CITY OF
OWATONNA

CITY COUNCIL MEETING

Tuesday, February 6, 2024 at 7:00 PM
Council Chambers, Charles S. Crandall Center
540 West Hills Circle
Roll Call: Council Members Svenby, Voss, Dotson, Burbank, Boeke, Raney & Schultz

PLEASE NOTE: At 5:30 p.m. Council will meet in a Study Session in Chambers of the Charles S Crandall Center at 540 West Hills Circle to receive updates from the Owatonna Chamber of Commerce and Tourism.

1. **INTRODUCTORY ACTIONS:** Call to Order; Roll Call and Pledge of Allegiance
    - 1.1. Council Agenda
    - 1.2. Mayor Kuntz
2. **CONSENT AGENDA ITEMS**
    - 2.1. Minutes – Council Meeting – January 16, 2024
    - 2.2. Minutes - Board/Commission Meetings
        - 2.2.1. EDA Minutes - November 15, 2023
        - 2.2.2. EDA Minutes - December 20, 2023
        - 2.2.3. HRA Minutes - November 27, 2023
        - 2.2.4. Planning Commission Minutes - November 14, 2023
        - 2.2.5. Planning Commission Minutes - December 12, 2023
        - 2.2.6. Planning Commission Minutes - January 9, 2024
    - 2.3. Department Reports:
        - 2.3.1. Fire - Monthly Dashboard and Activity Report - December 2023
        - 2.3.2. Building Inspections Monthly Report - January 2024
        - 2.3.3. Police - Monthly Crime Clock and Crime Statistics
    - 2.4. Licenses/Permits
        - 2.4.1. Exempt Permit - MN Pheasants Inc - March 9, 2024
        - 2.4.2. Event Permit - 2024 Pride in the Park - July 13, 2024
    - 2.5. Miscellaneous
        - 2.5.1. Marketing Services Agreement - Golf Now
        - 2.5.2. Maintenance Agreement - Club Car
        - 2.5.3. 2024 Instrumentation and Control Support Services Agreement - AE2S
        - 2.5.4. Renew HR/Payroll Software Contract - UKG

2.5.5. Bonding Agreements - Minnesota Public Facilities Authority

2.5.6. Set Date for 2024 Local Board of Appeal and Equalization Meeting - April 16, 2024

2.5.7. Statement of Work & Scope of Services - Gallagher

3. **ACTION ITEMS**

3.1. Finance Report

3.2. Resolutions:

3.2.1. Resolution 9-24: Approve Report & Set Public Hearing Date - 2024 Street & Utility Project

3.2.2. Resolution 10-24: Appoint Election Judges - Presidential Nomination Primary Election - March 5, 2024

3.3. Miscellaneous

3.3.1. Change Order #10 - Wastewater Treatment Facility Expansion - Rice Lake Construction

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**

Owatonna City Council Minutes - Draft
January 16, 2024

On Tuesday, January 16, 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 O'Connor; 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 Dotson made a motion to approve the agenda as presented, Council Member Svenby seconded the motion; all members voted aye in approval.

RECOMEND NEW BOARD/COMMISSION MEMBERS

Mayor Kuntz commented that there are currently three openings on various city boards as previous members resigned. Applicants were interviewed and background verifications successfully completed for recommendation for appointment for these individuals to fulfill the remaining term of the current open seat:

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

Council Member Raney made a motion to approve appointment as recommended, Council Member Dotson seconded the motion. Council President Schultz commented his daughter-in-law's name is also Lindsay Schultz and he is not related to Ms. Schultz being recommended to the HRA. With no additional comments, all members voted aye for approval. Patrick McDermott and Lindsay Schultz were present to receive the Oath of Office administered by Mayor Kuntz.

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 – January 2, 2024
Minutes - Airport Commission Meeting - December 12, 2023
Minutes - Library Board Meeting - December 21, 2023
Monthly Report - Building Inspection - December 2023
Exempt Permit - Raffle Owatonna Area Chamber of Commerce and Tourism - February 18, 2024
Event Permit - Bob Fest - Foremost Brewery - February 24, 2024
Temporary Liquor License - St Mary's School - April 20, 2024

Continuation of Consent Agenda Items:

Engagement Letter - Business Email - McDonald Hopkins to assist in analyzing and responding to a business email compromise

Resolution 5-24: Authorize Contract for Purchases - Fame Awards - $717.50

Software Subscription Services Agreement - Club Caddie – a one-year agreement software subscription services at Brooktree Golf Course

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

Council Member Boeke made a motion to approve these Consent Agenda items, Council Member Svenby seconded the motion. Council Member Voss recused himself as Resolution 5-24 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 $1,945,142.82, 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 6-24 Order Feasibility Report - 2024 Street & Utility Project

Public Works Director Murphy Requested approval of Resolution 6-24: Ordering the preparation of the 2024 Street & Utility Project Feasibility Report. This project will involve various levels of needed reconstruction work on the following streets:

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

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

Resolution 7-24: Lakeside Foods Notice of Violation and Administrative Order

City Administrator Busse requested action on this item be tabled to a February City Council Meeting to allow staff additional opportunity to meet with Lakeside Foods personnel. Council Member Raney made a motion to table this resolution, Council Member Dotson seconded the motion; all members voted aye for approval.

Mark Enter, VP of Operations at Lakeside Foods thanked the Council for tabling this item. Lakeside Foods has been in Owatonna since 2003 and they are very proud of their relationship with the City and want to be good community stewards.

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

Community Development Director Klecker presented Resolution 8-24 authorizing a variance for a wall sign at NewLife Community Church at 160 28th Street NE. Application No. VAR-15, received from Joel Stauffer requested allowance of a wall sign with 95 square feet in surface area, where 32 square feet in surface area is the maximum square footage allowed in residential districts. The property is 9.98 acres with the principal building setback approximately 258' from the front property line along 28th Street NE. The applicant does not intend on installing a free-standing sign, only wall signage is proposed. The Planning Commission held a public hearing on this request and recommend approval with condition that any additional signs on the property will be required to submit application for a sign permit. Council Member Boek made a motion for approval, Council Member Dotson seconded the motion, all members voted aye in approval.

STAFF COMMENTS

Public Works Director Murphy commented there were two to three inches of snow with a lot on wind last Friday. It took a few days to clear the streets and he asked everyone to stay back from the snow removal equipment to allow the operator the opportunity to do their job. Interviews are in process for three positions in the Public Works Department and he has been impressed with several applicants.

Community Development Director Klecker commented that interviews are in process for an engineering consultant required for FAA Projects. The south sections of the new fence at the airport have been placed; the north side and the gates will be installed this spring. Last year, the valuation of New Building Construction Permits was just more than $110 Million, a lot of this work is currently in process. Twenty-three permits were issued for new homes, 21 single-family homes and 2 side-by-side units; during 2022 there were only 16 new home permits issued.

PUBLIC COMMENTS

Melissa Zimmerman, 225 Stoney Creek Drive commented she is speaking regarding a proposed east-side corridor and referred to City Ordinance 95, Noise Control. The city has a compelling interest in imposing time, place, and manner restrictions on such noise on a content neutral basis and in a manner that does not unreasonably infringe on the rights of the city's inhabitants. The State Pollution Control Agency has motor vehicle noise limits per Minn. Rules Ch. 7030 it shall be unlawful for any person to make, continue, permit, or cause to be made or continued any loud, unnecessary, or unusual noise or any noise within the city which would be likely to annoy, disturb, injure, or endanger the comfort, repose, health, peace or safety of a reasonable person of ordinary sensibilities. Construction of a highway at 29th Avenue would do these things to hundreds of residents. Our neighborhood is a Noise Level 1 which requires a buffer of 800 feet from truck traffic and 300 feet from other vehicle traffic. The study completed in 1999 included 800 feet of right-of-way and current plans show only 15 feet. City Code Section 95.99 reads every person who violates any provision of this chapter is guilty of a petty misdemeanor and subsequent fine. Approving a highway at 29th Avenue violates the law and persons would be guilty of a misdemeanor. We need to stay safe and request this project be built on 34th Avenue.

Matt Sennett, 2519 Stoney Creek Drive commented that during a December City Council Meeting, he was present and heard the Steele County Engineer speak about this anticipated project. During his presentation's Q&A, he expressed 29th Avenue was one of two routes needed, one route is 34th Avenue, 0.6 miles away and the other is 29th Avenue which is just a few feet from homes in our established neighborhood. I'm not sure why many in this room are discussing 29th Avenue for this project? During a recent county meeting, the Steele County Engineer commented that if 29th Avenue is built, 34th Avenue will not be built during his lifetime. So, if only 29th Avenue is built, we can anticipate that twenty to thirty years from now there will be similar problems along 34th Avenue. We ask that you build one route as needed and build it on 34th Avenue. We, your residents, are encouraging you to build this corridor the right way and not build next to current homes.

MAYOR AND COUNCIL COMMENTS:

Council Member Raney commented that he and Council Member Boeke received e-mail from constituents with concerns that trash companies and the county recycling vendor are leaving emptied trash cans in the street. Our City Ordinance specifies where trash cans be stored, he asked Staff send a letter to these companies asking them to return emptied trash cans to the driveway apron or boulevard but not on the street, if there is wind, it makes for challenging times. Property owners should do the same, leave your trash can on your driveway apron or boulevard but not in the street to be emptied.

Council Member Svenby commented that yesterday, he attended the MLK Jr. Day event hosted by the Owatonna Human Rights Commission and Riverland Community College. He thanked the sponsor for hosting, this was a great event and well attended. This year it was a lunch event and not breakfast as in previous years; hopefully, it remains a noon event as it was well received.

Mayor Kuntz commented that the Human Rights Commission did an excellent job hosting the MLK Jr. event and the speaker, Seema Pothini, was very good. This spring, the terms of three current Human Rights Commissions expire so there will be some openings to serve on the Human Rights Commission.

City Administrator Busse commented that she also attended the MLK Jr. Day event. There were more than 120 in attendance, the most I have seen at this event so anticipating future MLK Jr. Day events will be like this year's.

Council President Schultz commented this was the shortest meeting held in some time and he wasn't going to prolong its conclusion.

At 7:31 p.m., Council Member Dotson made a motion to adjourn, Council Member Svenby seconded the motion and with no objection heard, the meeting ended.

Respectfully submitted,
Jeanette Clawson, Administrative Coordinator

Boards / Commisisons

EDA
Minutes
November 15, 2023

The Owatonna Economic Development Authority met in regular session at 4:00 PM in the Charles S. Crandall Center – Meeting Room at City Hall Building with Vice President Voss presiding. Commissioners present: Dan Boeke, Andrew Cowell, Corey Mensink, Tom Peterson and Doug Voss. Commissioners absent: Kevin Raney and Brenda DeVinney. Also present were Troy Klecker, Greg Kruschke, Brad Meier, Lisa Cochran, Sean Williams and Kristen Kopp.

Approval of Minutes. Commissioner Peterson moved approval of the minutes of the October 18, 2023 meeting with second by Commissioner Cowell. All Commissioners voting Aye, the motion passed.

Treasurer's Report. Troy Klecker presented the revenue and expense reports for October. He said we're running below budget but will have some consulting expenses for FoamCraft as well as some minor things in other categories.

Loan Report. Sean Williams presented the Loan Report for October. Klecker said that all loans are current.

OACCT / OPED Report. Chamber Director Brad Meier presented the OACCT Report for October. He highlighted workforce components. He said it's really active at this point in the year. There are a lot of kids and a lot of opportunities and they are swamped. There was a quarterly employer meeting earlier this week. They submitted a grant to the State that is custom made for what they're doing. They hope to hear back soon. He and Greg had an opportunity to attend a MN Real Estate Journal event in Golden Valley, along with Christian from OPU. It was a good opportunity to get in front of 300 to 400 people. The agreement with Livability is entering the third year of a three-year agreement. Owatonna hosted an event, What Lies Ahead for Southern MN's Economy. A Star Tribune reporter was at that event and he ended up writing about the high school. He likened it to the US Bank Stadium of high schools. There was some discussion about child care. Klecker said he's attending a webinar put on by SMIF about childcare.

OABDC Report. Sean Williams presented the OABDC Report for October. He said Bill retired on October 17. They're operating at full capacity. They're adjusting pricing to get a little more in line with the market to make the organization more financially stable. He said we've surpassed the October hours already this month. He said they get a number of referrals from Brad Meier. Otherwise there are a lot of referrals through nonprofits including SMIF. A big part of Q1 will be getting their marketing in shape and having an online presence. Meier said it's a great resource to have. Mensink said banks should be big, too. Williams said they're in the process of meeting with banks right now. The other thing taking up a lot of bandwidth is a partnership class with Community Ed. They are on week seven of twelve. There is a three-hour workshop and two-day boot camp scheduled for spring. Voss asked for his one-minute vision. Williams said they're having a strategic planning session next month. He said a focus will be broader community engagement and connecting all the dots that exist, but are operating in silos.

EDA Projects. Community Development Director Troy Klecker presented the EDA Projects for October. Cemstone is making cement and getting their pad down for construction next year. Meier said Cemstone was Troy's vision five years ago, and now it's happening. Klecker said they were planning to do some improvements on site, and we questioned whether their current spot was the right place to invest. We agreed to a five-year rent-free lease for Cemstone to build up enough capital to be able to build a new facility. Voss said the place is unbelievable. He said someday they should have an EDA tour of all that they've been involved in over the years. They've shown 117 West Bridge quite a bit. He said that they've had a lot of views on Loop Net. He's been contacted probably six or seven times in the last few months. He said he's dealing with one person who's a little more interested through Loop Net. He said he thinks it's because of some of the things that have been in the Cities media like the Pheasant Opener and the high school. Williams said every entrepreneur he's worked with this month has asked about that storefront. Al Martin is still putting numbers together for 148 Main Street West. CDI is opening in December. Kamp Automation is also looking at a December opening. Riverfront is going up and going well. Scooter's has been put off until spring. He will be talking with Alexander Lumber about swapping land to meet their needs. They plan to leave the house at 139 Pearl Street East up through the winter and demolish it in the spring.

Old Business. Klecker said that Oscar has moved his office from where the Chamber is now to North Cedar to accommodate the Riverfront project. Now he's focusing on getting 224 North Cedar going. Oscar said this was a little bit on the back burner but is now on the forefront. He said as he started getting back into the project, he's been figuring out the main floor. The upstairs is where it's changed the most since the original plan because of the cost associated with the lounge. The main thing is how he creates cashflow from the main floor and upstairs so it's a sustainable business. The upstairs is transitioning to more of an office space with a conference room looking toward the Courtyard. There will be three offices, a conference room and storage area. He is looking for a tenant that would lease the upstairs. He's looking at potentially the transition of Lava Burgers moving to the main floor, keeping the wine and whiskey and small tapas. You'd have a tenant there and then office business space upstairs. He got his first updated bid from a local builder and is expecting one more. They're coming in at $1.4 million. He said he's trying to figure out how to make it cashflow. He will need to look into whether they need sprinklers. An elevator is not optional. He's looking to hopefully have a plan / signed agreement with the builder in 45 days. He has a couple prospects for the office upstairs. Klecker said that they've had conversations about Lava Burger having an end date and moving things over. He asked if there is an end date. Oscar said no. Klecker asked if the $1.4 million is doable? Oscar said it's doable if everything falls into place. Klecker asked if he would need tenants first. Oscar said he'd need a signed lease. Williams said he might have someone. Oscar said the biggest thing was the separation of two spaces and potentially even a phase three for the basement, a speakeasy concept. Klecker said at one point he wasn't going to do anything upstairs and just the main level, which would reduce the cost. He asked if that's on the table—just to get the lounge going. Oscar said that's an option, too, but getting both done at the same time makes it cheaper. There was a big cost with the ceiling beams. If that has to be replaced, it's pretty pricey. The other part is, you're going to spend all that money to tear out that ceiling and recreate the flooring, you can offset that with someone paying rent. Klecker said some of the urgency from the EDA about this project is that the property was conveyed at no cost to Oscar. They put in a

TIF district to reimburse the City. It's the TIF that's going to generate the payback of the $225,000. When they set up the development agreement they had dates built in. They are beyond the dates of the agreement and the clock is ticking on the TIF district. The longer we wait, that's going to be less that's paid back to us. If he looks at it from that side, the sooner we can get this going, the more likely we'll be paid back. Oscar provided a space that was needed for the Riverfront project, so the EDA provided a grace period. They like that he's back looking at this. Oscar said as he's going forward with it, he'd like assistance with potential tenants. He chatted with Brad a few times about resources out there. Boeke said it seems like it could be a long time before we see progress. Klecker said that the wine lounge concept hit all the marks and would be a great project to have. But it does get to a point where if the project can't move quick enough, we have the default clause we could enact. We want to be in close contact with Oscar to know if it's moving quickly enough for the EDA. Boeke said he thinks it's a great concept. It's hard to find investors and tenants. Voss said within that context they need to see something happen. Klecker said that's up to the EDA. They have money invested in that building. It's up to the EDA to decide the parameters. Boeke said keep working at it. It's a good concept. Klecker said everyone loves this idea and would love to see this happen. Cowell suggested 60 days to get the construction agreement signed, to us, so we know the project is moving forward. Oscar said the February 21 meeting would be a good deadline. Kruschke said we have momentum on Cedar Avenue now. If he's not going to move forward, we'd have someone who would take it in a heartbeat. He said they ran a water line in during the streetscape, which is a $40,000 cost. Klecker said they don't want to sell it just to sell it, but they would like something to draw people downtown and enhance the nightlife. Everything we've done has been bringing people downtown.

Williams gave an update on the Forgivable Loan Program. Two of the highlighted businesses will not be using the full amount. Klecker said they might still want access to those dollars for other improvements. Are we offering that to them, or saying they're done, or do we need them to sign something. Williams said Lisa and he discovered that in the application it does say the funds have to be used within a year. Mensink said we extended a lot of these because of supply chain delays. Klecker said it's more of a statement acknowledging that the project is done. Mensink said if we open up another – they can think about applying again. Cowell said if the project is done and the work is complete or will not be completed, we should send a letter saying the funds will be moving back into the fund for future needs. Mensink said he agrees with that. Peterson suggested it's just a notice and they don't have to sign anything. The Commissioners agreed. Williams said they are creating a simplified, streamlined version that will live online. That's in the pipeline for 2024. Lisa said they should have something in their records if they can reapply, and if so, how many years later? Klecker said they should discuss whether they're looking at more dollars for 2024, and if their five years is up, can they reapply? There is a lot of momentum. What would entice more updates. He said they discussed second floor spaces. Maybe, can they allocate some dollars through a challenge to convert second level into business space. Would it be worthwhile to offer special incentive to convert the second level? Klecker said it's much more expensive proposition. Mensink said even windows would make a difference. Klecker asked how would we get things happening. Mensink suggested getting some input. Kruschke said they should do a survey first on what's occupied. Mensink said he'd like to capture the momentum while we have it downtown.

Klecker gave an update on 151 Bridge Street West. As of yesterday, he was intending on asking the EDA to purchase the property. He got the report from Braun back late yesterday and went through it today. He's not ready to ask for that today. There's nothing that has to be done immediately. There are two or three little things. He wants to formulate a better game plan on it and talk to the owner. Nothing is going to happen on that property if we don't get involved and do it. Any potential buyer with a lender will be told if they don't touch anything, they don't have to do anything. Mensink said it doesn't get any easier over time, but it will potentially be a bigger issue down the line.

Schedule Next Meeting. The next EDA meeting is scheduled for **December 20, 2023** at 4:00 PM in Charles S. Crandall Center – Chambers at City Hall.

Klecker said that this is Tom Peterson's last meeting. Voss said the EDA would love to see his new CDI building sometime next spring. He said they have appreciated his service and thanked him. Peterson said he's been glad to be a part of the community. They're on a good trajectory.

Adjournment. There being no further business, a motion was made by Commissioner Boeke and seconded by Commissioner Cowell to adjourn the meeting at 5:12 pm. All Commissioners voting Aye, the motion passed.

EDA
Minutes
December 20, 2023

The Owatonna Economic Development Authority met in regular session at 4:02 PM in the Charles S. Crandall Center – Meeting Room at City Hall Building with President Raney presiding. Commissioners present: Andrew Cowell, Brenda DeVinny, Kevin Raney, and Doug Voss. Commissioners absent: Dan Boeke and Corey Mensink. Also present were Troy Klecker, Brad Meier, Lisa Cochran, and Kristen Kopp.

Approval of Minutes. Commissioner Cowell moved approval of the minutes of the November 15, 2023 meeting with second by Commissioner Voss. All Commissioners voting Aye, the motion passed.

Treasurer's Report. Troy Klecker presented the revenue and expense reports for November. He said lodging tax dollars are looking good. Meier said that their estimates show that this year is stronger. Klecker said we've paid consulting invoices and there won't be a lot this last month. We'll be a little under budget, which is where we like to be.

