew Fischer (City of Owatonna), Daniel Marx (Flaherty & Hood, P.A.)

From: Jennifer Svennes, Bruno Hespanhol, Eric Meester (Nero Engineering)

Re: Owatonna Wastewater Treatment Facility
2023 Lakeside Loading Event
Loading Analysis and Impact on WWTF

The wastewater treatment facility (WWTF) in the City of Owatonna collects and treats wastewater from residential, commercial, and industrial users. The largest industries enter into Significant Industrial User (SIU) agreements with the City to ensure the waste sent to the facility stays within its treatment capabilities and to charge the industry appropriately for the cost of treating its wastewater.

Lakeside Foods (Lakeside) is an SIU and operates a vegetable canning facility in Owatonna. Lakeside typically only sends pretreated wastewater to the Owatonna WWTF during the winter months (mid-November to mid-May). The pretreatment consists of dissolved air floatation to reduce total suspended solids (TSS) and carbonaceous biological oxygen demand (CBOD) before the wastewater is discharged to the City's collection system and WWTF. From mid-May to mid-November (when there is no frost in the ground), Lakeside pumps untreated wastewater to a pond and disposes of the liquid by spray irrigation.

Starting in August, 2023, an increased CBOD and TSS load was noticed in the influent of the WWTF. Increased loading causes symptoms throughout the process, and the first signs were high oxygen demand and increased solids in the aeration basins. A shift in biological activity shortly followed and needed to be treated with additional chemicals. The increased loading was confirmed with the routine influent testing; however, it takes about a week to receive CBOD results so an event like this causes constant attention by plant operators to determine steps needed ensure the WWTF is still performing as necessary to meet permitted effluent limits. On August 21st, a second blower was started to meet the oxygen demand of the high loading. A second blower has never been required to operate in the 35-year life of the facility. The loading continued to increase through the end of September.

The only industry in town capable of sending such a heavy, sustained load to the WWTF is Lakeside. Calls were made initially by the Wastewater Manager to ask if they had changed anything in their operations or had any idea how wastewater from the facility could be making its way to the WWTF. In early September, a visit to the site was performed by WWTF personnel and Nero Engineering to review operations and ask questions. With no success in finding the issue through these methods, the City started investigations in the collection system. The City completed dye testing from Lakeside's floor drains,

collected additional samples from manholes, and ran a camera through the collection system around the facility.

The additional sampling proved higher CBOD and TSS results in a manhole downstream of Lakeside. With the location of the source narrowed down, City staff started visually inspecting more manholes and found a suspicious flow at a manhole immediately downstream of a manhole which appeared to contain normal domestic wastewater. On September 28th, the City collected video between these two manholes and found an unknown service from Lakeside connected to the collection system.

The City's contact person for Lakeside indicated the plant started processing corn on July 31st, 2023. He also indicated that there were 12 days between then and September 28th when they were not running their canning process. This equates to 48 days when the canning operation was online. Even though they were not running the canning process, they may have been performing washdown and cleaning procedures on those days.

When Lakeside knowingly discharges to the City's WWTF (Nov-May), they are required to collect representative composite samples over the normal hours of plant operations a minimum of 3 days per week. The samples must be tested for the following parameters: pH, 5-day CBOD, and TSS. The volume associated with the collected samples is determined by a discharge flow meter. Lakeside is then charged according to the heavy industrial user rates based on CBOD and TSS loadings. The current surcharges are \$481.95 per 1,000 pounds of CBOD and \$294.85 per 1,000 pounds of TSS.

Because there was an unknown connection from Lakeside to the City's collection system, the typical way of collecting, sampling and monitoring the discharge was not possible. However, routine data collected of the WWTF influent proved the collective loading to the plant was much higher than typical. By comparing the collective loading during the event to typical loadings, the loadings of CBOD and TSS from Lakeside were estimated.

The monthly average loadings in August and September of 2023 were compared to the average loadings of the months of June through October in 2021 and 2022. There were several reasons for using this data for the comparison including:

- The collective influent WWTF flow was similar in the years of 2021, 2022, and 2023.
- The June through October data does not include the months Lakeside typically sends wastewater to the City.
- It is unknown when flow started entering the City's collection system through the illegal connection from Lakeside. Therefore, the summer months leading up to August 2023 were excluded.
- There are numerous variables within wastewater so limiting the comparison to the most recent summers as opposed to a wider data set reduces variations due to significant rain events and natural growth and changes in the City over a longer time period.

The following figures illustrate the comparison of the data. Figure 1 shows the average influent flow to the WWTF. Figure 2 shows the average influent CBOD loading to the WWTF. Figure 3 shows the average influent TSS loading to the WWTF.