Loan Report. Troy Klecker presented the loan report for November. He said Sean Williams couldn't be here. All loans are current. Cars N Credit is showing as one more payment, but he thinks they've made that payment this month. There aren't a lot of people using the loan funds, other than Forgivable Loan Funds. Cowell asked about the Arrow Ace TIF with the sale of the business. Klecker said that nothing changes with that since the ownership will not change.

OACCT / OPED Report. Chamber Director Brad Meier presented the OACCT Report for November. He said that Missy and Brian have been swamped with students who need guidance. In the earlier days, the question was, "How do we get more interest?" They just found out that they got a grant that will support students' work experience over the summer, up to eight weeks. DeVinny asked what kind of work? Meier said manufacturing is one of the key employment areas and they highlighted a couple others, such as business IT. DeVinny asked how that coordinates with the Youth Skills Training Program. Meier said he thinks it's separate. DeVinny said that there is an age limit with YST. Meier said they'll have to see if it can tie into YST or it would be older high school students. They're on year three of three with Livability as a way to market Owatonna. We just found out that we are one of the top six communities to live in in Minnesota. Raney asked if they were satisfied with Livability. Meier said they didn't know what to expect. Raney said he thought the articles were really good, the question is if they are reaching who they want to reach. Meier said they're putting together a new marketing plan with the new branding coming out. He said they had a good opportunity for a project with a lead through the State of Minnesota. Greg coordinated the work to get through the first round, and they came on site. They were very impressed and said this was a breath of fresh air. It was positive. We'll see if we get the project. CDI cut the ribbon on their new facility this week. Raney said he wasn't able to attend, but spoke with Brad Fisher who said that CDI has upped the game for other manufacturers around town with their leisure time spaces within the facility. He was very impressed. Klecker said that Tom designed it around the employees—that's the perfect way to design it. The amenities are very visible. Cowell said kudos to Brad and Lisa about the article in the Star Tribune. Lisa said that was an awesome call to get and she and Brad talked to the reporter and met with her and her photographer. Klecker said that was followed by an article about the high school.

MainStreet. MainStreet Director Lisa Cochran said the holiday parade was very successful. They estimated about 7,800 people were downtown. She said the weather is the biggest factor and it was 28 degrees with no wind. Friday night was a hit with almost everyone. There were 82 entries and about 85 volunteers. Raney said this was his first time attending and he was so impressed. The weather was perfect and there weren't a lot of other events going on in town.

OABDC Report. Klecker said that the session on the strategic planning session went really well. Sean Williams will present that to the EDA at an upcoming meeting. The whole focus is different than what it's been and Williams brings a lot of experience and energy to the role. There are a lot of good things coming.

EDA Projects. Community Development Director Troy Klecker presented the EDA Projects for November. He said they're still trying to find someone to build on the old Hardee's / Budget Mart site. Cemstone will probably be able to move off their old site in 2024. Oscar has until February to get something going in former Bubba's building. 117 W Bridge has at least one person still looking at it. 148 W Main will need to get moving. CDI had their ribbon cutting and KAMP is not far behind. They started moving in. Riverfront is moving along. Scooters is a spring 2024 project. The house at E Fremont is down. He said they're talking about doing a swap with Alexander Lumber. We'll still have two lots available on Fremont as well as the next house we own and are renting out. FoamCraft has started on their project. 139 E Pearl will be demolished in the spring of 2024. We'll look at redeveloping that corner. Voss said we should have a fairly definitive plan on what to do with Bubba's if it doesn't work out for Oscar. Klecker said that there will be more interest in it if we do get it back because of the hotel. We want the right use in there. Something that enhances everything else. Raney said he hopes Oscar can make it happen. He said if it's put back on the market, it's extremely marketable. There was some discussion about Scooters and the vacant lot owned by the radio tower.

New Business. Klecker said we have an application in for HotWorx. Cochran said she's met with them several times. It's a workout studio that will be open 24/7. It will be a very comprehensive and safe way for members to come in. There will be 10 pods and you can control the heat in each pod. There will be a free weight area. There will be ADA bathrooms and one shower. They've already started with the windows and they will have a new sign up. They will be putting siding underneath the windows. It will be a huge change from Pets and Fish. They have a plan and their application was approved. Voss asked about Tone Music. Cochran said the building is not for sale, just the business for now. A motion was made by DeVinny and seconded by Cowell to approve a $10,000 interior and $10,000 exterior Forgivable Loan for HotWorx. All Commissioners voting Aye, the motion passed.

Klecker said they don't have to act on the 2024 Loan Program today, as there are still dollars remaining. We have had some discussions about extending it. Raney asked how much money we have. Klecker said we've generally had a good chunk of money in the EDA Loan fund and this is a way to get people to spend some of their own money. Raney asked Cochran if we'd do it again, how many could she sell. She said 10. She said she has four people not on this list who have just talked to her about it and are very interested. She said with the momentum, it would be doable. There aren't as many shortages now, so that helps. $10,000 is still a good amount, and it does help. Voss said we've done a lot of loans, have we touched a third of the need? Lisa said we're getting close. Klecker said we go through cycles with the economy and we went through a recession and things got bad. Now we're on an upswing. He said he thinks we need to maximize it because at some point in time, we'll hit a slow time again. We'll be that further ahead when we have another recession. Voss asked if we have the ability to give ourselves a loan for Centro Campesino. Cochran said Sean Williams is working on doing an online application that is fillable. Any building in the MainStreet district can qualify. Voss asked if we have the ability to do anything with it. Klecker said we can. We have typically done what is needed to keep the building safe and dry for a future buyer. Cowell asked if we want to expand the parameters beyond downtown. There are other areas of town that are getting grungy. Do we want to open it up to other areas. Raney said right now it's set up for the downtown. Cochran said they'd have to find someone to be in charge of it. Klecker said his preference is to keep it downtown because it gives more of an impact rather than spreading it out. We have momentum downtown and that's where we're having an impact. Klecker said he'd like to stick with downtown for at least another year. If it gets to a point where things are slowing down, he wouldn't mind specifying another area, such as the south end of town. The criteria would be different. We'll have the most success when we concentrate those dollars. Raney asked if Reggie's has talked about using the program in 2024. Cochran said she has spoken with him. He wants to, but he's not sure exactly what he wants to do. Klecker suggested doing $100,000 total. He said he'd rather have money being spent and going into the economy and leveraged to get more. Meier said that the sooner we declare it, the better. Cochran agreed as she will reintroduce it in a slightly different way so it catches people's attention. Klecker said will include the approval of the 2024 Loan Program at the January meeting. Cowell asked if there were any policies we should update at the time as well. Cochran said they talked about getting rid of the $25 application fee. Raney asked to have the Forgivable Loan guidelines ahead of the meeting. Klecker said they would also need to discuss how long a business has to wait if they want to do another loan if it's a different project. He'd like to have that figured out beforehand.

Schedule Next Meeting. The next EDA meeting is scheduled for **January 17, 2024** at 4:00 PM in Charles S. Crandall Center – Meeting Room at City Hall.

Adjournment. There being no further business, a motion was made by Commissioner DeVinny and seconded by Commissioner Cowell to adjourn the meeting at 5:03 pm. All Commissioners voting Aye, the motion passed.

MINUTES
OWATONNA HOUSING AND REDEVELOPMENT AUTHORITY
REGULAR MEETING on NOVEMBER 27, 2023

The regular meeting of the Owatonna Housing and Redevelopment Authority was called to order at 4:04 p.m. in the 2nd Floor Conference Room by Vice Chairperson Hole.

Members present were Nathan Dotson, Julie Fiske, John Hole. Also present were Executive Director Troy Klecker, Housing Manager Ghassan Madkour and Administrative Technician Kristen Kopp.

Approval of the Minutes: Chairperson Olivo called for a motion to approve the minutes of the October 23, 2023 meeting. A motion was made by Dotson and seconded by Fiske to approve the minutes. All Commissioners voting Aye, the motion carried.

Executive Director's Report: Troy Klecker gave an update on housing projects. He said the apartments on 26th Street and Cedar Avenue North are open. Some units may not be open yet, but they are pretty close to being open. Westlake Meadows apartments are progressing. Each of the five buildings are at a different stage. The first one should be opening up as soon as January and they will open in phases throughout the next couple of years. The other apartment project, Ascend, is a mixed-use project. They're moving along well and are planning to be done around this time next year. There are two projects we're working on now: the redevelopment of Modern Aire Apartments, which will be 60 units, 20 of which are affordable, and Eastgate II, which is a tax credit project very similar to Eastgate. We were not awarded tax credits, but will be reapplying in June. These projects take a long time, especially the affordable ones. The City owns a lot on the corner of 3rd Avenue NW and 22nd Street NW. We're trying to get the title work cleared up so we can plat it. That was land that was given to the City for affordable housing by the Cashmans. There is a lot behind Fareway Foods on Cedar Avenue South that's getting some interest as well. All the approvals are in place for Mineral Springs Estates up by the waterpark. They were hoping to get started this fall, but the costs related to infrastructure is too high to move forward, as that affects the lot prices. They're looking at equity investors and hoping to move forward in the spring. We've had a couple of local developers asking what they need to do for a single-family development. That is very encouraging that they're starting to ask questions. The good news is we're getting a good number of apartments and we're at 21 houses. Last year we had 16 houses, so that is encouraging.

Old Business: The Housing Choice Voucher program monthly report was presented by Madkour, including the City of Owatonna monthly balance sheet and revenue/expense report. Program utilization: The Housing Voucher program for October totaled 100. Total year to date assistance and administration costs were $696,665.79 and revenues were $747,581.01. The Housing Choice Voucher Program fund balance at September month end is $84,656.83. The HRA Revenues year to date total is $489,079.77 and the expenses total $448,453.45. The HRA General Fund balance is $561,982.74.

He said by the end of this month, we should be hitting 100. Mainstream is back over 30. Bridges is currently at 37 for regular Bridges and 7 for Bridges Like. Quite a bit of waitlist applications are coming in lately—the list is over 200. It's a constant thing that people don't respond. He said he's considering giving them a month instead of two weeks, but it already takes a long time to get someone on board after they have an application. To put it out another two weeks adds another two weeks to fill the voucher. It takes the sense of urgency out. Klecker says it leaves those on the waiting list there longer. Dotson agreed. The Commissioners agreed to keep it at two weeks. Klecker said they can gauge the need based on how quickly they act. He said they coordinate with the police department. The Police Department have a list of addresses, so if anything happens, we get notified. If it rises to a level that violates the voucher, we take action. Dotson asked how much notice we give. Klecker said someone could be charged and not be guilty, but we watch it. Madkour said to be customer oriented, we usually give them an extra month, so 60 days, if the charge is set in stone.

A motion was made by Dotson and seconded by Fiske to approve the reports as presented. All Commissioners voting Aye, the motion carried.

New Business: Madkour said he's working with a couple of agencies to see if we can absorb the vouchers. He said he'd rather fill it with our people. He said he wants to keep the numbers where they need to be. Klecker said he's on the Affordable Housing Task Force through United Way. It's a group of people who want to see more affordable housing, although it's not really clear what role the group can play. There is something this group can do, and that is that we have a Community Affordable Housing Action Plan. He said to let him know if they have any ideas of what this group can do.

Other: Madkour said that the December meeting falls on Christmas Day. Klecker said we could just cancel the meeting in December. Madkour said it will slow down quite a bit. Dotson asked if we have to have a special meeting, how much notice do we need? Madkour said at least a week. We're planning to be in the new building next meeting.

Adjournment: There being no further business, a motion to adjourn was made by Dotson and seconded by Fiske. All Commissioners voting Aye, the motion carried. The meeting adjourned at 4:40 pm.

Respectfully Submitted,
Ghassan Madkour
Housing Manager

OWATONNA PLANNING COMMISSION MINUTES FOR NOVEMBER 14, 2023

The Owatonna Planning Commission met in regular session at 5:30 pm in the Charles S. Crandall Center – Chambers at City Hall with Chairperson Kelly Rooks conducting the meeting. Present at roll call were Commissioners Mark Meier, Kelly Rooks, John Eickhoff, Mark Wilson, Nick Peake, and David Effertz. Commissioner Rachel Springer-Gasner was absent. Community Development Manager Greg Kruschke, Planning Specialist Sydnee Stroeing, and Administrative Technician Kristen Kopp were also present.

A motion was made by Eickhoff and seconded by Effertz to approve the minutes of the regular meeting of October 24, 2023. All Commissioners voting Aye, the motion carried.

Application CUP-11, which is a request by Jeff Bogut for a conditional use permit to allow the conversion of a single-family dwelling to a 3-unit multi-family dwelling in the R-3, Single- and Two-Family Residential District and Application VAR-10, which is a request by Jeff Bogut for a lot size variance on an 8,580 square foot lot where 13,000 square feet is required for a minimum lot size for a single-family converted to a multi-family in the R-3, Single- and Two-Family Residential District for the property at 301 Pine Avenue N was presented by Planning Specialist Sydnee Stroeing. (Refer to report on file.) Public hearing opened at 5:32 pm. No comments were made regarding this request. Public hearing closed at 5:33 pm. A motion was made by Effertz and seconded by Meier to recommend approval of Application CUP-11 and VAR-10 with the following conditions:

1) The units shall be registered with the Rental Registration program.
2) The property shall not contain more than 3 units at any one time.
3) All units shall be inspected and approved within the Rental Registration process. If any repairs are needed, they shall be completed to be in full compliance with the Rental Registration License.
4) Building permits shall be applied for before any alterations are made.

All Commissioners voting Aye, the motion carried.

VAR-12, which is a request by Kent Kleeberger for a lot size variance on a 9,600 square foot lot where 10,000 square feet is required for a minimum lot size for a two-family dwelling in the R-3, Single- and Two-Family Residential District for the property located at 2041 Greenwood Drive NE was presented by Planning Specialist Sydnee Stroeing. (Refer to report on file.) Public hearing opened at 5:34 pm. No comments were made regarding this request. Public hearing closed at 5:35 pm. A motion was made by Peake and seconded by Wilson to recommend City Council approval of this variance request with the following provisions:

1) The units shall be registered with the Rental Registration program.
2) The property shall not contain more than two units at any one time.
3) All units shall be inspected and approved within the Rental Registration process. If any repairs are needed, they shall be completed to be in full compliance with the Rental Registration License.

All Commissioners voting Aye, the motion carried.

Application SPLT-2, which is a request by Bryan Tucker, Summergate Development, for a lot split for the property located at 162 Cedar Cove Lane NW, was presented by Community Development Manager Greg Kruschke. (Refer to report on file.) The proposed split will split and recombine the 4 current units into 3 units. Public hearing opened at 5:38 pm. Applicant Bryan Tucker with Summergate Development was present and said that this is a property that was developed in 2006. This lot was approved for four units and has been vacant for a long time. After analysis of the current market, they feel that three units would be a good transition. Their intent is to match the existing structures as identically as possible with white cream siding and brick. They don't have design finalized, but it does fit this footprint. They've had some conversation with the property manager. Once they have an elevation, they will run that by him. He said he's happy to answer any questions. Carrie Urberg, 196 Cedar Cove Lane NW, said she's concerned about proposed Unit B complying with emergency fire code because they only have two-way windows. She said that Mr. Tucker did answer the question she had about complying with the existing surroundings. She was wondering about the size of the units and whether they were similar to the size of the units that were already there. Mr. Tucker said they'd need building permits and would meet constriction codes. There will be access off the front and back. The units are a little larger than the twin homes, certainly not smaller. They're probably a couple hundred feet bigger. Jeff Cole, 150 Cedar Cove Lane NW, said he had a question about the siding and wondered if there would be any sort of color difference since theirs was done 20 years ago. He wondered about the spacing of the units and if it would be even. Kruschke said the outside boundaries of the plat, whether this was four or two units, at no point could any wall go within 10 feet of the exterior boundary. Everything in the middle is delineated as the common area. There could be more space. They will need to fix Lot 17 in the declarations. As far as the siding, that's a fairly common occurrence throughout any neighborhood and is not something the City regulates or gets into. "Similar" or "compatible" is the language the City uses. The covenants and declarations are private documents that the City doesn't approve as part of the common interest community. The City really has no jurisdiction over the finality of that side of things, and is pretty general when it comes to the color. They don't take weathering into account. Public hearing closed at 5:44 pm. Eickhoff said he appreciates everyone's concern and involvement about where they live. He said this is a fairly straightforward request. A motion was made by Eickhoff and seconded by Effertz to recommend City Council approval of the formal lot split with the following conditions:

1) Any covenants or declarations shall be amended to recognize the changes in lots and legal descriptions.

All Commissioners voting Aye, the motion carried.

Final Plat of Cedar Mill Addition, which is an 0.84± acre tract of land to be rezoned B-3, Central Business District, owned by Steele County and located at 121 Mill Street East, was presented by Community Development Manager Greg Kruschke. (Refer to report on file.) He said there haven't been any changes since the preliminary plat.

A motion was made by Meier and seconded by Peake to recommend approval of the final plat of Cedar Mill Addition with the following conditions:

1) The final plat shall be recorded within 60 days of approval.
2) The title opinion shall be approved by the City Attorney prior to recording of the final plat.
3) All unused water and sewer services shall be disconnected at the main.
4) All comments of the City Engineers Memo shall be adhered to.

All Commissioners voting Aye, the motion carried.

Community Development Manager Kruschke provided updates on previous items. Both of the lot size variances from the last Planning Commission meeting were approved by City Council and the City moved forward with some demolition permits—the old Monson Eye Care and a house at 126 Fremont Street East, to the north of Alexander Lumber. Eickhoff asked if this was the location of a parking ramp. Kruschke said not necessarily a ramp, but a parking lot that is planned to be constructed in 2024. It's taken a lot longer to secure the closing with US Bank. They'll tackle the lot in two phases. There is some sidewalk work happening on Rose Street as well. The roundabout finished curbing today and Thursday, Friday, Saturday they're paving the rest of it. And then curing time, probably a week. Hopefully that will be opened by December 1.

Kruschke provided the October building reports. We're at $103 M through October, which is a big number to hit. This will be a new record year with a number of projects that probably won't be issued this year. There has been a flurry of singly family homes to end the year out. It will be a slow start next year.

There being no further business to come before the Planning Commission at this time, a motion was made by Meier to adjourn the meeting.

Shirlee Cunningham, 422 Pearl Street East, said that she was late for the meeting because there wasn't an address on the public hearing notice that she received. She was up and down knocking on doors to find the location of the meeting and was late. She missed the public hearing for CUP-11 and VAR-10 and said the meeting must have started before 5:30 pm. Kruschke asked if she had a comment she would like to share about that request. She said she did. She said she was a student at Pillsbury in 1969 and she rented that apartment then. She and her husband lived there for a year. Now she lives across the street after 11 years of being away in the service. It's always been an apartment. She wondered why they're asking for it to be an apartment when it's always been one for fifty some years. Kruschke said that someone stopped doing their rental registration process. At this point they don't meet the requirements because they haven't kept that going and their grandfathering in went away. They had to apply for a Variance to continue using it as an apartment. Shirlee Cunningham said that the police have been there all the time and it's halfway boarded up and they've literally destroyed the house upstairs. She was the only one who could come and represent the neighbors. Jeff Bogut, the applicant and owner, said he was also late to the meeting because of traffic in the metro. He said the reason the one door has a board over it is that they've had some difficult tenants and have worked toward getting them out through the eviction process. Then someone was breaking in and did some damage and graffiti. He put a board over the door. Then he got a call from the neighbors when someone had taken the plywood piece off the door. He reinstalled it and wrote on the door in bright orange paint: Keep Out. He's spoken with the police about it and told them that it's vacant upstairs. The downstairs is currently rented, but they had to go through this process before getting a contractor for the upstairs. To keep it secure he had to board it up.

The motion to adjourn was seconded by Eickhoff at 5:59 pm. All Commissioners voting Aye, the motion carried.

Respectfully Submitted,

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Greg Kruschke
Community Development Manager

OWATONNA PLANNING COMMISSION MINUTES FOR DECEMBER 12, 2023

The Owatonna Planning Commission met in regular session at 5:30 pm in the Charles S. Crandall Center – Chambers at City Hall with Chairperson Kelly Rooks conducting the meeting. Present at roll call were Commissioners Rachel Springer-Gasner, Kelly Rooks, John Eickhoff, Mark Wilson, Nick Peake, and David Effertz. Commissioner Mark Meier was absent. Community Development Manager Greg Kruschke, Planning Specialist Sydnee Stroeing, and Administrative Technician Kristen Kopp were also present.

A motion was made by Wilson and seconded by Springer-Gasner to approve the minutes of the regular meeting of November 14, 2023. All Commissioners voting Aye, the motion carried.

VAR-11, which is a request by Josh Jenke for a lot size variance on a 5,544 square foot lot where 13,000 square feet is required for a minimum lot size for a three-unit, multiple-family dwelling in the R-6, High Density Residential District for the property located at 406 Elm Avenue South has been resolved due to a variance previously granted in 1952 for the same request. Public hearing opened at 5:31 pm. No comments were made regarding this request. Public hearing closed at 5:32 pm.

VAR-13, which is a request by Michael Spitzack for a lot size variance on an 8,712 square foot lot where 10,000 square feet is required for a minimum lot size for a two-family dwelling in the R-6, High Density Residential District for the property located at 139 Rice Street West was presented by Planning Specialist Sydnee Stroeing. (Refer to report on file.) Public hearing opened at 5:33 pm. Applicant and owner, Michael Spitzack, said this has been rented out as long as he's owned it since 2019. He's pretty sure the previous owners were renting it out. They've had no issues with tenants or received any complaints. Public hearing closed at 5:34 pm. Eickhoff said we seem to get a lot of these requests. He asked if there is any fine or penalty for all the extra work. Kruschke said if they end up having to send out enforcement letters they do, otherwise it's just the application fees. The Fire Department has some on their side. A motion was made by Eickhoff and seconded by Effertz to recommend City Council approval of this Variance request with the following provisions:

1) The units shall be registered with the Rental Registration program.
2) The property shall not contain more than two units at any one time.
3) All units shall be inspected and approved within the Rental Registration process. If any repairs are needed, they shall be completed to be in full compliance with the Rental Registration License.

All Commissioners voting Aye, the motion carried.

VAR-14, which is a request by Brycen Gregor, on behalf of Anna Lee, for a lot size variance on an 8,712 square foot lot where 10,000 square feet is required for a minimum lot size for a two-family dwelling in the R-6, High Density Residential District for the property located at 322 Elm Avenue South was presented by Planning Specialist Sydnee Stroeing. (Refer to report on file.) Public hearing opened at 5:41 pm. No comments were made regarding this request. Public hearing closed at 5:42 pm. Effertz asked if the lot size was common as both requests were the same size. Stroeing said that it's a fairly common size in that part of town. Kruschke said they have met with Brycen Gregor and Anna Lee last Friday. They had questioned if they could have three units and we informed them that it would be a completely separate request as this had already been noticed for two units. He said they let them know these are the requirements and if they weren't in favor of the conditions, they would recommend against this request. Wilson asked if a fence would require a building permit. Stroeing said a Zoning Permit is required if the fence is in an easement. There is no easement on this property, so no permit would be required. Wilson asked if they would need to add curb and gutter to the parking on the front. Kruschke said that is actually the back, off the alley. The picture is a little disproportionate. The 45 gate off the alley doesn't work, so they need to do some work in the backyard. They have more room than the drawing shows. (Brycen Gregor and Anna Lee arrived at 5:44 pm.) Effertz asked if Ms. Lee is a new owner to the property. Anna Lee said she has owned this property for a while. Effertz said they've noticed some complaints on the refuse and asked if she's done anything to combat that. Ms. Lee said that was the last renter and they have cleaned it since. Peake said he thinks two units in this type of residence makes sense, and as long as the provisions are met, he doesn't see a problem with it. A motion was made by Eickhoff and seconded by Peake to recommend City Council approval of this Variance request with the following provisions:

1) The units shall be registered with the Rental Registration program.
2) The property shall not contain more than 2 units at any one time.
3) All units shall be inspected and approved within the Rental Registration process. If any repairs are needed, they shall be completed to be in full compliance with the Rental Registration License.
4) A code analysis prepared by a MN Licensed Architect shall be submitted to the Building Inspections Department to determine approval of increased occupancy. In the case that alterations are required to increase the occupancy to two units, building permits shall be applied for and approved of prior to alterations.
5) An approved parking plan that meets all applicable City Code requirements shall be submitted prior to installation of parking stalls.
6) The gate entrance for rear yard parking shall be moved to be located off the alley and a minimum of 20 feet from the east property line.
7) The parking stalls shall be installed prior to the occupancy of a second unit.
8) Debris and refuse shall be removed from the property or stored properly. The property shall be maintained in an adequate manner.
9) All the above requirements shall be met before occupancy of a second unit is granted.

Commissioners voting Aye: Springer-Gasner, Rooks, Eickhoff, Peake, Effertz. Commissioners voting No: Wilson. 5-1, the motion carried.

Kruschke said that things are starting to come together for the Vine Street Parking Lot downtown and they will likely have more information at their January meeting. They've taken down that Monson building and it will be temporarily signed for now. Eickhoff asked how many stalls that would create. Kruschke said he believed an extra 30-40 in the lot with additional on the street. He said there will be more greenery, more lighting, and a trail on Vine Street. The parking will mostly face north/south rather than east/west. They're planning to go out to bid in February.

Community Development Manager Kruschke provided updates on previous items. He said City Council has approved everything. Mineral Springs Estates is still kind of on hold and looking at coming back with a development agreement for spring construction. It hasn't been recorded yet.

Community Development Manager Kruschke provided the November building reports. We're roughly $100,000,000 and they're at about 27 single family homes. It will be a record year. Climate by Design and KAMP will be in their buildings by the time we meet next and Home 2 Suites is coming together quickly too.

Community Development Manager Kruschke said that a sign variance for NewLife Church will be on the January meeting, as well as another item or two.

Community Development Manager Kruschke thanked Planning Specialist Sydnee Stroeing for all she has done and said she is unfortunately leaving us at the end of this month as she took a job in another community. He congratulated her on her new job and thanked her for her work while she was here.

A motion was made by Effertz to adjourn was seconded by Springer-Gasner at 5:51 pm. All Commissioners voting Aye, the motion carried.

Respectfully Submitted,

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Greg Kruschke
Community Development Manager

OWATONNA PLANNING COMMISSION MINUTES FOR JANUARY 9, 2024

The Owatonna Planning Commission met in regular session at 5:30 pm in the Charles S. Crandall Center – Chambers at City Hall with Chairperson Kelly Rooks conducting the meeting. Present at roll call were Commissioners Mark Meier, Rachel Springer-Gasner, Kelly Rooks, John Eickhoff, Mark Wilson, Nick Peake, and David Effertz. Community Development Manager Greg Kruschke and Administrative Technician Kristen Kopp were also present.

A motion was made by Effertz and seconded by Springer-Gasner to approve the minutes of the regular meeting of December 12, 2023. All Commissioners voting Aye, the motion carried.

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.

The Commissioners discussed the 2050 Comprehensive Plan Draft Vision & Goals.

Vision Statement and Values: Eickhoff said he liked the "strategically located"—that's key. Meier said he'd remove "where the extra mile takes you" as it infers that you have to drive. Kruschke said that's a difficult one as it's the community branding initiative that came out. Rooks said she feels it's a little polarizing with "traditional" and "progressive" in the same sentence. She said she's okay with it as is, but it seems like a daunting task. It's something to strive for. Eickhoff said it also depends on how you interpret "progressive."

Land Use Goals: Rooks asked what "regional destination community center" means. Kruschke said it would service more than the community, maybe hosting events there. Rooks wondered if it means we'd be fighting other towns for gym space. Boeke said regional also means more federal and state monies available. Effertz asked if these were ranked. Kruschke said he wouldn't say they are ranked. Boeke said a lot of this was put in because of the feedback from the citizens. Number one in almost all the questionnaires was community center.

Transportation/Mobility: Kruschke said he's a little leery of a new river crossing across the Straight River. One person had commented on this and they gleaned onto it. It was talked about maybe 30 to 50 years ago. Meier said it doesn't really accomplish much. Kruschke said road maintenance and potholes were a big thing.

Parks and Trails: Eickhoff said there's a comment about a park within every one-half mile and wondered if there were currently guidelines. Kruschke said his guess is that came out of the Park and Rec Master Plan. It's an aspirational goal. Eickhoff asked about the parkland dedication ordinance. Kruschke said that if a developer comes in with a development, they'd have to give a percentage to the City for parkland, or cash in lieu of parkland. Owatonna is one of few cities that does not have one of these ordinances and these ordinances are challenged frequently in the courts. We have to have a Park and Rec Masterplan and a Comp Plan in place. Owatonna is fortunate to have had a lot of people donate parkland in the past. Effertz said he likes to focus on safety. We want to make sure residents are safe when they're using trail systems. This also should be added to the parks.

Housing: Kruschke said we should have a goal of a five-year supply of lots. That will always be a moving target. Right now, we don't have a five-year supply of lots.

Economic Development: Kruschke said that they have a full-time incubator director, so that may come off the list.

City Services and Leadership: Kruschke said that Boards and Commissions continue to be hard to fill. They continue to hear how we add diversity to those boards. The Communications Hub refers to a welcome center and ties into the Community Center.

Eickhoff said overall this is a good plan. He said it will cost a lot and said that fiscal responsibility is key and something to watch. Kruschke said if anyone has comments, to email him by the end of the week.

Community Development Manager Kruschke provided updates on previous items. He said City Council has approved the requests from December. Anna Lee has completed a lot of the improvements on South Elm already and is making decent progress.

Community Development Manager Kruschke provided the year-end Building Reports. We did $110 Million, which is a new record for the City. We only ended up issuing 21 single family houses with a few in process.

A motion was made by Meier to adjourn was seconded by Effertz at 6:00 pm. All Commissioners voting Aye, the motion carried.

Respectfully Submitted,

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Greg Kruschke
Community Development Manager

CITY OF OWATONNA

Department Reports

2023 OWATONNA FIRE DEPARTMENT MONTHLY ACTIVITY REPORT

INSPECTION SERVICES	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	2023	2022
Fire code inspections	134	153	201	112	189	75	175	268	284	363	227	239	2420	1988
Fire alarm inspections	2	1	1	1	1	0	2	2	2	1	3	1	17	20
Sprinkler system inspections	0	1	2	1	4	7	4	2	7	3	4	2	37	49
Nuisance inspections	3	3	6	12	106	78	63	39	47	31	2	3	393	382
Weed inspections	0	0	0	0	70	110	62	75	80	28	0	0	425	550
Sprinkler system permits issued	2	2	2	1	3	1	2	1	1	4	2	5	26	21
Fire alarm system permits issued	2	0	1	1	1	1	2	2	2	3	0	2	17	15
Hood/Suppression system permits issued	0	2	0	1	0	1	1	1	0	0	1	0	7	5
Plan reviews	4	7	7	6	9	12	10	9	10	9	9	12	104	65
Code reviews	6	1	8	6	2	2	2	1	1	2	3	3	37	38
# Knox boxes checked	1	0	0	2	1	1	0	1	0	4	0	1	11	14

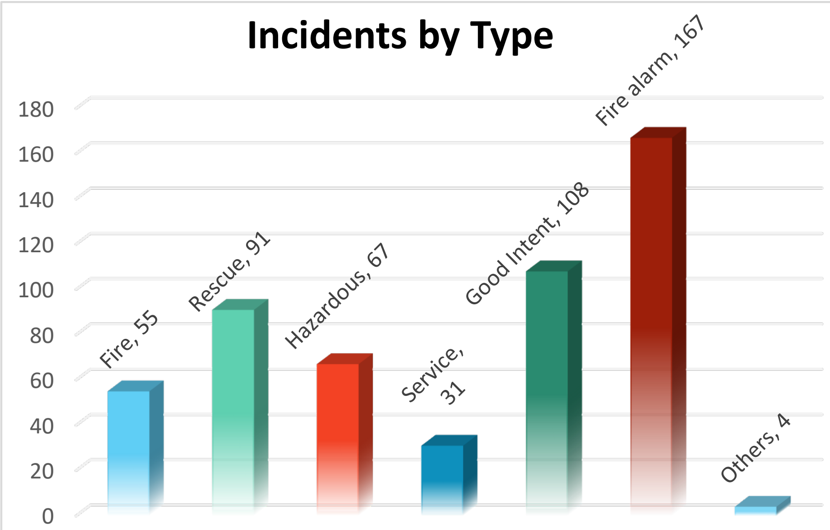
PUBLIC EDUCATION SERVICES	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	2023	2022
# people given tours	0	30	4	0	8	0	13	0	0	259	10	2	326	307
# people given extinguisher demos	0	0	0	0	0	70	0	31	0	0	0	0	101	100
# people at truck visits	0	0	0	200	340	0	0	0	0	453	53	0	1046	738
# people fire safety information	0	72	0	0	0	241	0	110	25	400	50	0	898	1753
# people juvenile firesetters	0	0	0	0	0	0	0	2	0	0	0	0	2	0

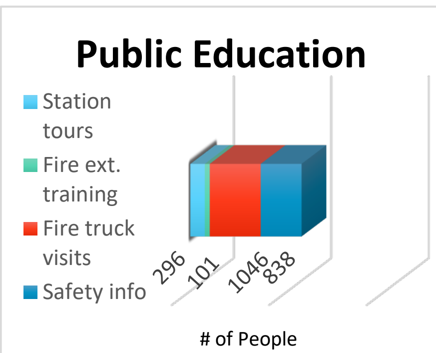
EMERGENCY RESPONSE SERVICES		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	2023	2022
Incidents	City incidents	31	23	22	39	38	43	37	37	55	44	46	29	444	482
	Rural incidents	5	3	5	9	10	8	7	5	7	5	10	3	77	105
	Mutual aid given	0	0	0	0	0	0	0	1	0	0	1	0	2	6
Monthly Totals		36	26	27	48	48	51	44	43	62	49	57	32	523	593
Type of Incidents	Fire	4	7	2	5	8	4	6	5	5	3	4	2	55	67
	Rescue calls	5	4	3	10	9	10	9	6	13	9	7	6	91	119
	Hazardous conditions	3	7	2	7	4	4	10	7	6	4	8	5	67	77
	Service calls	1	0	2	2	3	3	3	2	8	2	3	2	31	31
	Good intent calls	14	3	12	10	8	12	6	10	12	7	10	4	108	113
	Fire alarms	8	5	6	14	15	18	10	12	18	24	24	13	167	179
	Others	1	0	0	0	1	0	0	1	0	0	1	0	4	7
Monthly Totals		36	26	27	48	48	51	44	43	62	49	57	32	523	593
Total training hours		146.00	273.29	338.35	491.00	501.25	741.08	338.57	368.24	360.85	429.13	268.70	184.25	4441	3406

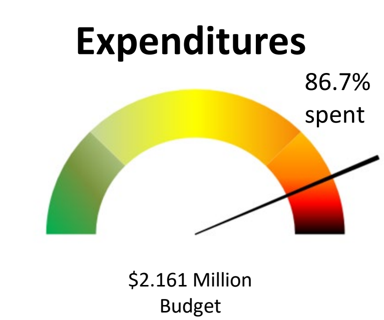
SAFETY SERVICES	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec		2023	2022
# injury reports	1	1	0	0	1	0	0	0	0	1	0	0		4	3
# lost work hours	0	0	0	0	0	0	0	0	0	0	0	0		0	0
# fire extinguishers serviced	201	34	0	35	19	23	0	23	0	0	70	20		425	254
1st aid supplies checked	0	0	0	1	0	0	0	0	0	0	0	0		1	5
Full-time shift hours worked	1724.25	1584.00	1743.50	1658.50	1736.00	1584.75	1764.50	1666.50	1752.50	1608.75	1680.75	1750.50		20254.50	18709.75
Full-time overtime hours worked	129.49	159.80	116.81	237.91	96.61	253.91	88.97	155.80	68.93	181.08	132.59	81.50		1703.40	1969.09
Part-time hours worked	268.02	187.00	315.75	471.50	494.00	478.00	372.00	406.00	365.75	474.10	362.50	205.25		4399.87	4535.00
Monthly Hours Worked Total	2121.76	1930.80	2176.06	2367.91	2326.61	2316.66	2225.47	2228.30	2187.18	2263.93	2175.84	2037.25	#	26357.77	25213.84

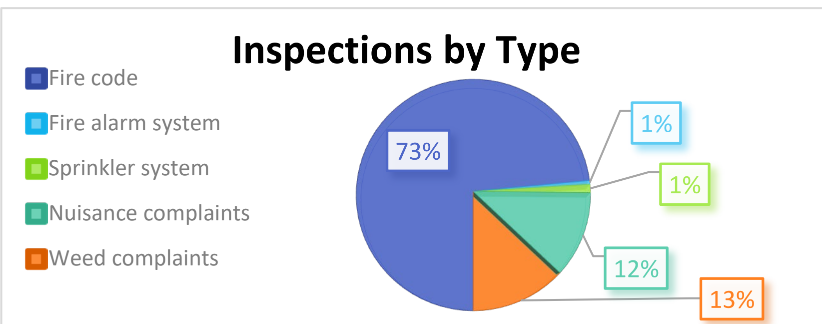
OWATONNA FIRE DEPARTMENT DASHBOARD

2023 STATISTICS

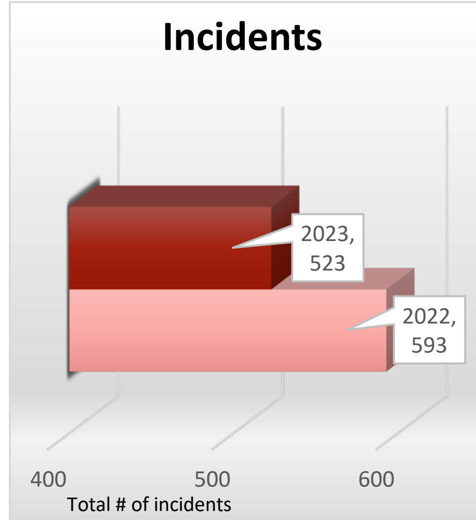


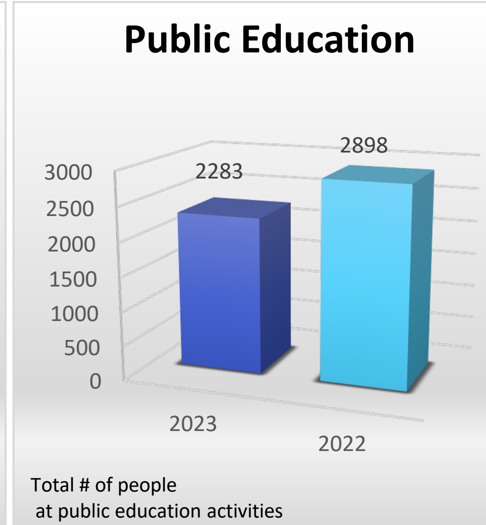


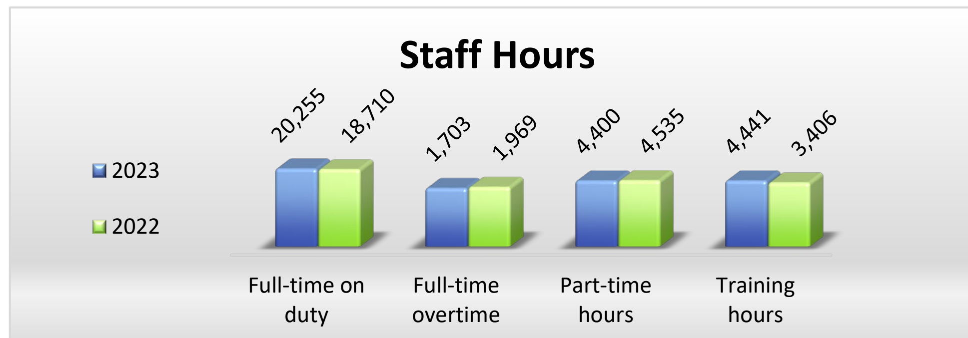


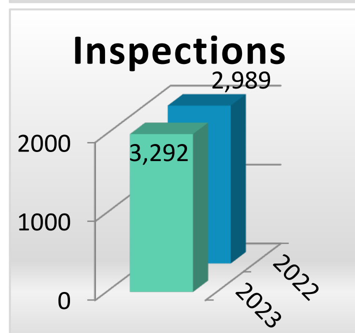


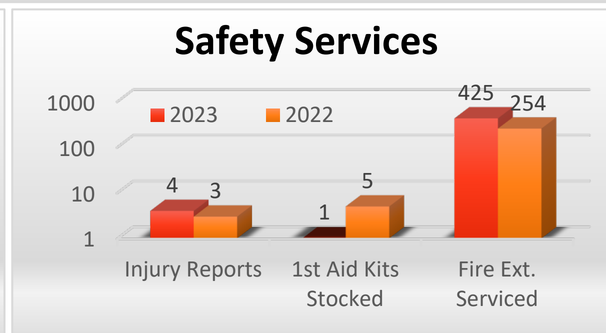
2023 VS 2022 STATISTICS











Updated through December 2023

COMPARISON REPORT OF BUILDING DONE IN CITY OF OWATONNA IN YEARS 2023 AND 2024															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 '23	0	0	5	16,600	8	443,880	7	5,117,850	66	494,614	0	0	0		86	6,072,944	
Jan '24	0	0	2	6,500	33	7,806,205		** see below	95	763,150	0	0	0		130	8,575,855	
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	
Feb '24																	
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	
Mar '24																	
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	
Apr '24																	
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	
May '24																	
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	
Jun '24																	
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	
Jul '24																	
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	
Aug '24																	
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	
Sep '24																	
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	
Oct '24																	
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	
Nov ' 24																	
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	
Dec '24																	

**Starting April 2023, Commerical and Industrial are combined

Owatonna Building Inspection Department Comparison Report- Construction to Date 2023/2024