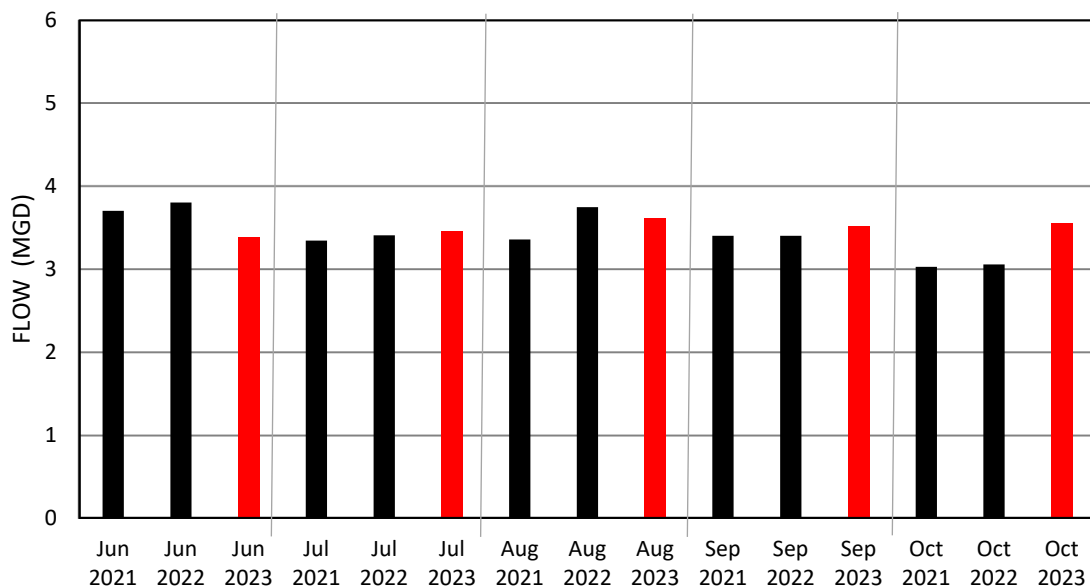


Figure 1: WWTF Influent Average Flow (Jun-Oct, 2021-2023)

As shown in Figure 1, the influent flow was relatively the same throughout the years during the same period of time from the years of 2021 through 2023. This helps illustrate the high strength of the waste from Lakeside since from a flow perspective, the illegal connection was not noticeable.

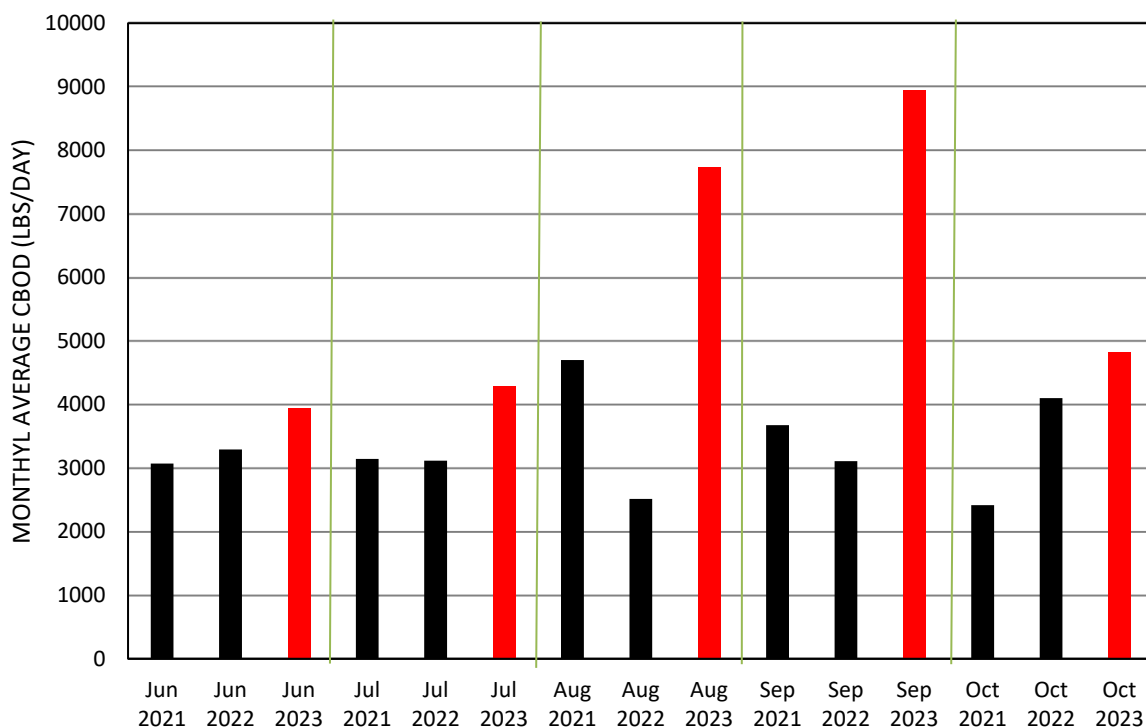


Figure 2: WWTF Influent Average CBOD (Jun-Oct, 2021-2023)