Construction Report for Permits Issued through January, 2024

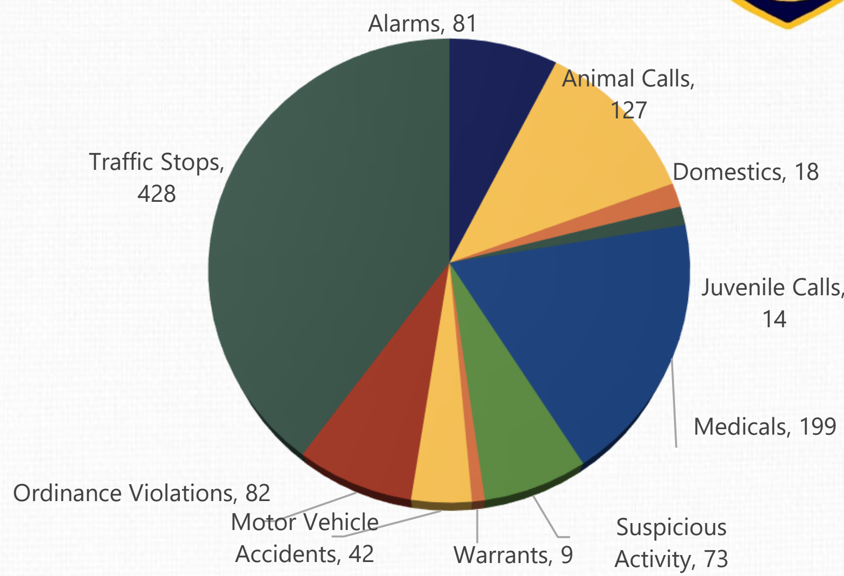
TYPE OF WORK	2023 PERMITS ISSUED	PERMITS ISSUED FOR CONSTRUCTION COST	Units	2024 PERMITS ISSUED	PERMITS ISSUED FOR CONSTRUCTION COST	Units
NEW DWELLINGS	0	0	0	0	0	
ACCESSORY BUILDINGS	5	16,600.00		2	6,500.00	
(INCLUDES GARAGES, UTIL.						
BLDGS, SW. POOLS, ETC.)						
COMMERCIAL AND INDUSTRIAL PF	15	5,561,730.00		33	7,806,205.00	
RESIDENTIAL ADD. & ALT.	66	494,614.00		95	763,150.00	
DUPLEXES & APTS.	0	0	0	0	0	0
(INCLUDES ATTACHED SF)						
DEMOLITION PERMITS	0	0		0	0	
TOTAL PERMITS ISSUED	86	6,072,944	0	130	8,575,855	0

Owatonna Police Department Crime Clock
January 2024

Calls for Service: 3,508

Average Daily Calls for Service: 113.16
Busiest Day: Monday

Average Hourly Calls for Service: 4.72
Busiest Hour: 2:00 PM



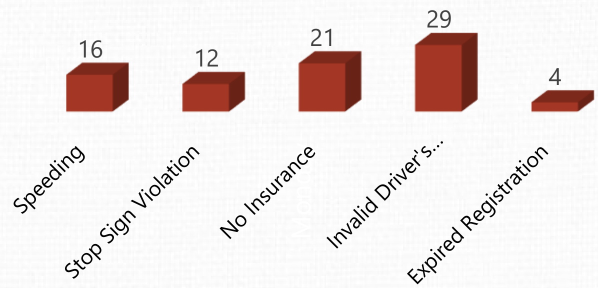
The Owatonna Police Department issued a total of 102 citations and 290 warnings in January.

Monthly Traffic Stops: 428

Average Daily Traffic Stops: 13.81

Average Hourly Traffic Stops: 0.58

Top 5 Citation Types



The above statistics are based on calls for service reports compiled monthly. Official crime data can be found in our annual reports.

CITY OF OWATONNA

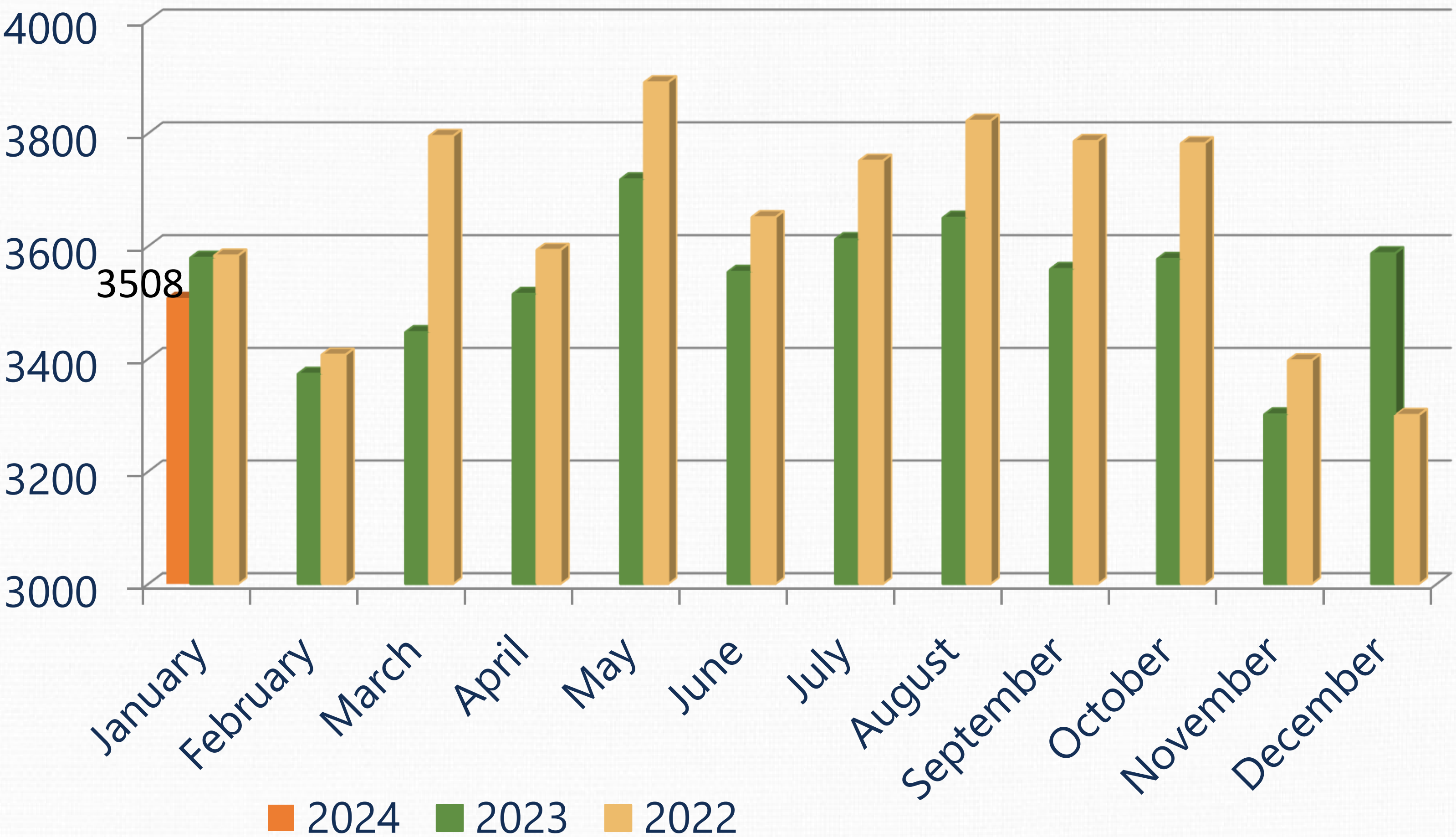
Owatonna Police Department

January 2024 Crime Statistics

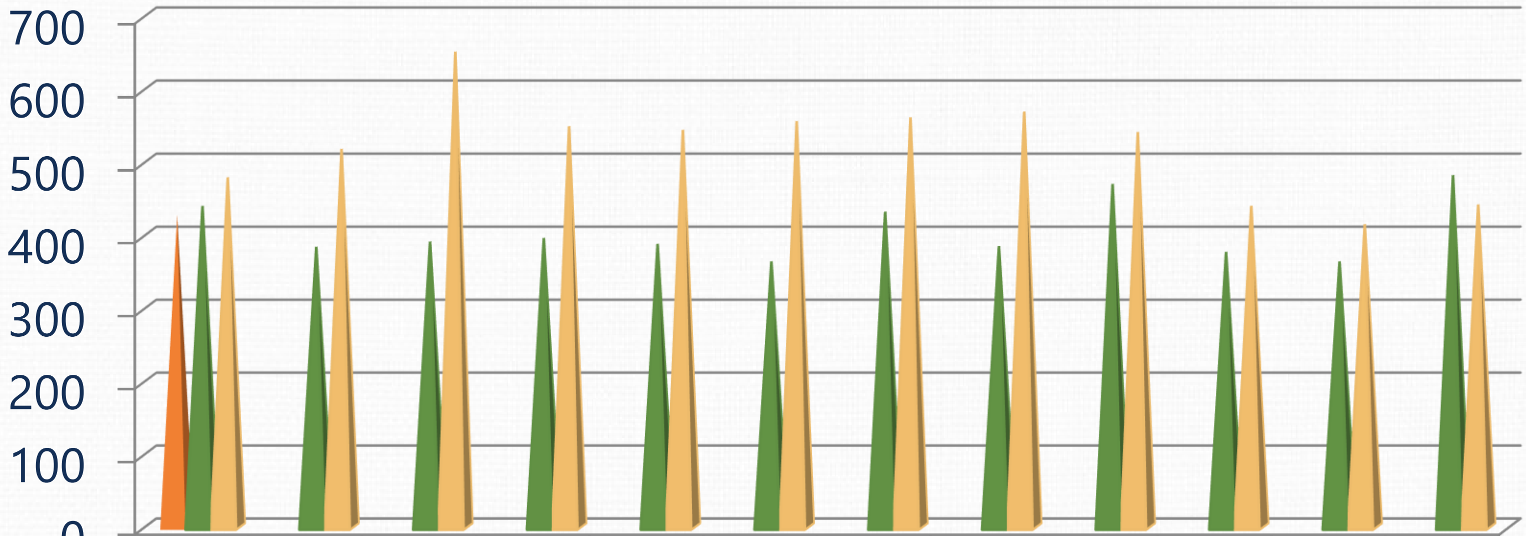
CITY OF OWATONNA

The following statistics are based on calls for service reports compiled monthly. Official crime data can be found in our annual reports.

Total Calls for Service

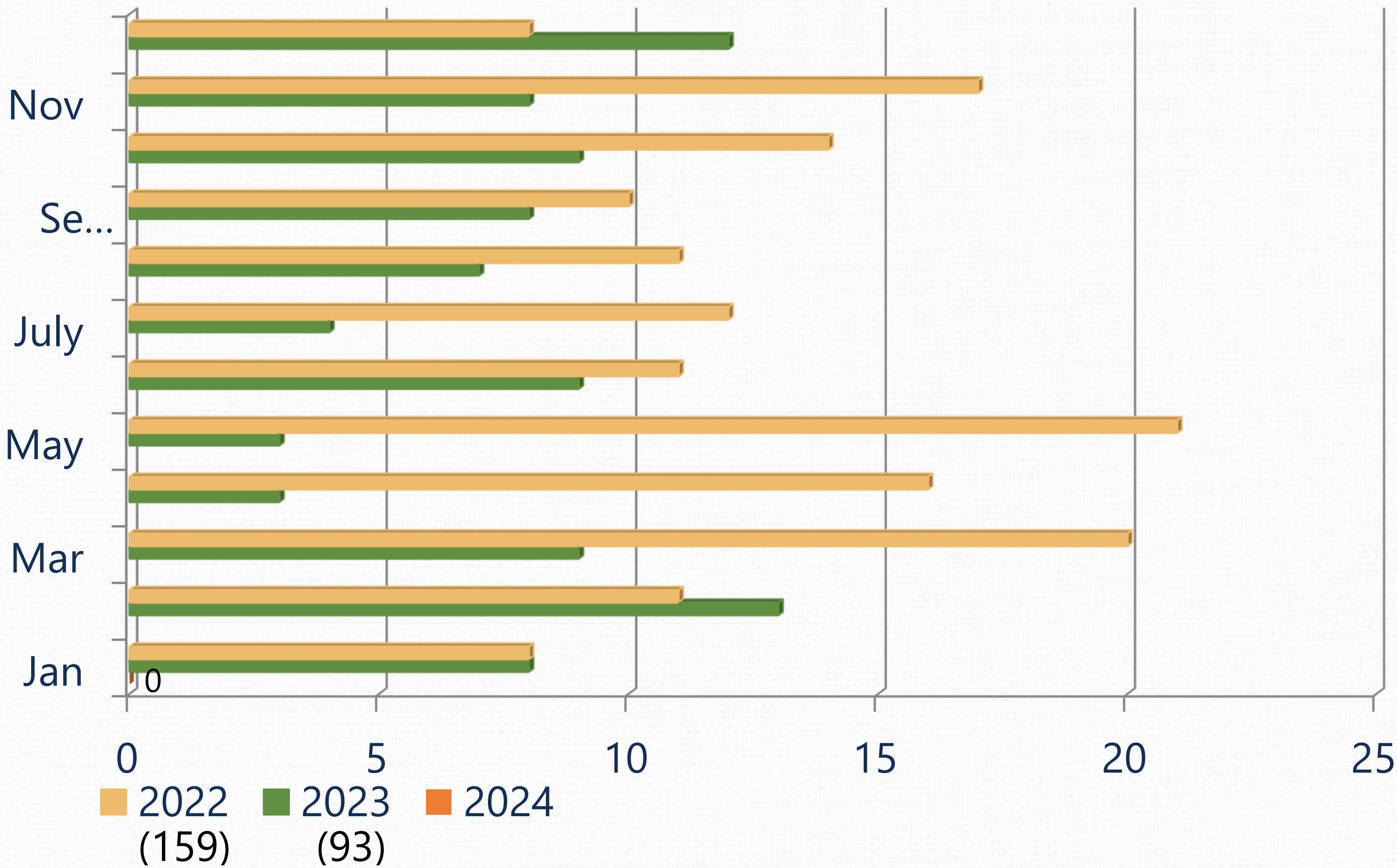


Traffic Stops



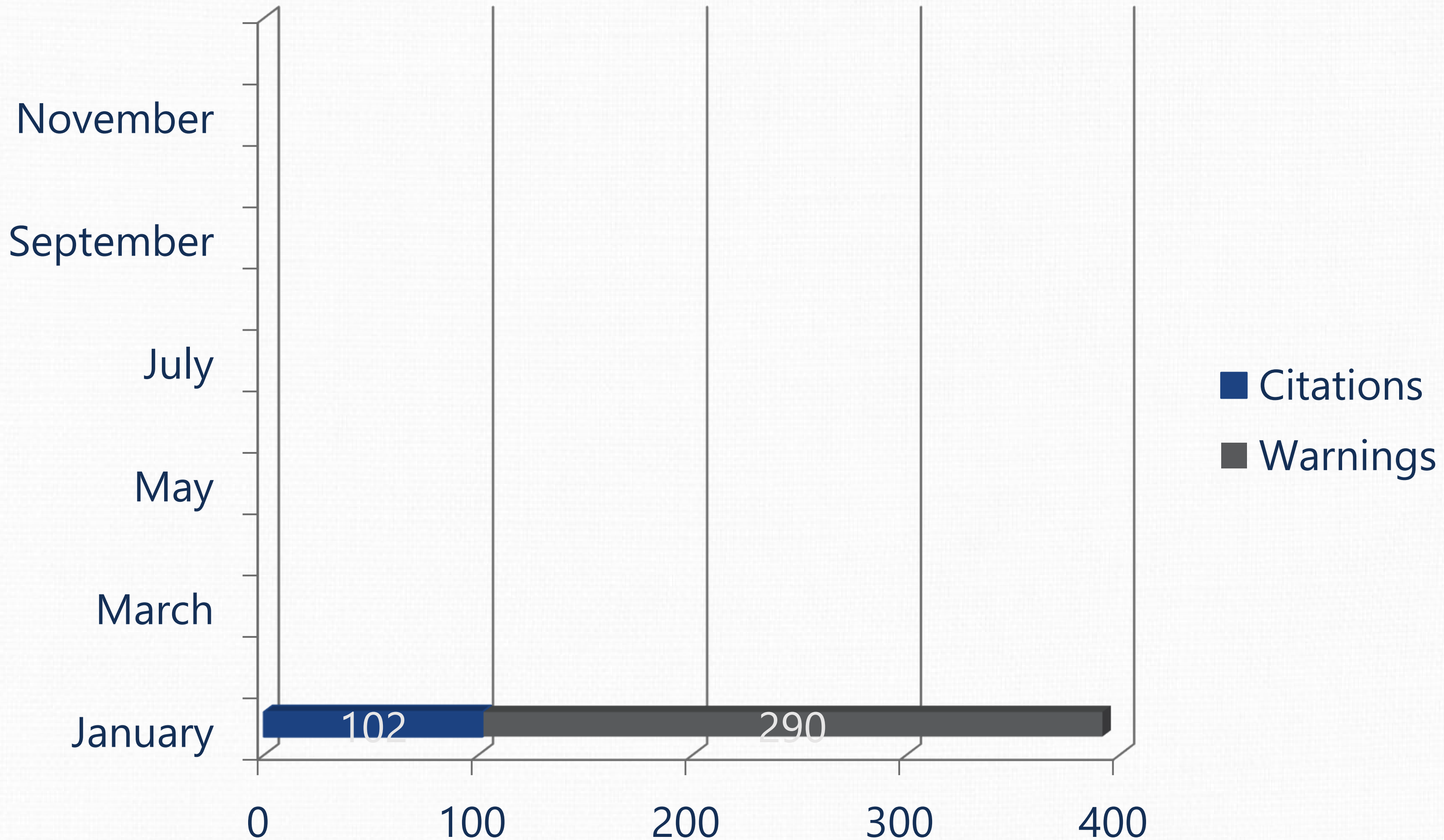
	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sept	Oct	Nov	Dec
2024	428											
2023	440	384	391	396	388	364	432	385	470	377	364	482
2022	479	518	651	549	544	556	561	569	541	440	415	442

DWI



CITY OF OWATONNA

Citations and Warnings



CITY OF OWATONNA

Group A Crimes

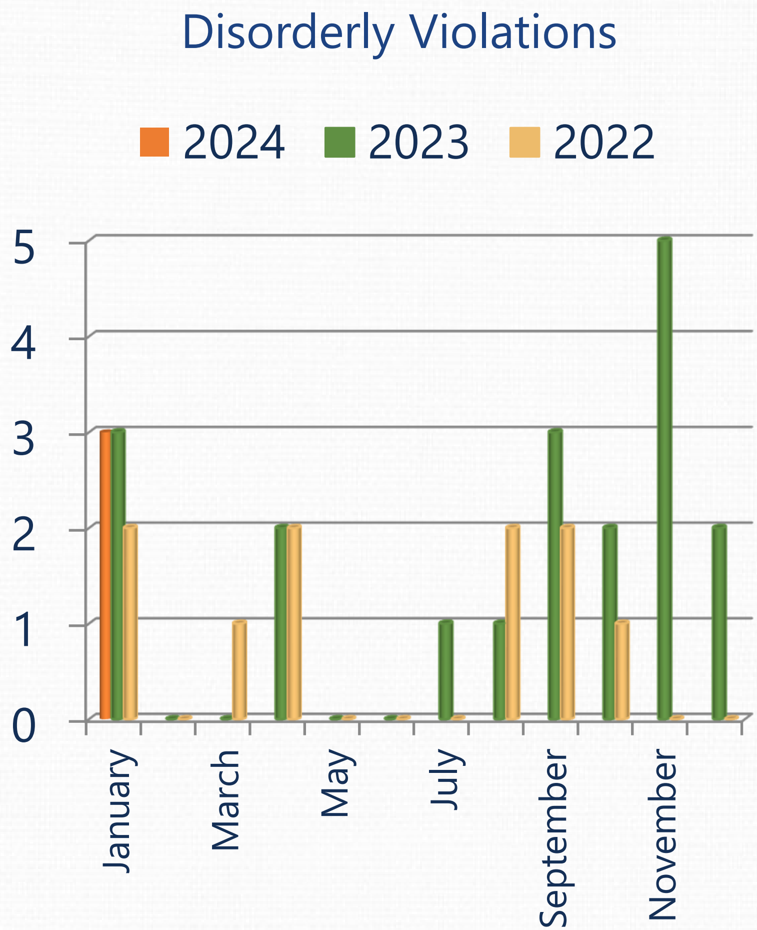
Murder and Non-Negligent Manslaughter	0	Shoplifting	9	Embezzlement	1
Kidnapping/Abduction	0	Theft From Building	1	Identity Theft	0
Rape	0	Theft From Motor Vehicle	1	Stolen Property Offenses	0
Sexual Assault with an object	0	Theft of Motor Vehicle Parts or Accessories	0	Destruction/Damage/Vandalism of Property	4
Fondling	2	All Other Larceny	1	Drug/Narcotic Violations	4
Robbery	0	Motor Vehicle Theft	2	Drug Equipment Violations	1
Aggravated Assault	2	Counterfeiting/Forgery	0	Pornography/Obscene Material	0
Simple Assault	6	False Pretenses/Swindle/Confidence Game	1	Weapon Law Violations	2
Intimidation (Assault)	3	Credit Card/Automated Teller Machine Fraud	1	Human Trafficking, Commercial Sex Acts	0
Arson	0	Impersonation	0	Animal Cruelty	0
Burglary/Breaking & Entering	1	Wire Fraud	1	TOTAL	43

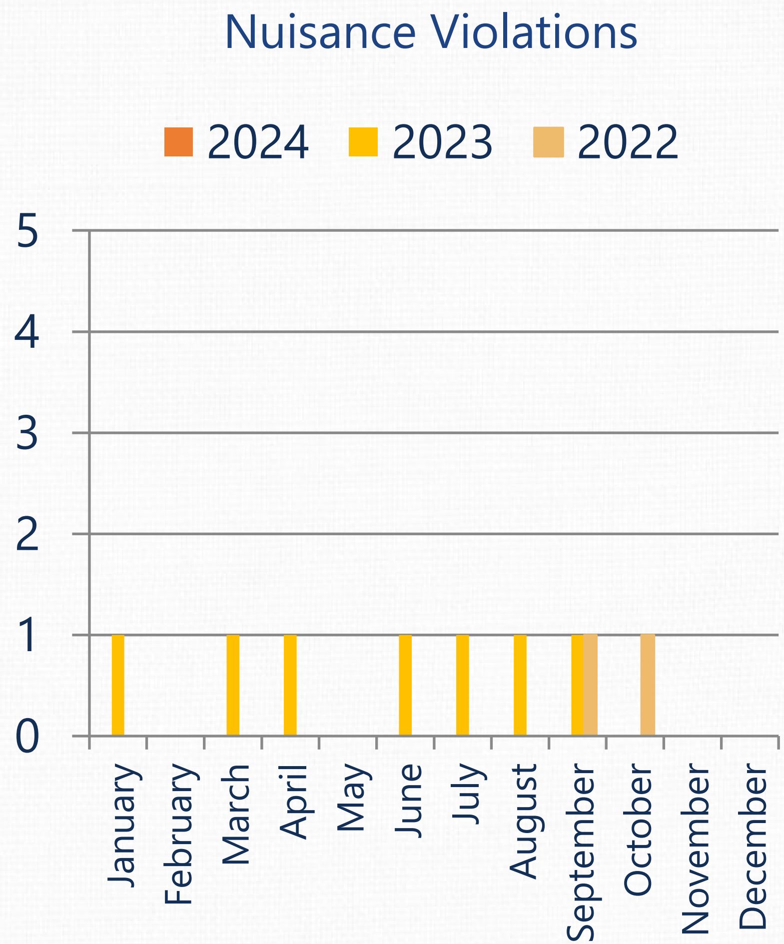
CITY OF OWATONNA

Group B Crimes

Curfew/Loitering/Vagrancy Violations	2
Disorderly Conduct	1
Driving Under the Influence	7
Family Offenses, Nonviolent	0
Liquor Law Violations	2
Trespass of Real Property	0
All Other Offenses	9
	Total 21

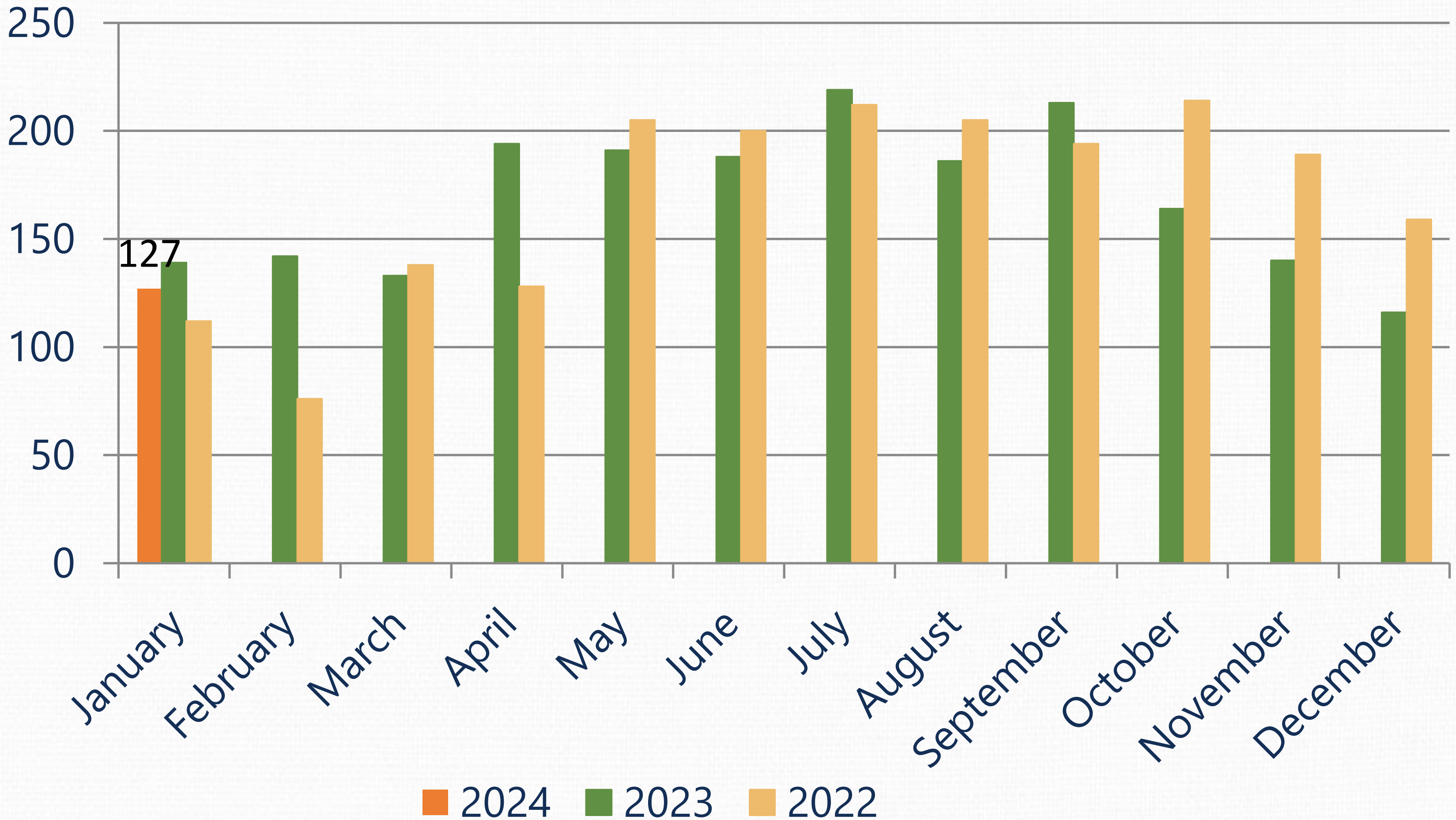
Disorderly and Nuisance Violations





CITY OF OWATONNA

Animal Control Calls



CITY OF OWATONNA

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: mn pheasants inc

Previous Gambling Permit Number: X-74011-23-039

Minnesota Tax ID Number, if any: es29793

Federal Employer ID Number (FEIN), if any: ____

Mailing Address: p.o box 351

City: owatonna State: mn Zip: 55060 County: steele

Name of Chief Executive Officer (CEO): george c sprague

CEO Daytime Phone: 507-456-9337 CEO Email: ____

(permit will be emailed to this email address unless otherwise indicated below)

Email permit to (if other than the CEO): jp585b@live.com

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): VFW Owatonna

Physical Address (do not use P.O. box): 135 Oakdale St,

Check one:

☑ City: owatonna Zip: mn County: 55060

☐ Township: ____ Zip: ____ County: ____

Date(s) of activity (for raffles, indicate the date of the drawing): 03-09-2024

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

- [x] 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: Jeanette Clawson

Title: Admin Coordinator Date: 1/31/2024

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: George C Sprague Date: Jan 31, 2024
(Signature must be CEO's signature; designee may not sign)

Print Name: george c sprague

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.

City of Owatonna, MN

2/2/2024

EP-24-4

Events Permit Application

Status: Active

Submitted On: 1/31/2024

Primary Location

No location

Applicant

Jennifer Hansen
507-456-7904
@ rainbowatonna@gmail.com
P.O. Box 1091
Owatonna, MN 55060

Event Information

Event Contact*

Jennifer Hansen

Location of Event*

Manthey Park Large Pavilion

Description of Event*

Pride in the Park

Pride in the Park

July 13, 2024

At Manthey Park - have rented the large pavilion, there will be five music groups performing between 11 am and 6 pm. Three food trucks will be set in the parking lot along the south edge of the lot and various vendors will setup along both sides the trail.

Event Set Up Date

07/13/2024

Event Set Up Time*

9:00 a.m.

Actual Event Date*

07/13/2024

Actual Event Time*

11:00 - 6:00 p.m.

Clean Up Date*

07/13/2024

Clean Up Time

6:00 p.m.

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

Canceled

Estimated Attendance*

500

Is this event a dance?*

No

Application Information

Sponsoring Organization Name*

Rainbowatonna

Mailing Address*

P.O. Box 1091

City*

Owatonna

State*

Minnesota

Zip*

55060

Website Address*

www.rainbowatonna.org

Primary Contact

Name*

Jennifer Hansen

Phone Number*

507-456-7904

Cell Phone

507-456-7904

Email Address*

hjhansentwo@gmail.com

Primary On-site Contact

Name*

Jennifer Hansen

Cell Phone*

507-456-7904

Alternate On-site Contact

Name*

Nathan M. Black

Cell Phone*

612-385-0378

Refer Media or Citizen Inquiries To:

Name*

Nathan M. Black

Phone*

612-385-0378

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*

9:00 a.m. - 6:00 p.m.

Date*

07/13/2024

Parks*

Yes

Start/End Time*

9:00 a.m. - 7:00 p.m.

Date*

07/13/2024

Name of Requested Park(s)*

Manthey Park Large Pavilion

Will any signs/banners be put up?*

Yes

Number and Size*

10 - size 36 x 48 inches

Will there be any inflatables?*

No

Will there be entertainment?*

Yes

What Type*

5 musical groups will be performing at the event

Will sound amplification be used?*

Yes

Type*

some group and some individual performers

Hours*

11:00 - 6:00 p.m.

Will sound be amplified after 10:00pm?*

No

Sound amplified after 10:00 p.m. will require an Exception to the City's Noise Ordinance. There is a $150 fee for an Exception to the City's Noise Ordinance which must be paid with this Event Application

Will a stage or tent(s) be set up?*

No

Will there be temporary fencing?*

No

Will merchandise/food items be sold?*

Yes

How many vendors expected?*

25

Will food be prepared on site?*

Yes

Will alcohol be sold?*

No

Is this a request for a temporary permit?*

Yes

Will there be a fireworks display?*

No

Describe power needs and location of power source*

There will only be need for power for the musicians and microphone being used. The outlets at the Pavilion will suffice for our needs.

Describe level of advertisement*

Owatonna Peoples Press, Steele County Times and local flyers
Social Media Platforms: Website, Facebook, InstraGram, etc.

Have adjacent property owners been notified of this event?*

No

Will the event need barricade(s)?

No

Will the event need cones?*

No

Size Needed*

Small

Will Central Park Stage be used?*

No

Will there be any horses?*

No

Describe trash removal and cleanup plan during and after event*

Clean-up will happen immediately following the event on July 13th. There are 18 committee members, plus a 2 girl scout troops that will assist with clean-up. We will bag up all the garbage in the paviolion and the surrounding area. These will be left in a central location.

Will event need traffic control?*

No

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

We have 18 committee members that will be stationed throughout the park area to ensure the safety of our participants. The Owatonna Police Department will also be advised of the event.

Will "No Parking" signs be needed?*

No

Will event need security?*

No

Will event need Emergency Medical Services?*

No

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

Should severe weather be anticipated the event will either be canceled or participants will be asked to leave the park and seek appropriate shelter.

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

Name*

Jennifer Hansen

Phone Number*

507-456-7904

Email*

hjhansentwo@gmail.com

List any other pertinent information

This is our second "Pride in the Park" event. It is open the the public and will run from 11:00 a.m. - 6:00 p.m. at Manthey Park in the Pavilion and park area. We have 5 musical groups/individuals that will be performing and 25 vendors that will be providing information, selling food/beverages (non-alcoholic), or art/craft items. We have art activities and a Reading Rainbow sponsored by Southern Minnesota Initiatives Foundation. OHS Students will have a temporary tattoo and facepainting booth. There will be yard games available for the public to play.

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

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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*

Jennifer J Hansen
Jan 31, 2024

Internal Use

Special Provisions

Fire Department Approval / Comments / Notes

Approved with no comment, no impact.

Park & Rec. Department Approval / Comments / Notes

Approved, No impact. Reminder to do for locates for any staking. Group has pavilion reserved, no baseball & softball fields reservations on file.

Police Department Approval / Comments / Notes

Approved. No budget impact. On-duty staff will monitor for peace and safety

Public Works Department Approval / Comments / Notes

Approved, no impact- food vendors should be set to open to the grass area and not the parking lot to keep attendees out of traffic area.

Building & Inspection

Approved, no impact.

Date to Council

February 6, 2024.

Council Notes

Jeanette called Ms. Hansen to ask if vendors would be within the pavilion or along the trail - vendors will be set up on both sides of the trail area.

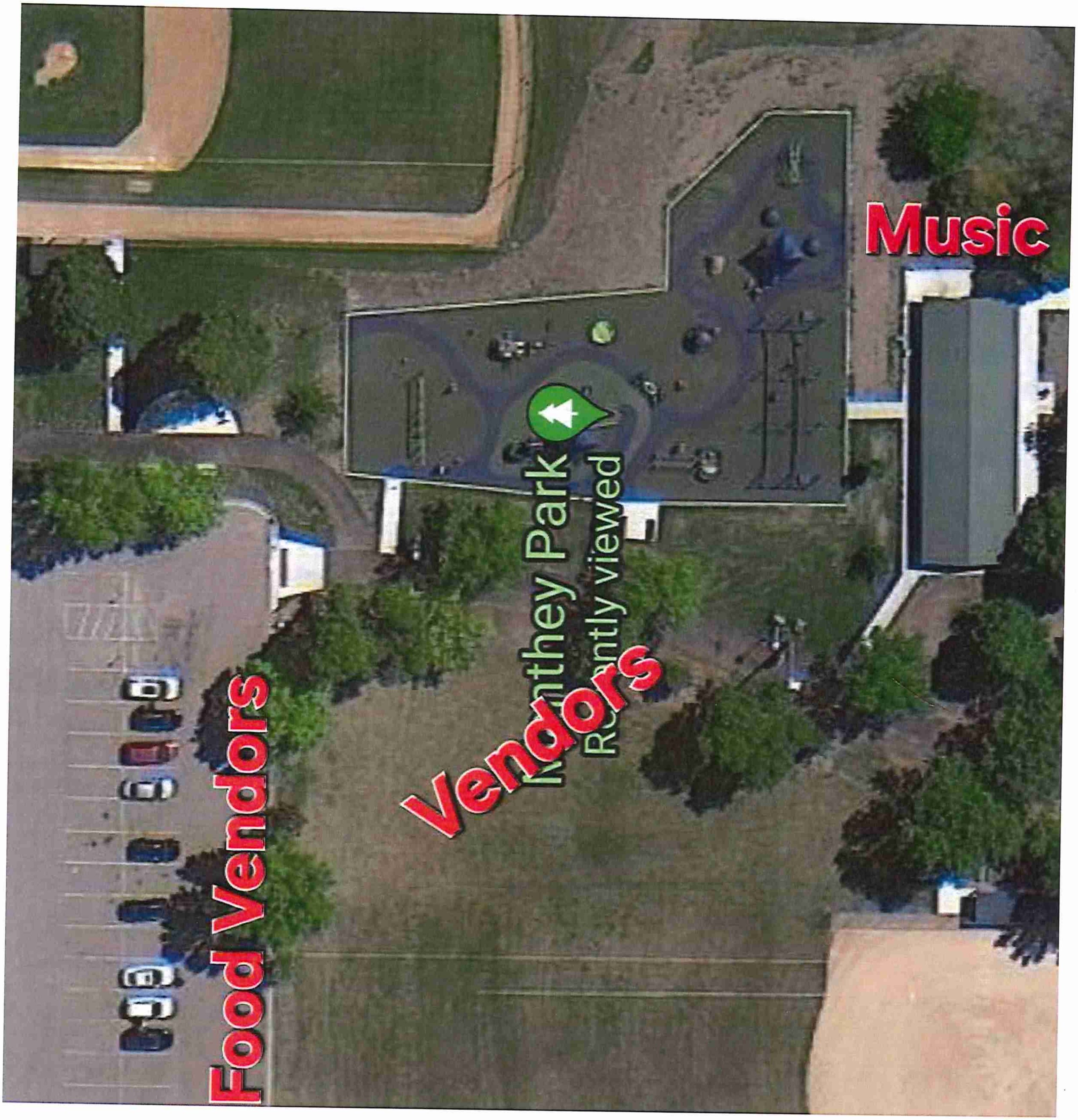
Items Needed

Manthey Park - have rented the large pavilion. Three food trucks to set in the parking lot and vendors on both sides of the trail.

Attachments

Site Plan
Screenshot_20240131_140258_Maps.jpg
Uploaded by Jennifer Hansen on Jan 31, 2024 at 2:11 PM

REQUIRED


Music
Vendors
Food Vendors

CITY OF OWATONNA

Miscellaneous

CITY OF OWATONNA

DATE: February 6, 2024
TO: Mayor and City Council
FROM: Eric Anderson, Recreation Manager
Jenna Tuma, Parks, Trails, Recreation & Facilities Director
SUBJECT: Marketing Services Agreement - Golf Now

Purpose:
Approval of the Marketing Services Agreement with Golf Now for Brooktree Golf Course.

Background:
Golf Now is a software, marketing, and technology software company with a national database that Brooktree Golf Course would leverage as an additional tool to market the course. Golf Now is the largest online tee-time marketplace in the world. It helps golfers and golf courses better connect by offering tee-time bookings at 11,000+ courses worldwide. Golfers can search the Golf Now database and reserve tee times online, based on search criteria such as location, price, and availability. Golf Now integrates with the Club Caddie Golf Management software (the software approved by the City Council on January 16, 2024, for Brooktree Golf Course operations), allowing for a smooth customer experience when booking tee times. The agreement is effective for 1 year and auto-renews for 1 year, until written notice is provided at least 30 days before the agreement term.

Budget Impact:
The fee for use of Golf Now is a daily tee-time trade, resulting in no direct expense on the general operating budget. The maximum payment for use of the Golf Now software is a daily 18-hole, 4-person trade. If the provided trade time does not sell, Golf Now will not collect any payment for that day. Brooktree has the authority to determine the available trade times, which would result in providing historically low-use tee times. The use of this software will expand the marketing capabilities without the need for additional general budget marketing dollars.

Staff Recommendation:
Staff Recommends approval of the agreement.

Attachments:
1. Golf Now Marketing Services Agreement - Legal Review & Updates

ORDER FORM
SO-38431

This Order Form, subject the terms and conditions of the Agreement (as defined below), is entered into between GolfNow, LLC ("GolfNow") and City of Owatonna ("Client") (individually, a "Party" and collectively, the "Parties"), effective as of the Effective Date set forth below, and shall govern GolfNow's provision of software, marketing, and/or technology services for Client's golf courses listed below.