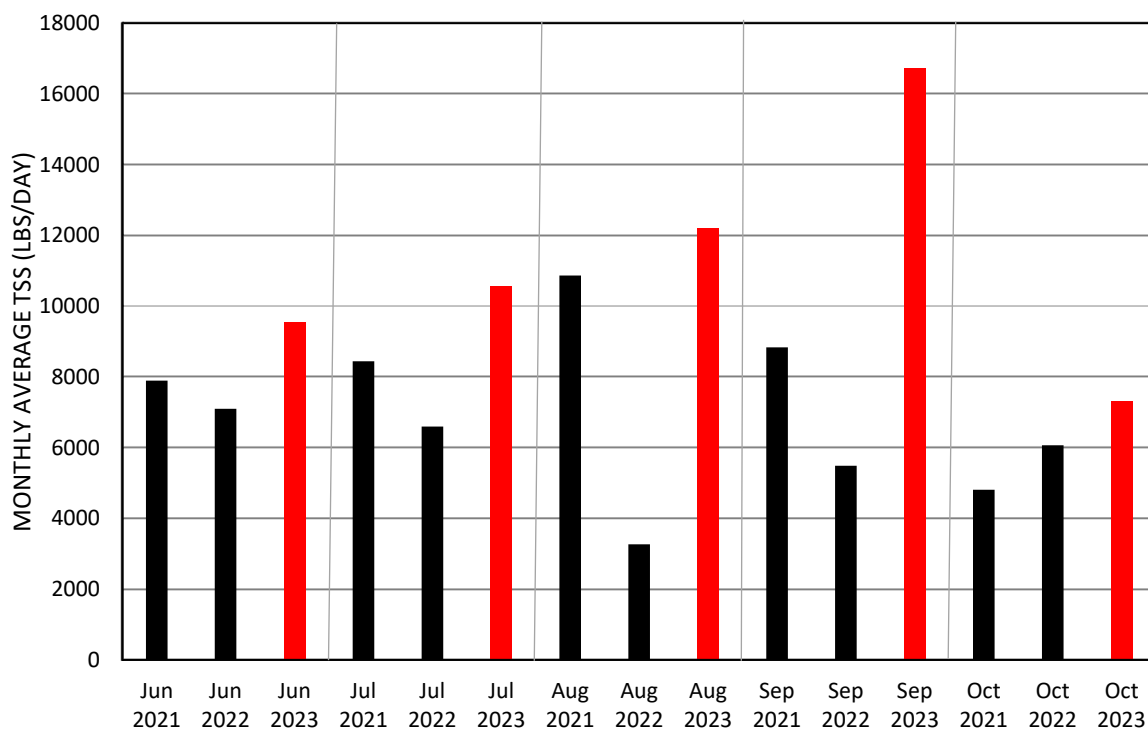


Figure 3: WWTF Influent Average TSS (Jun-Oct, 2021-2023)

Figure 2 highlights the significant increase in CBOD influent loading into Owatonna's WWTF in the months of August and September of 2023. Similarly, Figure 3 highlights the significant increase in TSS influent loading into Owatonna's WWTF in the months of August and September of 2023.

Table 1 presents the data numerically and summarizes the calculated average CBOD and TSS loading from Lakeside during the months of August and September, 2023. Based on these loadings, surcharges for the heavy loading were calculated in Table 2. Because representative samples were not collected, the pounds per day presented in the table equate to the daily maximum loading for every day of the month. If representative samples were collected, the data may show higher loadings on some days and lower loadings on other days.

Table 1: August and September 2023 compared to 2021 and 2023 Summer Averages

Description	Timeframe	CBOD (lb/d)	TSS (lb/d)
WWTF Influent Data			
Average Influent during summer 2021	Jun-Oct 2021	3,401	8,168
Average Influent during summer 2022	Jun-Oct 2022	3,226	5,701
Average Influent during summers 2021 and 2022		3,313	6,934
Monthly Average WWTF Influent	Aug 2023	7,732	12,212
Monthly Average WWTF Influent	Sept 2023	8,940	16,738
Lakeside Contribution			
Aug 2023 minus 21/22 Summer average	Aug 2023	4,419	5,278
Sept 2023 minus 21/22 Summer average	Sept 2023	5,627	9,804
		CBOD (lb/month)	TSS (lb/month)
Monthly Total	8/2023	136,975	163,606
Monthly Total	9/2023	168,796	294,108

Table 2: Surcharge Determination

		CBOD	TSS
Heavy Industrial Surcharge Rate (per 1000 lb/parameter)		\$481.95	\$294.84
Monthly Surcharge	8/2023	\$66,015.06	\$48,237.62
	9/2023	\$81,351.41	\$86,714.94
Total Surcharge by Parameter		\$147,366.46	\$134,952.56
Total Surcharge		\$282,319.02	

The City's Industrial Pretreatment Ordinance requires several items that were violated in August and September including but not limited to the following:

- Pretreatment of industrial wastewater with a Dissolved Air Flotation (DAF) System prior to being discharged to the City's wastewater treatment system.
 - The DAF was not in operation. Without pretreatment, the extremely high strength wastewater had a major impact on the City's wastewater system even at an unnoticeable volume.
- Collection of representative composite samples during plant operations a minimum of 3 days per week for the following parameters: pH, 5-day CBOD, and TSS.
 - No samples were collected between July 31st and September 28th because flow was entering the wastewater system through an illegal, unknown connection.
- Compliance with the specific effluent limits shown in Table 3.
 - Based on the Lakeside loadings previously determined, the quantities were 1.5 times the limit for CBOD and 6 times the limit for TSS in August. In September, the loadings from Lakeside were nearly 2 times the limit for CBOD and nearly 12 times the limit for TSS.