GolfNow: 7580 Golf Channel Drive Orlando, FL 32819	**Client (Legal Entity Name):**	City of Owatonna
	Client's Mailing Address:	1369 Cherry St Owatonna, MN 55060 USA
	Client's Golf Course List:	Brooktree Golf Course

Prepared By:	Joe Cox	**Client's Contact Name:**	Kurt Strangler
Phone:	(612) 394-8951	**Client's Contact Phone:**	5074442467
Email:	joe.cox@nbcuni.com	**Client's Email:**	kurt.stangler@ci.owatonna.mn.us

TERM AND RENEWALS: The Initial Term of this Agreement shall be effective as of the last date of the last signature written below (the "Effective Date") and shall expire One (1) Year thereafter and shall be non-cancellable, except as provided herein. **UPON EXPIRATION OF THE INITIAL TERM, THIS AGREEMENT SHALL AUTOMATICALLY RENEW FOR SUCCESSIVE ONE (1) YEAR TERMS UNLESS OTHERWISE TERMINATED BY EITHER PARTY IN WRITING AT LEAST THIRTY (30) DAYS PRIOR TO ANY RENEWAL TERM.**

PRODUCT(S) & SERVICE(S)

Golf Course	Product
Brooktree Golf Course	Golf365 GolfNow

TOTAL PAYMENT(S)

Trade Payment Terms

Payment Number: PD2-58553/CAP-73677 Brooktree Golf Course Trade Provided: All Days Trade Load Time: 1:16 PM 18 Holes Cart Included Bookable for 1 to 4 Players and allow singles to fill partially booked tee times	Days In Advance to Load: 7 Trade Time will have a Bookable Window beginning at 1:15 PM

GOLFNOW BOOKING ENGINE	ACKNOWLEDGED
Client shall be required to use a booking engine powered by GolfNow.	No

ORDER FORM
SO-38431

ONLINE MARKETING	ACKNOWLEDGED
Does Client agree to grant GolfNow permission to purchase keywords in search engine marketing that include Client's name, or any other trade name, trademark or other intellectual property belonging to Client?	Yes
MILITARY TEE TIMES	ACKNOWLEDGED
Does Client agree to grant GolfNow permission to add Client inventory to MilitaryTeeTimes.com at a fifteen percent (15%) discount relative to all inventory released and posted on golfnow.com?	No

AGREED TO AND ACCEPTED
This Order Form is subject to the attached Terms and Conditions (the "Terms and Conditions") and any other attached addenda (collectively, the "Agreement"). The Agreement shall constitute a legally binding agreement between Client and GolfNow, and Client accepts and agrees to the terms of the Agreement by signing below.

__________ Initial Here to confirm you have read the Terms and Conditions

Client Signature: ____________________ *Printed Name:* ____________________ *Date:* ____________

GolfNow Signature: ____________________ *Printed Name:* ____________________ *Date:* ____________

If you are a Tax Exempt organization, please check box and click button below to upload a current copy of your tax exemption certification.

Tax Exempt ☐

I. GolfNow Standard Terms and Conditions for Products and Services.

These Standard Terms and Conditions (the "**Terms**") and any applicable Additional Terms shall apply to Client's business relationship with GolfNow, LLC ("**GolfNow**") and any subsidiary or affiliate of GolfNow. For purposes of these Terms, any reference to Client shall mean the legal entity listed as "**Client**" on the relevant Order Form or other similar sales agreement, including applicable addenda (collectively as the "**Order Form**") between GolfNow and Client. Certain GolfNow products or services may also be subject to additional terms and conditions specific to those products or services as set forth below (the "**Additional Terms**"), including the following:

- SmartPlay Merchant Terms and Conditions;
- Answers Reservation Center Terms & Conditions;
- Full Swing Terms and Conditions;
- Toptracer Terms and Conditions;
- ClubBuy Terms and Conditions;
- GolfNow Payments Merchant Services Agreement for Sub-Merchants; and
- Clubhouse Bulletin Terms and Conditions.

These Terms and the Additional Terms shall be subject to and incorporate the terms and conditions of the Order Form (collectively referred to as the "**Agreement**"). Any capitalized terms used but not otherwise defined in these Terms shall have the respective meanings ascribed to them in the applicable Order Form.

In the event GolfNow allows Client to access and/or use any portion of the GolfNow Services following the termination date of the Agreement, such access and/or use of the GolfNow Services shall be governed by the then current Terms posted on https://golf.nbcsportsnext.com/about/terms-and-conditions/.

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1. Term and Termination. The Initial Term of this Agreement, along with any applicable Renewal Term, shall be for the period of time as set forth on the attached Order Form (the "**Term**"), and shall be non-cancellable except as provided herein. Either Party may immediately terminate this Agreement in the event that the other Party materially breaches this Agreement and fails to cure such breach within thirty (30) days' written notice of such breach. Furthermore, GolfNow reserves the right to immediately suspend Client's and/or it's Users' access to the Services in the event that either Client or a User, as the case may be, is in breach of this Agreement or engaged in any unauthorized conduct (including any violation of the terms of this Agreement or any applicable law or third party right). Upon termination of this Agreement, Client shall delete and return all Software (including all copies), and sign a statement certifying same. Client agrees and acknowledges that GolfNow has no obligation to retain the Client Data and shall, unless legally prohibited, delete such Client Data in its systems or otherwise in its possession or under its control following termination of the Agreement.

2. GolfNow Services. GolfNow shall provide the Products and/or Services (including any Software) set forth in the applicable Order Form (the "**Services**"). When applicable, GolfNow shall provide access to Client's tee times through any of its branded websites and mobile apps (including but not limited to GolfNow.com and TeeOff.com), partner or affiliated websites, or any other distribution channel (the "**GolfNow Distribution Channels**"). Unless agreed upon otherwise, GolfNow shall apply the latest version of the GolfNow Services to the marketing and administration of Client tee times. GolfNow shall notify Client in advance in writing of any updates to the GolfNow Services and will provide appropriate training and/or materials to Client concerning all updates relating to the GolfNow Services in use by Client. Client shall provide GolfNow with access to all of the internal and external systems (including third party systems licensed to Client) necessary for GolfNow to provide the Services. Client shall honor all tee times reserved through the GolfNow Distribution Channels and shall treat all golfers originating from GolfNow Distribution Channels with proper courtesy and respect. Client shall make every effort to maintain its tee time inventory in the most up-to-date manner possible, with proper communication to GolfNow regarding changes in availability, golf course conditions, etc. The Parties shall work cooperatively to minimize double-bookings, cancellations and the like.

3. GolfNow Software. To the extent that GolfNow provides Client with any software under this Agreement, GolfNow grants Client a limited, non-exclusive, non-transferable license to utilize the software as set forth on the included Order Form (the "**Software**"). Subsequent enhancements, updates, including code corrections and fixes which correct problems with the Software, including any online user instructions and help files ("**Documentation**"), made available by GolfNow to all subscribing customers for the same offering will be made available to Client at no additional charge. However, any new applications, application modules or enhancements that are not offered generally by GolfNow as part of the purchased Software require renegotiation of terms. GolfNow reserves the right to require mandatory upgrades of the Software as may be necessary, as well as to require Client to utilize alternative and upgraded versions of the Software from time to time (at no extra charge to Client unless Client has consented thereto). This Agreement will apply to any application updates, upgrades and new modules or offerings subsequently provided by GolfNow to Client as part of any purchased Services. GolfNow will provide access, user identification and passwords to a reasonable number of designated Client employees, representatives, consultants, contractors or agents who are authorized to use the Services on behalf of Client (each a "**User**"). Client understands and acknowledges that all third-party vendors must have a written agreement with GolfNow in order to create any interface with the Software. If Client provides its own hardware (including peripheral equipment) for use with the Software, such hardware must meet or exceed GolfNow's current technical specifications for purposes of compatibility with the Software.

4. Hardware. To the extent GolfNow provides Client with any hardware pursuant to the applicable Order Form (the "**Hardware**"), and that Order Form indicates such Hardware will remain the property of GolfNow ("**GolfNow-Owned Hardware**"), the GolfNow-Owned Hardware shall be returned by Client to GolfNow within fourteen (14) days upon the earlier of: (i) termination of this Agreement; or (ii) expiration of the Term. Client assumes all risk of loss or damage to any Hardware. Client's recourse with respect to defective Hardware shall be limited to the applicable manufacturer's warranty. Unless the Parties mutually agree otherwise, Client shall be responsible for the cost of: (x) the replacement of defective Hardware not covered by manufacturer's warranty; and (y) any Hardware upgrades or replacements necessary to meet the minimum system requirements of the GolfNow Services received by Client. GolfNow agrees to cover up to five gigabytes (5GB) of data per month during the Term of the Agreement ("**Data Limit**") for each iPad provided by GolfNow. Should Client exceed the Data Limit, Client shall be responsible for any additional charges incurred as a result.

5. Support and Training. GolfNow shall provide Client appropriate levels of training (including access to remote training and on-line resources). Additional in-person training may be provided for an additional fee. Telephone and email support shall be provided to Client during normal business hours through GolfNow's published phone numbers and email addresses.

6. Connectivity. Except as otherwise stated herein, Client will be solely responsible for the procurement, payment, and maintenance of all telephone and internet connectively necessary to utilize the applicable Hardware or Services. Client agrees that such connectivity will meet or exceed bandwidth requirements as may be provided by GolfNow, and that GolfNow shall not be responsible for any disruptions in Client's use of the Hardware or Services caused by Client's connectivity.

7. Hardware and Software Configuration and Security. Client agrees that, should the configuration of the Hardware or Software be altered (either by Client's personnel or, upon Client's written request, by GolfNow personnel) to allow unrestricted internet browsing or additional functionality, or Client uses the Hardware or Software to visit web sites that are not pre-approved by GolfNow, Client agrees that: (i) it does so at its own risk; (ii) it will pay for, reimburse GolfNow for and be liable for any resulting tangible or intangible damages, losses or injuries; (iii) all uptime obligations and warranties associated with the Hardware and Software will be voided; and (vi) it will be liable for and indemnify, defend and hold GolfNow harmless from any loss or damage resulting from such alterations or internet use, including but not limited to, actual or alleged data security breaches or the introduction of malware and viruses. GolfNow will, if requested by Client, provide repair and technical support services concerning such issues at its then-standard consulting rates. Client also agrees to reimburse GolfNow for all reasonable costs and expenses associated with such repair and technical support. Client will be responsible for maintaining security on its network at all times. GolfNow assumes no responsibility for viruses, malware or other issues that arise due to activity on Client's network, and accepts no liability for the consequences of said activity, regardless of the ownership of the hardware residing on thenetwork.

8. Fees and Pricing. Client's payment to GolfNow shall be the "**Total Payment**" amount set forth on the relevant Order Form. If Client agrees to charge a Transaction Fee for rounds booked on Client's website through a GolfNow booking engine, Client's share of the Transaction Fee, as set forth in the Order Form, shall be net GolfNow's costs (approximately 5%). For the avoidance of doubt, the Transaction Fees referenced in the Order Form do not include any convenience fees charged by GolfNow through GolfNow's Distribution Channels. If applicable, Client shall have the right to approve the price and amount of all non-Trade Time inventory offered through GolfNow's Distribution Channels. GolfNow shall receive tee times and rates at least as favorable to GolfNow as the most favorable tee times and rates offered or provided by Client to any other third-party distribution service or any third party with substantially similar features, functionality, or capabilities as those provided by GolfNow.

Client acknowledges and agrees that Client's payment to GolfNow, whether cash or provision of Trade Time(s), is a material element of this Agreement. Due to this material element, in the event that Client does not comply with the payment requirements hereunder or otherwise breaches the terms of this Agreement (each a "**Non-Compliance Event**"), Client shall be required to pay the following fees to GolfNow: (1) For Products/Services being paid for via Trade Time(s): Five Hundred Dollars ($500) per Product and/or Service, per Golf Course, per month for each month after the first instance of any Non-Compliance Event through either: (i) the cure of the Non-Compliance Event; or (ii) the end of the current Term, whichever is shorter; and (2) For Products/Services being paid for in cash: Client will be invoiced for the cash price owed to GolfNow for those Products/Services for the remainder of the Term, with payment being due within thirty (30) days of Client's receipt of such invoice. Additional fees relating to Non-Compliance Events may apply for certain Products and/or Services such as Toptracer Range and Full Swing, or as otherwise set forth in the Order Form. For the avoidance of doubt, nothing in this section shall limit any rights or remedies available to GolfNow relating to a Non-Compliance Event.

<u>Cash Payment Terms</u>: GolfNow will invoice Client for all Products/Services for which Cash is the applicable payment method as indicated on the Order Form, and such invoices shall be payable within thirty (30) days of Client's receipt (unless agreed upon otherwise in writing). In the event Client fails to make timely payment on an outstanding invoice, GolfNow reserves the right to suspend support and/or deactivate Client's Products/Services until such time Client has paid in full. Any invoice one hundred twenty (120) or more days past due shall be considered a Non-Compliance Event and material breach for which GolfNow may immediately terminate the Agreement and disconnect the Products/Services, and the fees set forth in Section 8 shall apply. All Cash Payment pricing for GolfNow's Products/Services are subject to, once per calendar year of the Term upon sixty (60) days' notice to Client, an annual increase of the greater of five percent (5%) or the increase in the Consumer Price Index for Urban Consumers, as issued by the Bureau of Labor Statistics, U.S. Department of Labor, over the prior twelve (12) month period ("**CPI**"), applied on a cumulative year-over-year basis starting from the Effective Date of the applicable Order Form, unless and to the extent such Order Form sets forth different terms for annual Cash Payment increases.

<u>For Clients receiving Golf365 Pro (formerly G1)</u>: Client acknowledges and agrees that Client's use of Golf365 Pro requires Client's adoption of GolfNow's Booking Engine 5.0 (or later) and that Client charge a Transaction Fee on all rounds booked through the GolfNow Booking Engine, which Client shall split with GolfNow according to the terms of the Order Form.

9. Trade Time Definitions.

(i) Trade Time with Rolling Terms: A single 'Trade Time' is defined as four (4) individual 9-hole or 18-hole rounds (as applicable) (with or without cart), with player rule one to four (1-4), made available for sale by GolfNow for its own benefit. Each Trade Time shall be made available for sale beginning on the first day of the month and will be made available on subsequent days throughout the month until a maximum of thirty-one (31) Trade Times (or 124 individual 9-hole or 18-hole trade rounds) have been sold each month. Any Trade Time that 'rolls' to a subsequent day may be posted at any time during that day's Bookable Window, regardless of the Trade Load Time. GolfNow shall have the ability to sell Trade Times at a price that is at the discretion of GolfNow (except where mutually agreed upon otherwise). Trade Times shall be available for purchase on Client's website and GolfNow's Distribution Channels.

(ii) Trade Time with Non-Rolling Terms: A single 'Trade Time' is defined as four (4) individual 9-hole or 18-hole rounds (as applicable) (with or without cart), with player rule one to four (1-4), made available for sale by GolfNow for its own benefit. GolfNow shall have the ability to sell Trade Times at a price that is at the discretion of GolfNow (except where mutually agreed upon). Trade Times shall be available for purchase on Client's website and GolfNow's Distribution Channels.

(iii) Trade Time Posting. The tee times of the individual 9-hole or 18-hole rounds (as applicable) provided as Trade Times shall be posted during the Bookable Window (defined below), or at the specified Trade Load Time(s) set forth in the Order Form. "**Bookable Window**" shall mean any time throughout the day unless a specified Bookable Window is defined otherwise in the Order Form. For the avoidance of doubt, if the Order Form includes specified Trade Load Time(s), but not a defined Bookable Window, the applicable Bookable Window shall be any time throughout the day. In addition to the above, GolfNow may also offer Trade Times for sale as "Pay Now & Save" tee times at any time throughout the Bookable Window. For the avoidance of doubt, once a Trade Time has been sold as a "Pay Now & Save," it will be removed from the applicable Trade Load Time or Bookable Window.

(iv) Smart Trade (TeeOff.com only): If noted on the Order Form, GolfNow may employ the "Smart Trade" system for selling Trade Times, whereby the tee time inventory shall include "auto-switching" the Trade Time inventory from floating time slots to a fixed time slot if the target window becomes more than 80% booked.

(v) Availability. In the event a Trade Time (full or partial), Trade Load Time, or Bookable Window becomes unavailable on a given day for any reason, including but not limited to weather, a scheduled outing/event, over-seeding, course maintenance, or the tee time was sold by Client outside of GolfNow's Distribution Channels, GolfNow may re-post the applicable Trade Times or individual tee times at any available time(s) during the Bookable Window on either the same day or earlier/subsequent date(s).

10. Trade Over-Sell. In the event that GolfNow inadvertently oversells trade rounds due to a technology or interface error, GolfNow shall block future trade rounds to make up for such oversell. If the oversold rounds are valued at more than One Thousand Dollars ($1,000), GolfNow agrees to issue a refund check to Client. For the avoidance of doubt, if the oversold rounds are valued at less than One Thousand Dollars ($1,000), GolfNow shall reimburse Client via future blocked trade rounds.

11. Acceptable Use. Client shall use the Services in accordance with the Documentation and this Agreement for purposes of operating its business and not for further resale or distribution. Client shall not: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Services available to any third party (other than Users and Client End Users as expressly authorized by this Agreement); (ii) use the Services to collect, transmit or process (a) infringing, offensive, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material that is harmful to children or violates third party privacy rights; or (b) send, store, publish, post, upload or otherwise transmit any viruses, Trojan horses, worms, time bombs, corrupted files or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any systems, data, personal information or property of another; (iii) interfere with or disrupt the integrity or performance of the Services or any of GolfNow's and/or its licensors' proprietary technology, including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs, the Documentation, training materials, templates, and other tangible or intangible technical material or information and any components thereof, used by GolfNow or its third party licensors and providers to provide the Services (referred to herein as "**GolfNow Technology**"); or (iv) attempt to gain unauthorized access to the GolfNow Technology or Services; (v) use or knowingly permit the use of any security testing tools in order to probe, scan or attempt to penetrate or ascertain the security of the Services or the GolfNow Technology; (vi) access the Software or GolfNow Technology for the purpose of building a similar or competitive offering; (vii) copy, translate, create a derivative work of, reverse engineer, reverse assemble, disassemble, or decompile the Services or GolfNow Technology or any part thereof or otherwise attempt to discover any source code or modify the Services or GolfNow Technology. Client shall: (i) notify GolfNow customer support as promptly as practicable by email, fax or telephone of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to GolfNow as promptly as practicable and use reasonable efforts to stop immediately any copying or distribution of any Client proprietary information or Client Data that is known or suspected by Client or Users through the Services; and (iii) not impersonate another User or provide false identity information to gain access to or use the Services. Client is responsible for all its Users' compliance with this Agreement, for charges incurred by its Users under Client's account, and for using commercially reasonable efforts to ensure that its Users maintain the confidentiality of their passwords and user names. Certain editions of the Services offer integration capabilities via an application programming interface, or API. The number of API calls Client can make per account at no additional charge is limited (excluding calls resulting from use of GolfNow End User applications, golfnow.com, and GolfNow- certified applications) to an aggregate maximum of two hundred thousand (200,000) calls/day/account. Calls to the API that exceed the daily maximums in the preceding sentence may require payment of additional charges.

12. End Users; Privacy Policies and Terms of Use. End users of the Services shall be either: (1) GolfNow account holders who interact with Client via their GolfNow account ("**GolfNow Account User(s)**"; e.g. Golfer who uses their GolfNow account to reserve tee time through a GolfNow Booking Engine on Client's website); or (2) any other individual or company who interacts with the Services for purposes of conducting business with Client ("**Client End User(s)**") (collectively, "**End User(s)**"). Client acknowledges and agrees that Client shall be solely responsible for establishing and enforcing the terms and conditions under which Client End Users interact with portions of the Services controlled by Client (e.g. Client's websites or point-of-sale systems). Client will at all times during the Term: (a) maintain a privacy policy and terms of use that are consistent with applicable laws and industry best practices (as determined by reference to the practices of other consumer-oriented websites and the promulgations of applicable industry standards bodies); (b) make such policy and terms of use easily accessible to Client End Users and otherwise in compliance with all applicable laws, including but not limited to the California Consumer Privacy Act ("**CCPA**"); and (c) comply with such policy and terms of use. No End User shall be deemed a third-party beneficiary of this Agreement. Client shall not make any warranties, representations or commitments to Client End Users which would: (i) imply an endorsement by GolfNow; (ii) purport to bind GolfNow to any legal obligations owed by Client to the Client End User; or (iii) entitle any End User to enforce the terms of this Agreement against GolfNow. Notwithstanding the foregoing, GolfNow shall be entitled to make its own privacy policy and terms of use available to GolfNow Account Users on the Services, and Client shall not take any actions that would diminish the accessibility of such policy or terms.

13. Ownership of Data.

(i) Definitions.

(a) "**Applicable Law**" means all applicable laws, rules, regulations, rulings, judgments, directives, or other requirements of any governmental authority in any country or jurisdiction, as may be amended or otherwise revised from time to time and all applicable, current industry self-regulatory principles, including but not limited to the CAN-SPAM, TCPA, and Privacy Laws.

(b) "**Personal Data**" means any information that relates to an individual and that, alone or in combination with other data, can be used to identify, contact, or precisely locate an individual, or other information that constitutes "personal data" or "personal information" under Privacy Laws.

(c) "**Privacy Laws**" means all Applicable Laws and third-party platforms restrictions relating to the Processing of Personal Data, privacy and security that may exist in any relevant jurisdiction, including but not limited to CCPA and GDPR.

(d) "**Process**", "**Processing**" and words of similar nature mean using, accessing, storing, securing, sharing, disclosing, altering, destroying and deleting Personal Data and other actions as set forth in the applicable Privacy Laws.

(ii) Client Data. As used herein, "**Client Data**" shall mean any data, information, or material provided or submitted to the Services by Client, Client End Users, or Client's customers, personnel, and business contacts, including any Personal Data thereof (e.g. name, address, phone number, email address, credit card information, purchases, or preferences) ("**Client Personal Data**"), in the course of Client's use of the Services. The Parties acknowledge and agree that GolfNow shall act as a service provider for any Client Personal Data processed by GolfNow through its provision of the Services. Where this is the case, GolfNow shall collect, retain, use, disclose, and otherwise process Client Personal Data (including personal information as defined under the applicable law) solely to fulfill its obligations to Client under this Agreement on Client's behalf, for Client's operational purposes, for GolfNow's own operational purposes, for other notified purposes, and for no other purposes. GolfNow shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Client Data where such deletion, correction, destruction, damage, loss or failure to store is initiated by or caused by Client or its Users, or Client End Users. Client agrees that GolfNow may process Client Personal Data to generate non-personally identifiable information by means of aggregation or de-identification, and to use and disclose that data, along with, on an aggregate basis and so long as no such use specifically identifies Client, any Client Data relating to Client's usage of the Services (e.g., general usage data; yield, utilization, rate, rounds, or pace; anonymous survey results) (collectively, "**Aggregated Data**"), for its own commercial purposes during or after the term of this Agreement. GolfNow shall not sell Client Personal Data or otherwise disclose Client Personal Data for a commercial purpose. Client retains ownership of Client Data, whether obtained prior to or during the Term of this Agreement. For the avoidance of doubt, Aggregated Data shall not be considered Client Data or Client Personal Data.

(ii) GolfNow Account Data and Shared Data. GolfNow shall own the rights to all Personal Data collected by GolfNow directly from GolfNow Account Users on GolfNow-operated sites and services or through the Services provided to Client, including, but not limited to, name, phone number, login credentials, tee times, requests for amenities such as food orders, information about other golfers, and other profile information (collectively, "**GolfNow Account Data**"). When applicable, GolfNow shall provide Client with the portions of GolfNow Account Data necessary to enable GolfNow Account Users to interact with Client through the Services and for Client to fulfill certain golfer transactions made through the Services (e.g., golfer name, phone number, and tee time for GolfNow.com bookings; golfer name and food order for SmartPlay order; and golfer contact information to set up a profile for future bookings through GolfNow Booking Engines). Except as otherwise provided in this Agreement, GolfNow and Client, with respect to the portion of the GolfNow Account Data that Client may receive from GolfNow, each Client and GolfNow will independently own such data (the "**Shared Data**"), provided, however, Client shall not "sell" Shared Data as "sell" is defined under applicable Privacy Laws, including but not limited to the CCPA. Client represents and warrants that Client will comply with all Applicable Law, including but not limited to CAN-SPAM, CIPA, TCPA, Telemarketing Sales Rule, CCPA, and/or any other similar Privacy Laws, with respect to (i) any and all Client Personal Data and Shared Data; and (ii) Client's use of Client Personal Data and Shared Data in conjunction with the Services, including but not limited to Client's distribution of marketing communications (via e-mail, text message, or otherwise) through the Services, whether by Client directly or by GolfNow on Client's behalf or at Client's direction. Client shall comply with its obligations as a "business" or "controller" under applicable law, including the CCPA for all Client Personal Data and Shared Data.

14. Data Security. Industry standards have been set by the Payment Card Industry Data Security Standards ("**PCI Standards**") for protection of customer information. GolfNow and Client both represent and warrant that they will comply with PCI Standards during the entire Term of this Agreement and thereafter with respect to customer Personal Data accumulated during the Term, and further agree to adhere to all other applicable standards, laws, rules, and regulations for protection of customer Personal Data to which they have access during the entire Term of this Agreement. GolfNow agrees that it will use systems, tools and security and take commercially reasonable steps to ensure Client Personal Data hosted by GolfNow is not accessed, redistributed, duplicated, or modified. GolfNow shall be free to provide certain required levels of access to contracted third party vendors that may need access to such data in order to provide the Services.

15. Websites and Mobile Apps. In the event that GolfNow provides Client with a custom Website or Mobile App (the "**Websites & Apps**") as part of the Services, Client acknowledges and agrees that Client, and not GolfNow, shall be responsible for: (i) any and all content (i.e., images, video, text, etc.) and third-party links, including any social media accounts or activity (i.e. Facebook, Twitter, YouTube, etc.), uploaded and/or published to the Websites & Apps by Client directly or provided to GolfNow for upload and/or publishing on Client's behalf; (ii) any and all additions, deletions, edits, or changes made to the Websites & Apps by Client directly or by GolfNow at Client's direction; (iii) the accessibility to disabled persons of any and all content (i.e., images, video, text, etc.), third-party links, or third-party features, services, or functionality uploaded or published to, or included in, the Websites & Apps by Client directly or by GolfNow at Client's direction; (iv) any and all representations made to End Users by Client through the Websites & Apps; (v) any and all communications between Client and End Users made or initiated through the Websites & Apps; (vi) any and all products/services of Client offered or advertised through the Websites & Apps; and (vii) any and all third-party software or services utilized by Client relating to the Websites & Apps not provided by GolfNow. Pursuant to Section 12 above, Client, and not GolfNow, shall be responsible for providing the privacy policy and terms of use for Client's Website(s), which shall be separate and distinct from GolfNow's privacy policy and terms of use applicable to the Mobile Apps and GolfNow Account Users. Client acknowledges and agrees that the Websites & Apps are part of the Services licensed to Client for the Term of the Agreement, and that upon termination of the Agreement, the Websites & Apps, and any other services relating to the Websites & Apps provided by GolfNow, including but not limited to domain name, hosting, and email, will be immediately taken down and/or turned off, along with Client's access to the Websites & Apps and any related services. Unless agreed upon otherwise, all content created by GolfNow for the Websites & Apps shall remain the property of GolfNow and may not be used by Client following the termination of this Agreement. Client is solely responsible for creating copies or backups of all Client-owned content or data from the Websites & Apps prior to termination, and in no event shall GolfNow be responsible for the loss of any of Client's data following the termination of this Agreement. For purposes of this Section, "Client" shall include any Users, employees, vendors, agents and other personnel of Client.

16. Intellectual Property.

(i) Client Intellectual Property Rights. Client hereby grants GolfNow during the Term a revocable, limited, non-exclusive, royalty-free, worldwide license to use certain materials provided by Client, including but not limited to golf course information, logos, branding, images, and video (the "**Client Materials**"), as may be necessary for GolfNow to: (i) provide the Services to Client; (ii) aggregate Client usage data as set forth above; and (iii) to promote Client and provide the marketing services contemplated herein. Client retains all right, title and interest, including all related intellectual property rights, in and to the Client Materials. Client represents and warrants that any Client Materials provided to GolfNow and/or, if applicable, uploaded to Client's Websites & Apps during the Term will be fully cleared (e.g. for copyrights, rights of publicity, etc.) for commercial use in all mediums (including, without limitation, on the internet, in print, and via mobile distribution channels).

(ii) GolfNow Intellectual Property Rights. GolfNow and its licensors retain all right, title and interest, including all related intellectual property rights, in and to the GolfNow Services, Software, Technology, and Documentation. This Agreement is not a sale and does not convey to Client any rights of ownership in or related to the GolfNow Products, Services, Software, or Technology. Any GolfNow-related names, logos, and the product or service names associated with the Services are trademarks of GolfNow or its licensors or other affiliated third parties, and no right or license shall be deemed granted to use them to Client, any End User, or any other third party without the prior, express written consent of GolfNow. GolfNow shall be free to use or incorporate and permit its third party licensors to use or incorporate into the GolfNow Technology and/or Services any suggestions, enhancement requests, recommendations or other feedback provided by Client and End Users relating to the GolfNow Services, and all such recommendations shall be free from any confidentiality restrictions that might otherwise be imposed upon GolfNow hereunder, all of which once incorporated shall be the sole and exclusive property of GolfNow and its licensors.

17. Confidentiality.

(i) Definition. "Confidential Information" means all non-public information of a Party ("Disclosing Party") disclosed to the other Party under this Agreement ("Receiving Party"), whether orally or in writing and whether or not designated as confidential at the time of disclosure, including without limitation the terms and conditions of this Agreement (including pricing and other terms), business information, specifications, research, software (in the case of GolfNow, including but not limited to, the GolfNow Technology, flow of screens, and Documentation), trade secrets, designs, drawings, flow charts, data, computer programs, marketing plans, budget figures, and other financial and business information of the Disclosing Party, and Client Data.

(ii) Treatment of Confidential Information. Except with the Disclosing Party's permission, the Receiving Party shall not use any Confidential Information of the Disclosing Party for any purpose other the performance of the Receiving Party's obligations under this Agreement, and shall not disclose the Confidential Information to any third party other than its contractors or authorized representatives who are subject to binding obligations of confidence substantially similar to those set forth in this Agreement and solely for the purposes of this Agreement.

(iii) Permitted Disclosure. The obligation of nondisclosure set forth herein shall not apply to any Confidential Information that: (a) is or becomes publicly available without a breach of any obligation owed to the Disclosing Party, including, by way of example but not limitation, the posting of Client materials or Client Data by Client, Users or End Users on any publicly-available portions of the Services; (b) is already known to the Receiving Party at the time of its disclosure by the Disclosing Party, without a breach of any obligation owed to the Disclosing Party; (c) following its disclosure to the Receiving Party, is received by the Receiving Party from a third party without breach of any obligation owed to the Disclosing Party; or (d) is independently developed by the Receiving Party without reference to or use of the Disclosing Party's Confidential Information (except for patentable subject matter, which shall not be subject to this exception); or (e) the Receiving Party is required to disclose by any applicable law, by any rule or regulation of any court or government agency of competent jurisdiction, or pursuant to legal process; provided that the Receiving Party provides the Disclosing Party with prompt written notice of the requirement to disclose, reasonable assistance in the opposing or limiting of such disclosure and limits such disclosure to that strictly required by such court, government agency or legal process; (f) is a permitted aggregation of data.

(iv) Injunctive Relief. The Parties agree that any unauthorized disclosure of Confidential Information may cause immediate and irreparable injury to the Disclosing Party and that, in the event of such breach, the Disclosing Party will be entitled, in addition to any other available remedies, to immediate injunctive and other equitable relief, without bond and without the necessity of showing actual monetary damages. Notwithstanding the foregoing, Client irrevocably waives any right to enjoin or restrain the operation of the GolfNow Software, Services, or Technology as a whole, or GolfNow's, its providers', or its customers' use of any content or other material used or displayed through the Services other than Client's Confidential Information.

18. Limited Warranties and Remedies; Disclaimers. Both Parties represent and warrant that: (a) they have the authority to enter into this Agreement and that their signatories are duly authorized and empowered to sign this Agreement on their behalf; and (b) they will comply with all applicable laws, ordinances, statutes, regulations and rules, and that they have the power to settle fully and completely all claims, causes of action, demands, charges and liabilities arising out of or relating to this Agreement. Client represents and warrants to GolfNow that any intellectual property provided to GolfNow by Client (including without limitation, any photographs, drawings, or works of art) do not violate the rights of any third party. GolfNow will provide the Services in a professional and workmanlike manner and free from any unreasonable defects, and GolfNow will use all reasonable means to fix any defect in the Services that may arise. GolfNow will provide Client with training on how to use the Services and provide support as needed by Client. Notwithstanding the foregoing, in the event that Client creates its own content and/or software, and/or utilizes third party software to deliver services to the Client's users, such content and software or services are not included within this Limited Warranty and GolfNow is not responsible for any damages or remedies of any kind in connection with Client's content and/or use of such software or services. GolfNow shall notify Client in advance of any updates to the Services and will provide appropriate training and/or materials to Client concerning all updates. Client and its authorized users shall use the Software and Services only in accordance with this Agreement. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER GOLFNOW NOR ITS PROVIDERS MAKE ANY REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE GOLFNOW SERVICES, SOFTWARE, OR TECHNOLOGY. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER GOLFNOW NOR ITS PROVIDERS REPRESENT OR WARRANT THAT (A) THE USE OF THE GOLFNOW SOFTWARE, SERVICES OR TECHNOLOGY WILL BE UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THE GOLFNOW SOFTWARE, SERVICES, OR TECHNOLOGY WILL MEET CLIENT'S OR END USERS' REQUIREMENTS OR EXPECTATIONS, OR (C) THE GOLFNOW SOFTWARE, SERVICES, OR TECHNOLOGY THAT MAKE THE SERVICES AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, SO LONG AS GOLFNOW HAS TAKEN REASONABLE STEPS TO SAFEGUARD AGAINST SUCH VIRUSES OR OTHER HARMFUL COMPONENTS. EXCEPT AS EXPRESSLY SET FORTH ABOVE, THE GOLFNOW SOFTWARE, SERVICES, AND TECHNOLOGY IS PROVIDED TO CLIENT STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND IMPLIED OR STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY GOLFNOW AND ITS PROVIDERS. With respect to malfunctioning Software, GOLFNOW'S entire liability and Client's exclusive remedy shall be the repair/replacement of the Software.

19. Limitation of Liability. EXCEPT FOR THIRD PARTY LIABILITIES AND EACH PARTY'S INDEMNIFICATION OBLIGATIONS, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY DAMAGES BASED ON LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION OR LOSS OF DATA), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATIONS SHALL APPLY REGARDLESS OF THE CAUSE OR THE FORM OF ACTION (WHETHER BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE). IN NO EVENT SHALL GOLFNOW'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT PAID OR OWED BY CLIENT HEREUNDER (WHICHEVER IS GREATER) OR, WITH RESPECT TO ANY SINGLE INCIDENT, THE AMOUNT PAID BY CLIENT HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT. THE FOREGOING SHALL NOT LIMIT CLIENT'S PAYMENT OBLIGATIONS UNDER THE TOTAL PAYMENT SECTION OF THE ORDER FORM.

20. Indemnification.

(i) By Client. Client shall indemnify, defend, and hold harmless GolfNow, LLC and its parents, affiliates, officers, directors, employees, contractors, vendors, agents, and representatives, (collectively, the "**GolfNow Indemnified Parties**"), from any and all claims, demands, actions, suits, investigations, proceedings, damages, losses and liabilities, including reasonable attorney's fees and expenses (collectively, "**Losses**") as incurred, arising from or related to any third-party claim (a) that any materials provided to GolfNow by Client, or utilized by Client in its use of the GolfNow Services infringe, misappropriate, or otherwise violate or conflict with applicable law or any third-party's intellectual property rights or rights of privacy or publicity; or (b) to the extent arising from or relating to (i) the breach of Client's obligations, representations, or warranties under this Agreement, including any third-party claim alleging any act, omission, or fact that constitutes a breach; (ii) any death, personal injury, bodily injury to persons, or damage to property caused by Client or occurring at Client's Golf Course(s); (iii) any dispute between Client and a customer/golfer, including in connection with the customer/golfer's experience at Client's Golf Course(s), without regard for the basis of such claim; (iv) any negligence or willful misconduct of Client or Client's employees, vendors, agents or other personnel; and (v) the Client Data and/or Client's Websites & Apps (as defined in Section 15), to the extent such Losses are not a result of GolfNow's negligence.

(ii) By GolfNow. GolfNow agrees to defend, indemnify, and hold harmless Client, its parents, affiliates, officers, directors, partners, employees, contractors, vendors, guests, volunteers, agents, and representatives from and against all Losses arising out of or resulting from any act undertaken or committed by GolfNow, or any contractors hired or engaged by GolfNow, in connection with the performance of GolfNow's obligations under this Agreement. GolfNow also agrees to defend, indemnify, and hold harmless Client from any liability resulting from any claim, action or cause of action which may be asserted by third-parties arising out of the performance of the GolfNow's obligations pursuant to this Agreement, except those actions or liabilities which are due to the misconduct or negligence of Client.

21. Insurance. At all times during the Term and at its own expense, each Party shall keep in full force and effect the following insurance coverages: (i) commercial general liability insurance for limits of not less than One Million Dollars ($1,000,000.00) per occurrence for bodily injury and property damage, product liability, personal and advertising injury and completed operations liability; and (ii) worker's compensation insurance in compliance with applicable law; (iii) employers' liability insurance with a limit not less than One Million Dollars ($1,000,000.00); and (iv) property insurance on an "all risk" basis with replacement cost coverage for property and equipment in care, custody, and control of the insured.

The Parties will deliver to the other Party certificates of insurance for the required coverage upon request. All required insurance will be placed with carriers rated no lower than A-VII in the most current edition of AM Best's Property Casualty Key Rating Guide and will provide thirty (30) days' written notice of cancellation or non-renewal, which notice shall be provided in accordance with these Terms. The stipulated limits of coverage will not be construed as a limitation of any potential liability to the Parties. Failure to request evidence of insurance is not a waiver of a Party's obligation to obtain the required insurance.

22. Dispute Resolution. This Agreement shall be governed, interpreted and construed under the laws of the United States and the State of Minnesota without regard to any conflict of law principles. The Parties shall act in good faith and use commercially reasonable efforts to promptly resolve any claim, dispute, controversy or disagreement (each a "**Dispute**") between the Parties under or related to this Agreement. Any Dispute arising out of this Agreement which cannot be resolved by the Parties shall be governed exclusively by binding arbitration initiated and conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association, conducted in the Minneapolis, Minnesota, metropolitan area. The arbitrator shall have the power to award reasonable attorneys' fees and costs to the prevailing Party in any arbitration, and either Party shall have the right to take appropriate action to enforce any arbitration award in any court having jurisdiction over the applicable Party.

23. Binding Nature; Assignment. This Agreement shall be binding upon GolfNow and Client, and their respective successors and assigns; provided, however, that neither Party shall assign this Agreement or any of its rights or obligations hereunder, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, without Client's consent, GolfNow may assign all or part of its rights and obligations under this Agreement to: (i) any of its divisions, affiliates or subsidiaries; (ii) its parent company; or (iii) any of its parent company's divisions, affiliates, or subsidiaries. A sale of substantially all of the stock or assets of a Party, or the reorganization or merger of a Party, shall not constitute an assignment of this Agreement. Any assignment or transfer in violation of this Section shall be void and of no force or effect. Any subcontractors retained by GolfNow to perform certain obligations hereunder shall be bound by and their actions are governed by this Agreement as if GolfNow itself was performing suchobligations.

24. Export Control. Client and GolfNow agree, in connection with Client's use of the Services, to comply with all applicable export and re-export laws and regulations. GolfNow makes no representation that the Software or Services is appropriate, will comply with applicable laws, or available for use in locations other than the United States of America.

25. Taxes. Client represents and warrants that it will be responsible for the payment of all taxes it may incur in connection with the performance of this Agreement or use of GolfNow Services. Client will indemnify, defend and hold GolfNow harmless from any liability incurred by GolfNow in connection with Client's failure to comply with this Taxes provision.

(i) Sale of Tee Times or Other Items to End Users: With regard to the sale by Client of tee times or other taxable items directly to an End User through or in connection with services provided by GolfNow under this contract, Client will, as required by applicable laws, collect and remit all applicable taxes relating to consideration paid by End Users directly to Client. GolfNow will collect and remit all applicable taxes relating to consideration paid directly to it by End Users.

(ii) Barter for or Cash Purchase of GolfNow Services by Client: The license by Client of some or all of GolfNow Services (including software) under this contract may be subject to sales or use tax in the state(s) in which Client operates. GolfNow recognizes that the value to Client of its Services, including software solutions provided under this contract, lies principally in the provision of access to and effective execution within the market created by GolfNow. Client and GolfNow agree that the consideration due from Client to GolfNow under this contract that is applicable to software equals the lesser of twenty percent (20%) of the total remuneration collected by GolfNow from End Users for Tee Times (or cash from Client) under the contract or $2,500 ("The Allocation") calculated on a per account (not per course) basis. To the extent that the state(s) in which Client operates impose tax on the license of software provided through this contract, tax will be computed on The Allocation, and will be payable by Client to GolfNow for remittance to the appropriate taxauthority.

26. Survival. Sections 1, 16-20, 22, 25 and 26 shall survive notwithstanding the expiration or termination of this Agreement.

27. Miscellaneous. This Agreement shall constitute the entire understanding of the Parties with respect to the subject matter hereof and supersedes any and all prior understandings and agreements, written or oral, relating thereto between Client and GolfNow. Additionally, this Agreement shall terminate and supersede any and all prior Order Form(s) entered into between Client and GolfNow regarding the Golf Course(s) and Products/Services listed herein. For the avoidance of doubt, this Agreement shall not terminate and/or supersede any non-Order Form agreements between Client and GolfNow or any prior Order Form(s) or other agreement(s) between Client and GolfNow relating to golf courses not listed in this Agreement. The Parties acknowledge and represent that they have carefully read and fully understand all of the terms and conditions set forth in this Agreement. The Parties further acknowledge and represent that they enter into this Agreement freely, knowingly and without coercion and based on their own judgment and investigation of this matter, and not in reliance upon any representations or promises made by any Party, its attorneys, or its agents. The Parties hereby acknowledge and agree that GolfNow is an independent contractor and not an employee, agent, joint venturer or partner of Client or any of its affiliates. Nothing in this Agreement shall be interpreted or construed as creating or establishing a joint venture, partnership, employment, or agency relationship among any of the Parties as a result of this Agreement. The headings in this Agreement are intended for convenience of reference and shall not affect its interpretation. None of the Parties shall have any power to obligate or right to bind any other Party. This Agreement may be executed in one or more counterparts, with electronic exchange of signatures (e.g., pdf and DocuSign) sufficient to bind the Parties. Notices of either Party as required herein shall be sent to the addresses provided in the attached Order Form.