Table 3: Lakeside Foods Effluent Limits

Parameter	Daily Max
CBOD	2,919 lbs/day
TSS	834 lbs/day

- Prohibition of discharging slug loads to the City's system, which means "any pollutant, including oxygen demand pollutants (BOD), released in a discharge of such volume or strength as to cause inhibition or disruption in the wastewater treatment system."
 - The excess loading of CBOD and TSS had a significant impact on the wastewater treatment system causing the following issues:
 - Excess solids which stressed the clarifiers, DAF, digesters, and required additional effort for dewatering and hauling.
 - Much higher oxygen demand in the aeration basins requiring the use of an additional 250 horsepower blower.
 - Filamentous growth which required the use of chlorine to control.
 - Much higher phosphorus requiring additional ferric chloride use.
 - Significant staff time for troubleshooting and managing the WWTF.

**CITY OF OWATONNA MINNESOTA
ADMINISTRATIVE ORDER**

IN THE MATTER OF

**Lakeside Foods Industrial Wastewater Discharge Permit
900 North Cedar Ave Owatonna, MN 55060**

This Administrative Order (the "Order") is issued by the Council of the City of Owatonna, Minnesota (the "City") pursuant to Sections 50 and 51 of the City's Code of Ordinances. This AO requires Lakeside Foods to take action to correct violations of its Industrial Wastewater Discharge Permit (the "Permit") and the City's Code of Ordinances.

* * * * *

VIOLATIONS

Sections I – IV of the Notice of Violation dated January 16, 2024 is hereby incorporated by reference and the City finds that Lakeside Foods has committed the below violations of the City's Code and the Permit:

1. Lakeside Foods violated the Biochemical Oxygen Demand (BOD) effluent limit of 2919 lbs/day in its Permit on forty-eight (48) individual days between August and September of 2023. (City Code § 51.11; Permit at p. 3).
2. Lakeside Foods violated the TSS effluent limit of 834 lbs/day in its permit on forty-eight (48) individual days between August and September of 2023. (City Code § 51.11; Permit at p. 3).
3. Lakeside Foods violated the prohibition against discharging slug loads to the City's system on forty-eight (48) individual days between August and September of 2023 (City Code § 51.03(A)(9)).
4. Lakeside Foods violated the requirement to pretreat its wastewater with a Dissolved Air Flotation System prior to being discharged to the City's wastewater treatment on forty-eight (48) individual days between August and September of 2023. (City Code § 51.11; Permit at p. 3).
5. Lakeside Foods violated the sampling requirements in its permit on twenty-four (24) individual says between August and September of 2023. (City Code § 51.11; Permit at p. 3).

* * * * *

*** CORRECTIVE**

ACTION REQUIRED

Pursuant to sections 50 and 51 of the City's Code of Ordinances and the Permit, Lakeside Foods

is required to correct the above violations and ensure ongoing and future compliance with City Code and the Permit by taking the following actions:

1. Within 30 days after of receipt of this Order, submit a plan that identifies clear timelines for completion of the following actions:
 - a) Install necessary components required to accurately assess water consumption and discharge (Water Mass Balance System)
 - b) Comprehensive televising of all internal and exterior sanitary piping and conveyance systems. Deliverable to the City shall include a map or plan of all sanitary pipe and conveyances televised including all direct connections to City infrastructure. Provide documentation of any device or fitting controlling discharge to City infrastructure.
 - c) Sanitary piping and conveyance system condition assessment provided by third party reviewer. Third party reviewer shall be approved by the City based on qualification package.
 - d) Permit all facilities within City R/W or Easement, including but not limited to, conveyance features, above ground structures, small utilities, and others as specified by the City.
 - e) Acquire Limited Use Agreements as determined by the City.
 - f) Provide all plans for the force main discharging to the spray field.
 - g) Remove all non-contact cooling water connections from sanitary sewer.
 - h) Provide Traffic Control plan for loading dock access at Cedar Avenue N and 11th St NE.

2. Within 365 days after receipt of this Order, submit a written report and evidence to the City demonstrating that tasks 1(a) – (h) above have been completed.

Lakeside Foods may make a written request for an extension of any of the above timelines. The City may grant an extension for good cause. Please make a written request for extension by contacting the City staff person identified below.

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SURCHARGE

Pursuant to the City's Industrial User Rates the City is assessing Lakeside Foods a surcharge in the amount of **\$282,319.02** for the increased BOD and TSS loads that Lakeside Foods discharged to the City's system in August and September of 2023:

Lakeside Contribution			
		CBOD (lb/month)	TSS (lb/month)
Monthly Total (Avg*31)	8/2023	136,975	163,606
Monthly Total (Avg*30)	9/2023	168,796	294,108

Surcharge Determination		CBOD	TSS
Heavy Industrial Surcharge Rate (per 1000 lb/parameter)		\$481.95	\$294.84
Monthly Surcharge	8/2023	\$66,015.06	\$48,237.62
	9/2023	\$81,351.41	\$86,714.94
Total Surcharge by Parameter		\$147,366.46	\$134,952.56
Total Surcharge		\$282,319.02	

For details about how the City determined the above surcharge please refer to Exhibit A. The total surcharge of \$282,319.02 is due within **30 days** after receipt of this Order and the surcharge invoice.

PENALTY & COSTS

Pursuant to § 51.99 (A) of the City's Code, the City has the authority to issue civil penalties and fines of not more than \$1,000 per day per violation. Based on the above, the City has found that Lakeside Foods violated its permit and/or City ordinance 216 times between August and September of 2023 and therefore imposes a **penalty of \$216,000**.

Pursuant to § 51.99 (B) of the City's Code the City has the authority to assess costs for any expense, loss or damage caused by the violation or discharge. Based on the above, the City has found that Lakeside Foods' permit violations between August and September of 2023 resulted in expenses and losses to the City of **\$85,000**. As a result, Lakeside Foods is liable to the City for combined penalties and costs of **\$301,000**.

If the Regulated Party performs and documents completion of all the corrective action requirements listed above to the satisfaction of the City, within 365 days after the receipt of this Order, the **\$216,000** penalty may be partially or wholly forgivable.

If the regulated party fails to complete the corrective actions within the appropriate time frame the City will impose the entire **\$216,000 penalty** and may initiate proceedings to terminate the connection between Lakeside Foods and the City's wastewater treatment facility. Future City costs associated with corrective action compliance shall be the sole responsibility of Lakeside Foods.

* * * * *

RIGHT TO REQUEST HEARING

SHOW CAUSE HEARING - Pursuant to §51.18 of the City's Ordinance Lakeside Foods has the right to request a hearing before the City Council to show why this enforcement action should not be taken. Lakeside Foods must request such a hearing in writing within 30 days after the receipt of this Order. This Order becomes a final order after 30 days unless the Lakeside Foods requests a hearing as provided above.

APPEAL TO CITY COUNCIL – Lakeside Foods has the right to Appeal the final Order within 30 days after it becomes final pursuant to § 52.21.

City of Owatonna, MN

Date

Address questions and the submittals requested above to:

Sean Murphy, Public Works Director
Andrew Fischer, Wastewater Manager



DATE: January 16, 2024
TO: Mayor and City Council
FROM: Greg Kruschke, Community Development Manager
SUBJECT: Resolution 8-24: VAR-15 - New Life Community Church Sign Variance

Purpose:

Request Council approval of Resolution 8-24 approving a variance for a wall sign at NewLife Community Church at 160 28th Street NE.

Background:

Application No. VAR-15, was received from Joel Stauffer, on behalf of NewLife Community Church of Owatonna, INC. This is a request for a wall sign variance of 95 square feet in surface area, where 32 square feet in surface area is the maximum square footage for a wall sign in Residential Districts for the property located at 160 28th Street NE.

Staff Report and recap of the public hearing held by the Planning Commission on this request. The Planning Commission recommends approval of this variance.

Budget Impact:

None.

Staff Recommendation:

Staff recommends approval as recommended by the Planning Commission.

Attachments:

1. Resolution 8-24 Var 15 - Sign Variance - NewLife Community Church
2. Staff Report - VAR-15

RESOLUTION NO. 8-24
A RESOLUTION APPROVING VARIANCE VAR-15

WHEREAS, Application No. VAR-15, by Joel Stauffer, on behalf of NewLife Community Church of Owatonna, INC., a request for a wall sign variance of 95 square feet in surface area where 32 square feet in surface area is the maximum square footage for a wall sign in Residential Districts and legally described as follows:

Lot 1, Block 1, New Life Addition, Steele County, Minnesota
; and

WHEREAS, The Planning Commission held a public hearing on January 9, 2024 and recommended approval of VAR-15; and

WHEREAS, on January 16, 2024, the City Council accepted and approved Variance VAR-15, 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 VAR-15 Staff Report.

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

1. That said variance 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 variance be and the same hereby is approved with the following provisions:
 - A) Any additional signs on the property will be required to submit a sign permit.
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 ____ day of _____, 2024, with the following vote:

Aye __; No __; Absent __.

Approved and signed this this ____ day of _____, 2024.

Thomas A. Kuntz, Mayor

ATTEST:

Kris M. Busse, City Administrator/City Clerk

January 9, 2024

To: Planning Commission

From: Community Development Department

RE: Application No. VAR-15, by Joel Stauffer, on behalf of NewLife Community Church of Owatonna, INC., a request for a wall sign variance of 95 square feet in surface area where 32 square feet in surface area is the maximum square footage for a wall sign in Residential Districts.

Application Review:

Applicant: Joel Stauffer

Owner: NewLife Community Church of Owatonna, INC.

Location of Property: 160 28th Street Northeast

Zoning Map: R-1, Single-Family Residential District

Zoning Ordinance: Section 153.25 (A) (2) lists the requirements for wall signage within Residential Districts.

Report Attachments:

1. Location Map
2. Aerial Photo
3. Site Plan
4. Application Letter
5. Proposed Signage
6. Other Materials

Proposed Development:

- ◆ Application No. VAR-15 by Joel Stauffer, on behalf of NewLife Community Church of Owatonna, INC., a request for a wall sign variance of 95 square feet in surface area where 32 square feet in surface area is the maximum square footage for a wall sign in Residential Districts.
- ◆ The property is zoned R-1, Single-Family Residential District which regulates and limits the dimensions of wall signs as follows:
 - ❖ Each property shall be limited to 32 square feet of total sign area, except property abutting two or more public rights-of-way shall be allowed an additional 32 square feet per right-of-way.
 - ❖ Such sign shall not extend beyond the top of parapet wall.
- ◆ NewLife Community Church is located in a Residential District and abuts a Business District to the south of the property. The front façade of the building faces a B-2, Community Business District to the south.
- ◆ The property is 9.98 acres with the principal building located on the west side of the parcel. The principal building is setback approximately 258' from the front property line along 28th Street NE. The property abuts one right-of-way.

- ◆ The applicant's proposed wall signage is larger than the maximum wall signage requirement in a Residential District. The applicant is requesting a variance for an increase in permitted wall signage in order to increase visibility of the signage from the roadway, and to be more in line with wall signage that is permitted in the B-2, Community Business District, the zoning district to the south of the property.
- ◆ The applicant does not intend on installing a free-standing sign, only wall signage is proposed.
- ◆ State Statute requires that the applicant show a practical difficulty in order to be granted a variance. You also need to show that the variance requested is the minimum amount necessary to accomplish what is needed.
- ◆ A variance must stand on its own merits and may not be compared to other situations in which variances were granted.
- ◆ According to the ordinance, the Planning Commission shall make findings of fact base on the following.
 - ❖ That particular physical surroundings, shape, or topographical conditions of the specified parcel of land involved.
 - ❖ That the condition involved is unique to the particular parcel of land involved.
 - ❖ That the alleged difficulty or hardship is caused by this Ordinance and has not been created by any persons presently having an interest in the parcel.
 - ❖ That the granting of the variation will not be detrimental to the public welfare or injurious to other land or improvements to the neighborhood.
 - ❖ That the proposed variation will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion of the public streets, or interfere with the function of the Police and Fire Departments of the City.

Staff Review:

Based on the information provided, staff is recommending approval Application No. VAR-15 with the following conditions.

- 1) Any additional signs on the property will be required to submit a sign permit.

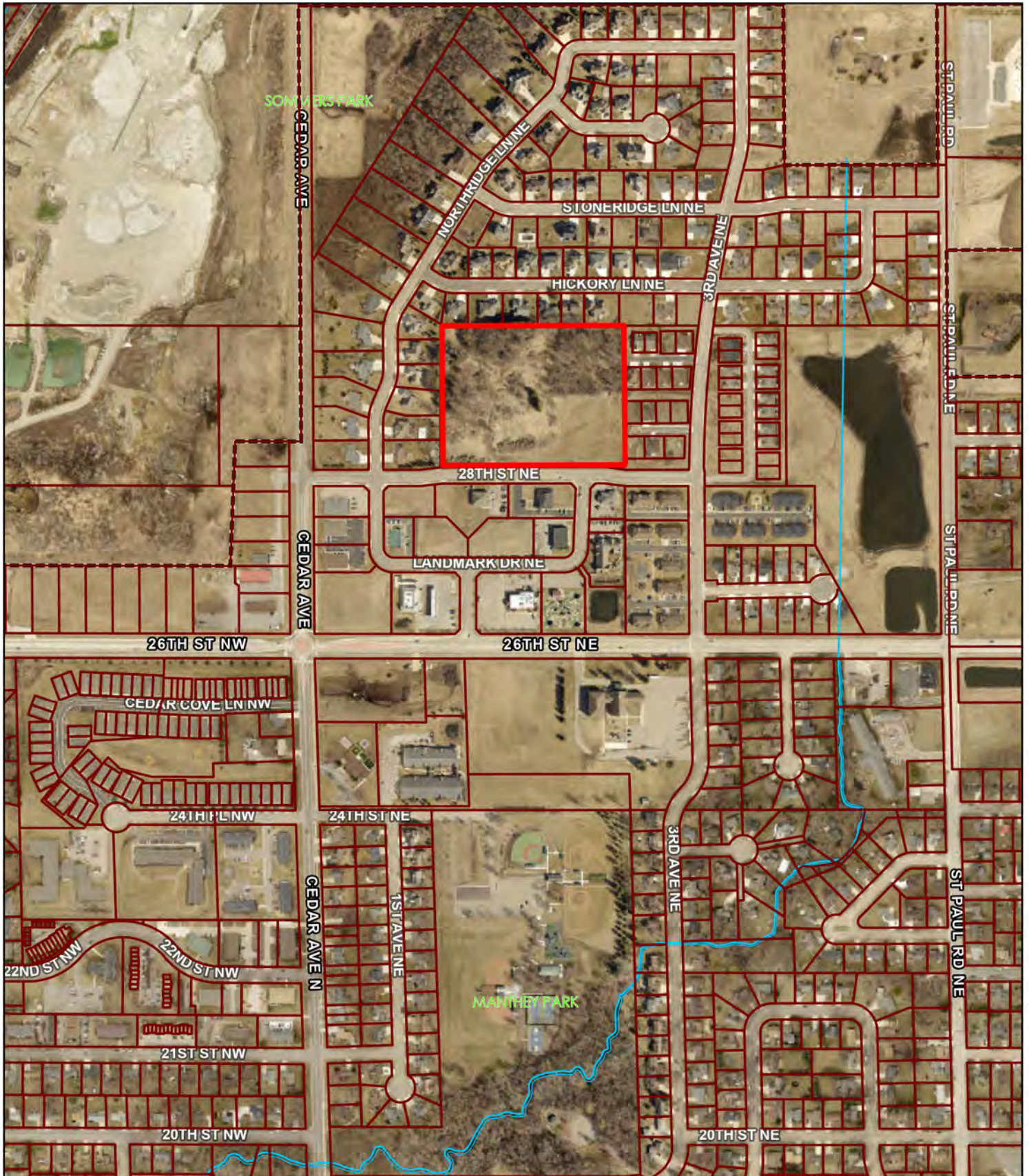
Planning Commission:

VAR -15, which is a request by Joel Stauffer on behalf of NewLife Community Church of Owatonna, INC. for a wall sign variance of 95 square feet in surface area where 32 square feet in surface area is the maximum square footage for a wall sign in Residential Districts, was presented by Community Development Manager Greg Kruschke. (Refer to report on file.) Public hearing opened at 5:33 pm. No comments were made regarding this request. Public hearing closed at 5:34 pm. Springer-Gasner said that it looks nice and it makes sense that the sign is bigger—it's a big building. A motion was made by Springer-Gasner and seconded by Wilson to recommend City Council approval of Application No. VAR-15 with the following conditions:

- 1) Any additional signs on the property will be required to submit a sign permit.

All Commissioners voting Aye, the motion carried.

160 28th St NE
City of Owatonna



December 18, 2023

Site 



1:9,000

1 in = 750 ft

This drawing is neither a legally recorded map nor a survey and is not intended to be used as one. This information is a compilation of records, information, and data located in various city, county, and state offices and other sources, affecting the area shown, and is to be used for reference purposes only.

160 28th St NE
City of Owatonna



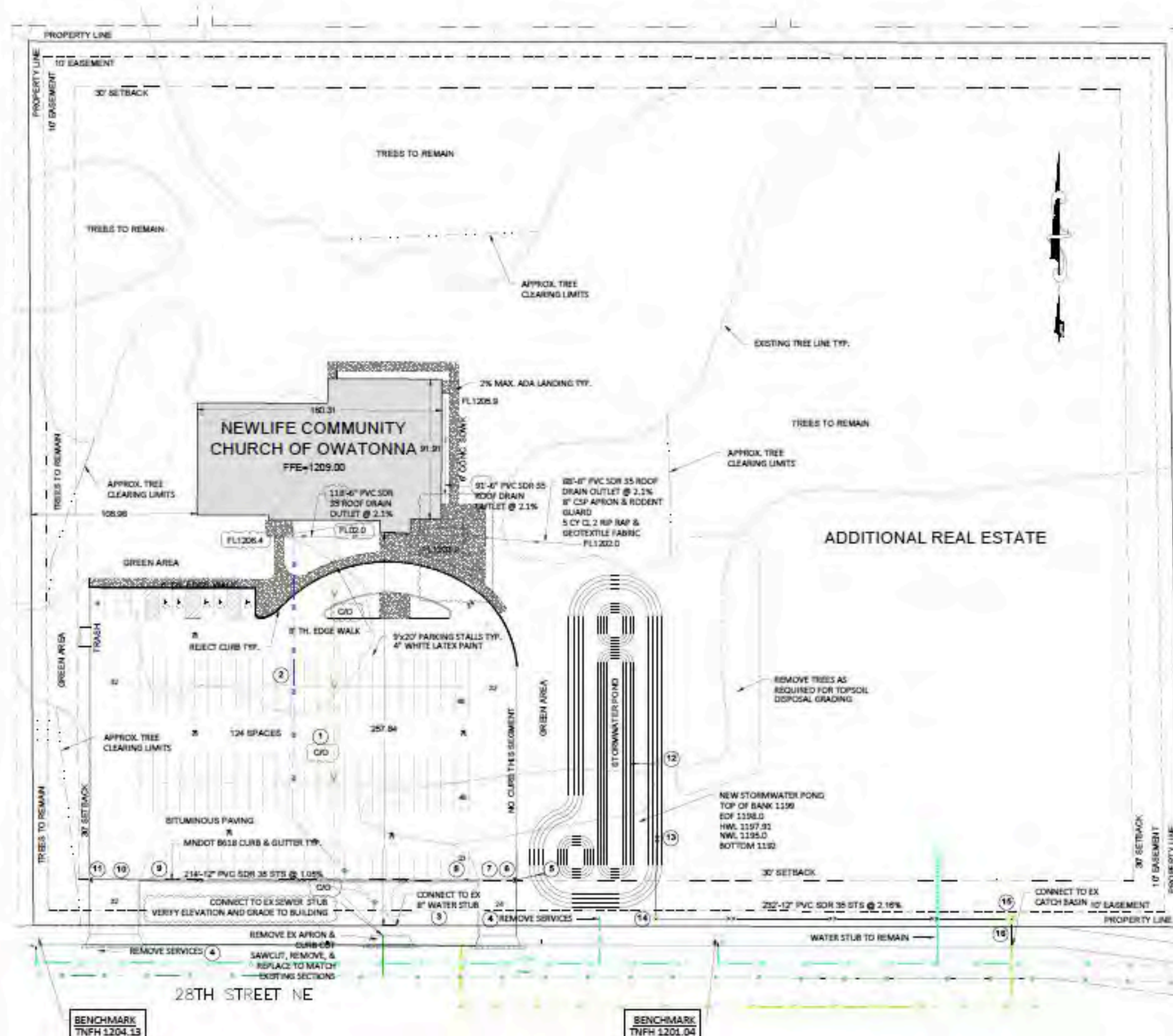
December 18, 2023

Site 



1:2,400
1 in = 200 ft

This drawing is neither a legally recorded map nor a survey and is not intended to be used as one. This information is a compilation of records, information, and data located in various city, county, and state offices and other sources, affecting the area shown, and is to be used for reference purposes only.



LEGEND

- 24" - 12" PVC SDR 35 SEWER SERVICE WITH CLEANOUTS @ 2.1% MIN. EXTEND TO WITHIN 5' OF BUILDING COORD. WITH MECH.
- 6" DI. 12" SDR 35 WATER SERVICE CONNECT TO C.V. @ P.W. EXTEND TO WITHIN 5' OF BUILDING COORD. WITH MECH.
- MONUMENT SIGN - SEE ARCH.
- REMOVE (IN-USE) SEWER AND WATER SERVICES AS SHOWN. EXCAVATE, REMOVE, & RELocate TO COORD. & GUTTER & GUTTER SECTION. REMOVE (TUTED) PER CITY & DRP. RELocate PAVING TO MATCH EXISTING SECTION.
- 14" - 12" RCP ST @ 1.05% APPROX. ELEV. 1195.0. EXCAVATE POND AT APPROX. ELEV. TO ELEV. 1195.
- DESIGN 30" R5067 CASTING DR1200.3 FL 1195.2
- 32" - 12" PVC SDR 35 ST @ 1.05%
- DESIGN 30" R5067 CASTING DR1200.55 FL 1195.9
- DESIGN 30" R5067 CASTING DR1201.6 FL 1197.7
- 32" - 12" PVC SDR 35 ST @ 1.05%
- DESIGN 30" R5067 CASTING DR1201.6 FL 1198.1
- POW. OUTLET STRUCTURE
- 100" - 12" PVC SDR 35 ST @ 2.1%
- DESIGN 4020-48 R1772 CASTING RM1199.88 FL 1192.97
- DESIGN 4020-48 R1772 CASTING RM1194.75 FL 1198.33
- 18" - 12" PVC SDR 35 ST @ 2.0% CORE DRILL EX. CATCH BASIN & CONNECT TO EX. STS. FL 1198.01 (EXIST'G)

A. CONTACT INFORMATION:

NewLife Community Church of Owatonna Contact:

Pastor Joel Stauffer

135 West Main Street

Owatonna, MN 55060

joel.stauffer@newlife.community

507-320-3141

Vanman Architects and Builders Contact:

Angie Knodel, AIA

9600 54th Ave N, Suite 180

Plymouth, MN 55442

angie@vanmanab.com

763-541-9552

B. NARRATIVE:

NewLife Community Church of Owatonna was founded in 2011 in Owatonna as a Christian Church that teaches from the Bible with a mission to lead people to become fully devoted followers of Christ. The first public gatherings began in January, 2012 at Owatonna High School. As this local church grew, the need for a larger auditorium became evident. In early 2019, NewLife Community Church of Owatonna moved to Wilson Elementary School to temporarily allow more space for the growing number of weekend attenders. NewLife Community Church of Owatonna plans to construct an approximately 20,000 sf facility that would include a lobby space as you enter the building, a 450 seat worship auditorium, classrooms for kids ministry, administrative offices, as well as toilets, storage and utility spaces, in order to accommodate the growing church and to plan for future growth.

The building would be used primarily on Sunday Mornings, from 7am, when the volunteers arrive, to 1pm, when the volunteers leave. The building would also be used on Wednesday nights, during youth services, from 5 pm to 9 pm. Other uses and special events will happen occasionally throughout the year. Regular daytime office hours would be kept during the week.





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Miscellaneous