II. Additional Terms.

The following Additional Terms shall govern Client's purchase and use of the associated product and/or service and are expressly incorporated into the Agreement between GolfNow and Client when applicable. These Additional Terms will not change or replace the Standard Terms and Conditions or any other Terms of the Agreement unless expressly stated otherwise. Any capitalized terms not defined in these Additional Terms shall have the same meaning as set forth in the Agreement and in the event of an express conflict between these Additional Terms and the Agreement, the Additional Terms shall control.

A. SmartPlay Merchant Terms and Conditions.

These SmartPlay Merchant Terms and Conditions ("**SmartPlay Terms**") shall govern GolfNow's provision of the SmartPlay Services (as defined below) to Merchant and are expressly incorporated into and made a part of the applicable Agreement between GolfNow and Merchant. For purposes of these SmartPlay Terms, "GolfNow" shall refer to GolfNow, LLC and "Merchant" shall mean the legal entity listed as "Client" on the applicable Order Form between GolfNow and Merchant.

1. SmartPlay Technology.

If selected on the Order Form, GolfNow will enable GolfNow's proprietary SmartPlay technology services to facilitate the marketing, sale, and fulfillment of orders for food, beverages and other products ("**Items**") to Customers at Merchant's Golf Courses through the GolfNow mobile app and other GolfNow platforms at GolfNow's discretion (collectively, the "**GolfNow App**") (the "**SmartPlay Services**"). For the avoidance of doubt, "**Customers**" shall refer to end users of the GolfNow App utilizing the SmartPlay Services at Merchant's Golf Courses. Merchant acknowledges the SmartPlay Services at all times require Merchant's use of GolfNow's Golf365 Pro or Golf365 Premier (formerly EZSuite) and GolfNow Payments, which are subject to additional terms and conditions under the Agreement. If at any point during the Term Merchant ceases its use of either Golf365 Pro/Golf365 Premier or GolfNow Payments, GolfNow may immediately suspend or terminate the SmartPlay Services.

2. GolfNow Obligations.

2.1 SmartPlay Services. Subject to the Agreement and these SmartPlay Terms, GolfNow shall provide the SmartPlay Services to Merchant solely for use at the Golf Courses specified in the relevant Order Form. For the avoidance of doubt, as between Merchant and GolfNow, GolfNow will retain sole and absolute control over the SmartPlay Services (and all related elements of the user experience and user interface within the GolfNow App), including: (i) the personalization of the SmartPlay Services for Customers (as defined below); (ii) the prioritization and display of options available to Customers; (iii) the functionality available to Customers within the GolfNow App; (iv) any service fees charged to Customers on purchases made through the SmartPlay Services; and (v) adding, removing, or otherwise modifying any feature or functionality made available through the SmartPlay Services or GolfNow App.

2.2 No Delivery Services. For the avoidance of doubt, the SmartPlay Services do not include, and GolfNow will not perform or in any way provide for, the delivery of any Items. Merchant and Merchant's Golf Courses, pursuant to Section 4 below, will at all times be solely responsible for the delivery of Items purchased by Customers through the SmartPlay Services ("**Delivery Services**"), and GolfNow will not be liable or responsible for any Items or deliveries, or any errors or misrepresentations relating to any Items or deliveries.

3. Merchant Obligations.

3.1 Items for Purchase. Merchant agrees to make Items available to Customers for purchase during its normal business hours. Merchant will prepare, handle, store, and deliver all Items in accordance with all applicable laws and regulations, including without limitation all laws, rules, and regulations (i) governing time or temperature controls required for food safety ("**Food Safety Standards**"); and (ii) relating to the sale and/or service of alcohol. Merchant will solely determine the quality, portion, size, ingredients, or other criteria applicable to any Items ("**Criteria**") and Merchant is solely responsible for ensuring all Items meet the applicable Criteria. For the avoidance of doubt, the selection of Items made available to Customers through the SmartPlay Services will be at Merchant's discretion; however, in the event Merchant fails to make any Items available, Merchant will be in breach of the Agreement and GolfNow may suspend the SmartPlay Services until such Items are posted for sale.

3.2 Item Responsibility. Merchant acknowledges and agrees that GolfNow will not take title to any Item at any time. Additionally, Merchant shall be responsible for any reimbursement costs related to Customer refunds relating to Items or any other issue within Merchant's control. For the avoidance of doubt, all items sold to Customers through the SmartPlay Services shall be sold under Merchant's retail and food delivery licenses, including but not limited to any alcohol-related licenses.

3.3 Item Order Support. Merchant is solely responsible for providing all Customer support for Merchant's Items sold through the SmartPlay Services, including support for delivery, and Merchant will provide GolfNow with a customer service phone number that GolfNow will display in the GolfNow App so that Customers may direct their support inquiries to Merchant. Merchant will at all times during the Term be solely responsible for resolving all complaints and issues raised relating to: (i) Items purchased through the SmartPlay Services; and (ii) Merchant's Delivery Services (as defined below), and will accept and respond to all customer service inquiries.

3.4 Item Pricing; Taxes. Merchant shall be solely responsible for setting the retail price for each Item to be offered for sale through the SmartPlay Services (the "**Retail Price**"). Merchant is the "retailer" or "seller" of all Items and is solely responsible for the collection and remittance of all applicable Sales Taxes and other fees. The term "**Sales Tax**" includes any sales, sellers use, transaction privilege, privilege, general excise, gross receipts, Item taxes and similar transaction taxes. Unless expressly indicated otherwise, the Retail Price of each Item shall exclude Sales Tax or any other fees. Merchant is solely responsible for determining all applicable Sales Tax and other fees, and identifying and informing GolfNow of the appropriate Sales Tax and other fee amount for GolfNow to charge Customers on Merchant's behalf for Items available through the SmartPlay Services and GolfNow App. To the extent that applicable Sales Tax and other fees are not determined by Merchant, Merchant expressly authorizes GolfNow to make such determination on its behalf and Merchant hereby acknowledges and agrees that GolfNow will have no liability for the accuracy of any such determination. Merchant expressly authorizes GolfNow, at Merchant's direction, to collect such Sales Taxes and other fees on Merchant's behalf.

Additionally, Merchant agrees that unless mutually agreed upon otherwise, the Retail Prices for all Items offered for sale by Merchant through the SmartPlay Services shall not be higher than the prices that Merchant and/or Merchant's Golf Courses charge for similar Items outside of the SmartPlay Services, including at Merchant's pro shops, restaurants, bars, and/or beverage carts.

3.5 Restrictions. In connection with the access to and use of the SmartPlay Services, Merchant will not (and will not allow any third party to): (i) reverse engineer or attempt to discover any source code or underlying ideas or algorithms used to provide the SmartPlay Services; (ii) provide, lease, lend, disclose, or otherwise use or allow any third-parties to use the SmartPlay Services (except as otherwise authorized by GolfNow); or (iii) possess or use, or allow the transfer, transmission, export, or re-export of any software or portion thereof in violation of any export control laws or regulations administered by the U.S. Commerce Department, U.S. Treasury Department's Office of Foreign Assets Control, or any other government agency. Merchant will not (and will not allow any third party to) use the SmartPlay Services or any other transactional, operational, performance or other data or information that is related to the sale of Items to Customers through directly or indirectly compete with GolfNow or its affiliates. The following restricted Items may not be featured or sold via the SmartPlay Services: illegal items, fragile items, dangerous items (like weapons, explosives, flammables, etc.), stolen goods, Items containing endangered species or any items that Merchant does not have permission to send.

4. Delivery.

4.1 Provision of Delivery Services. As between GolfNow and Merchant, Merchant acknowledges and agrees that: (a) Merchant will be solely responsible for determining the most effective, efficient and safe manner to perform each instance of Delivery Services; and (b) except for the SmartPlay Services technology, Merchant will provide all necessary equipment, tools, and other materials, at Merchant's expense, necessary to perform any Delivery Services. In the event Merchant collects any personal data from Customers in connection with the Delivery Services, including but not limited to location, signature, photo, or ID (as defined below) information, Merchant agrees not to use or retain such personal data other than purposes of fulfilling the Delivery Services.

4.2 Delivery Personnel. Merchant will have the sole responsibility for any obligations or liabilities to Delivery Personnel (as defined below) that arise from or relate to Merchant's relationship with the Delivery Personnel. Merchant acknowledges and agrees that Merchant exercises sole control over any employees, agents, or contractors performing the Delivery Services on behalf of Merchant ("**Delivery Personnel**") and that Merchant will comply with: (i) all applicable laws (including tax, gratuity, social security, and employment laws) and regulations applicable to Merchant's relationship with the Delivery Personnel; and (ii) industry best practice with respect to working conditions and compensation for Delivery Personnel, including but not limited to the distribution of any gratuities. Merchant further acknowledges and agrees that Merchant will at all times during the Term be responsible and liable for the acts and omissions of its Delivery Personnel with respect to Customers, GolfNow, and third-parties.

4.3 Relationship with Customers. GolfNow and its affiliates shall not be responsible or liable for the actions or inactions of Customer(s) in relation to any of Merchant's activities, including the Delivery Services. Merchant acknowledges and agrees that: (i) Merchant will have the sole responsibility for any obligations or liabilities to Customers or other third-parties that arise from or relate to Merchant's provision of the Delivery Services.

4.4 Delivery Area and Timing. Unless agreed upon by the Parties otherwise, GolfNow shall determine the geographic area in which the Delivery Services will be available ("**Delivery Area**"), and GolfNow (or Merchant upon notice to GolfNow) may limit the Delivery Area with respect to adverse events such as inclement weather or poor driving conditions to ensure safe and reliable Delivery Services. Merchant acknowledges that GolfNow will use the Delivery Area to limit the Merchant's ability to sell Items only to potential Customer who request delivery within the Delivery Area through the SmartPlay Services. Merchant shall provide GolfNow with projected timelines for the preparation of Item orders so that GolfNow may determine and display estimated time for delivery that may be displayed to Customers within the GolfNow App.

4.5 Transportation Method. For purposes of these SmartPlay Terms, "Transportation Method" shall mean a mode of transportation used by Merchant and its Delivery Personnel for the purpose of providing the Delivery Services.

4.5.1 Transportation Method Requirements. Merchant acknowledges that any and all Transportation Method(s) will at all times be: (a) properly registered and licensed as required by law to operate as a delivery vehicle; (b) owned or leased by Merchant or otherwise in Merchant's lawful possession; (c) suitable for performing the Delivery Services; and (d) maintained in good operating condition, consistent with industry safety and maintenance standards for a Transportation Method of its kind and any additional standards or requirements required by applicable law, and in a clean and sanitary condition.

4.5.2 Delivery Personnel Requirements. Merchant acknowledges and agrees that at all Delivery Personnel will, at all times during the Term: (a) hold and maintain (a) a valid applicable license with the appropriate level of certification to operate the Transportation Method assigned to each Delivery Personnel; and (ii) all licenses, permits, approvals, and authority applicable to Merchant and/or its Delivery Personnel necessary to provide the Delivery Services to third parties; (b) provide the Delivery Services in a professional manner with due skill, care, and diligence; and (c) maintain high standards of professionalism, service, and courtesy.

Merchant acknowledges and agrees that GolfNow reserves the right, at any time in GolfNow's sole discretion, to restrict Merchant or Delivery Personnel from accessing or using the SmartPlay Services in event Merchant or such Delivery Personnel fail to meet any of the requirement within this Section.

5. Payment Terms.

5.1 Payment to GolfNow. Merchant's payment for the SmartPlay Services shall be the payment to GolfNow set forth in the attached Order Form.

5.2 SmartPlay Service Fee(s). GolfNow, in its sole discretion, may charge Customers a service fee on all Item purchases made through the SmartPlay Services **("SmartPlay Service Fee(s)")** as set forth on the relevant Order Form. The SmartPlay Service Fees shall be paid directly to GolfNow by Customers at the time of purchase, and GolfNow shall retain one hundred percent (100%) of each SmartPlay Service Fee collected unless stated otherwise in the Order Form.

5.3 Payment to Merchant; Payment Processing. For each purchase of an Item or Items, the Customer(s) will be charged (i) the Retail Price of the Item(s) ("**Item Revenue**"); (ii) any applicable Sales Tax; and (iii) the Service Fee(s), if any. All Customer purchases of Items through the SmartPlay Services will be processed and reconciled pursuant to the Agreement and the "**GolfNow Merchant Services Agreement for Sub-Merchants**" entered into between Merchant and GolfNow regarding Merchant's use of the GolfNow Payments service, with Merchant receiving one hundred percent (100%) (net of processing fees of the Item Revenue and Sales Tax, and GolfNow receiving (100%) of the SmartPlay Service Fee(s), unless agreed upon otherwise.

6. Intellectual Property.

6.1 GolfNow owns all right, title, and interest in and to the SmartPlay Services, GolfNow App, and any related content supplied by GolfNow. Additionally, GolfNow shall have sole editorial control over (i) the SmartPlay Services; and (ii) the presentation of any content provided by Merchant for display within the SmartPlay Services, including but not limited to menus, photographs, trademarks, and logos ("**Merchant Content**"). Merchant shall own all right, title, and interest in the Merchant Content, subject to the licenses granted herein.

6.2 For the Term of the Agreement, Merchant hereby grants GolfNow a non-exclusive, perpetual, fully paid-up and royalty free license to use and display the Merchant Content in connection with Merchant's Items, Merchant's use of the SmartPlay Services, and any marketing or promotional activities relating thereto. GolfNow may remove any Merchant Content from the SmartPlay Services at any time in its sole discretion.

6.3 Without limiting anything in the Agreement, Merchant represents and warrants that the no Merchant Content will infringe, misappropriate, or otherwise violate any third-party's intellectual property or other proprietary rights. To the extent the Merchant Content contains any third-party materials, Merchant is solely responsible for, and will secure any and all rights, licenses, consents, and/or permissions necessary to, GolfNow's use of such Merchant Content.

6.4 No Development. EACH PARTY ACKNOWLEDGES AND AGREES THAT THERE SHALL BE NO DEVELOPMENT OF TECHNOLOGY, CONTENT, MEDIA, OR OTHER INTELLECTUAL PARTY BY EITHER PARTY FOR THE OTHER PARTY PURSUANT TO THIS AGREEMENT.

7. Marketing. GolfNow and its affiliates may showcase the availability of Merchant's Items via the SmartPlay Services and/or GolfNow App through various promotional activities, including but not limited to social media, websites, e-mail, and advertisements.

8. Ratings. Merchant acknowledges and agrees that Customers who purchase Items through the SmartPlay Services may be prompted by GolfNow to provide a rating of such Items and/or to provide comments or feedback related to the Customer's experience with Merchant and the applicable Items on the GolfNow App or other GolfNow platforms ("**Customer Feedback**"). GolfNow and its affiliates reserve the right (i) to use, share, and display such Customer Feedback; and (ii) to edit or remove Customer Feedback as deemed necessary by GolfNow.

9. SmartPlay Customer Data. Any and all information about Customers generated or collected by GolfNow through the SmartPlay Services ("SmartPlay Customer Data"), including but not limited to Customer name(s), delivery location(s) or address(es), email address(es), phone numbers, purchase history, and/or preferences or any information that may otherwise be considered "personal data" or "personal information" under applicable law shall be considered GolfNow Account Data. However, to the extent GolfNow shares any SmartPlay Customer Data with Merchant for the purposes of fulfilling Customer orders or completing transactions through the SmartPlay Services, such SmartPlay Customer Data shall be considered Shared Data.

10. Representations and Warranties.

10.1 General. Merchant hereby represents and warrants that: (i) it has the authority to enter into the Agreement and these SmartPlay Terms and to grant the rights granted hereunder, and that doing so will not violate any other agreement to which it is a party; (ii) it is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its origin; (iii) it has not entered into, and during the Term will not enter into, any agreement that would prevent it from comply with or performing under the Agreement or these SmartPlay Terms; (iv) it will comply with applicable retail food, beverage, or other health and safety codes, rules or regulations, as well as any other laws applicable to its business (including, without limitation, the obligation to pay tips to delivery and other workers, if any); and (v) it will provide accurate tax rates and calculations to GolfNow; and (vi) it will remit to the applicable taxing authority all legally-required taxes and will files all required tax returns and forms.

10.2 Alcohol. In the event Merchant offers alcohol to Customers as Item(s) for purchase through the SmartPlay Services, Merchant represents and warrants that Merchant and/or the applicable Golf Course(s) maintains a valid and active liquor license and all other applicable licenses, permits, and registrations for the sale, distribution, and delivery of alcohol (collectively, "Liquor Licenses"). Merchant will provide GolfNow with a copy of the Liquor Licenses and any renewal thereof, and will immediately notify GolfNow if any Liquor License is not renewed or is revoked, cancelled, or surrendered at any time during the Term. Merchant acknowledges and agrees that Merchant, and not GolfNow, is solely responsible for confirming via bona-fide government-issued identification ("ID") that all Customers who purchase alcohol from Merchant's Golf Courses through the SmartPlay Services are at least twenty-one (21) years old prior to Merchant serving or delivering alcohol to any such Customers.

10.3 DISCLAIMER. EXCEPT AS SET FORTH HEREIN, EACH PARTY MAKES NO REPRESENTATIONS, AND HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING ITS SERVICES OR PRODUCTS OR ANY PORTION THEREOF, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE.

B. Answers Reservation Center Services Terms and Conditions.

These GolfNow Answers Terms and Conditions ("Answers Terms") shall apply specifically to Client's use of the GolfNow Answers reservation center services ("Answers Service") and are expressly incorporated into and made a part of the applicable Agreement between GolfNow and Client.

1. GolfNow Responsibilities.

(a) GolfNow is responsible for the toll-free telephone charges associated with forwarding calls to the Answers Service, unless Client elects to use its own toll-free number.

(b) GolfNow will, in conjunction with Client, develop a telephone protocol to be used by GolfNow's customer service representatives ("CSR(s)") when answering telephone calls for Client's Golf Course(s).

(c) GolfNow CSR's, where appropriate, will attempt to collect relevant Personal Data of callers on Client's behalf, which may include first name, last name, postal code, phone number, and/or email address.

(d) GolfNow is not responsible to Client for any lost revenues resulting from errors made by CSR's performing the Answers Service on Client's behalf.

2. Client Responsibilities.

(a) Client will at all times be responsible for providing and maintaining data connectivity at its Golf Course(s) as required to receive the Answers Services.

(b) Client will not forward the main phone number(s) of its Golf Course(s) to GolfNow, but shall implement an auto-attendant if all tee time calls are to be handled by the Answers Service.

(c) Client will be responsible for any costs and fees associated with implementing call forwarding, except for toll-free charges set forth in Section 1(a) above.

(d) The accuracy of tee time pricing or other Golf Course-specific information provided to provided to GolfNow for use in the Answers Service will at all times be the responsibility of Client, regardless of whether GolfNow assists in the data entry.

3. **Data Collection.** Except as otherwise set forth herein, data collected by CSR's from callers to a Client-controlled telephone number through the Answers Service, including Personal Data, will be considered Client Data under the Agreement.

4. **Trade Times.** Client acknowledges and agrees that GolfNow may sell the Trade Time(s) set forth on the relevant Order Form, if applicable, through the Answers Service. All Trade Times reserved through the Answers Service will be noted on Client's tee sheet as such. Client will not cancel, move or edit a Trade Time reserved through the Answers Service without first contacting GolfNow and Client will not apply a surcharge to golfers who reserved a Trade Time through the Answers Service.

C. Full Swing Terms and Conditions.

Client acknowledges and agrees that the Full Swing simulator(s), technology, hardware, software, products, and services (collectively the "**Full Swing Technology**") are provided solely by a third-party, Full Swing Golf, Inc. ("**Full Swing**"), and that Client's receipt of the Full Swing Technology under this Agreement with GolfNow is contingent upon Client's execution of a separate and distinct contract(s) between Client and Full Swing, to which GolfNow will not be a party (collectively as the "**Full Swing Agreement(s)**"). Client's use of the Full Swing Technology, including any related hardware and/or software, will at all times be governed by the terms and conditions of the Full Swing Agreements. In the event Client fails to execute the Full Swing Agreements within seven (7) days of the execution of this Agreement, GolfNow shall have the option to terminate this Agreement.

Client's payment for the Full Swing Technology shall be the payment to GolfNow set forth in the applicable GolfNow Order Form. Client's payment obligations to GolfNow will begin immediately upon the effective date of the Agreement, regardless of when the Full Swing Technology is installed. For the avoidance of doubt, Client's payment to GolfNow for the Full Swing Technology shall be subject to the terms and conditions of this Agreement, and not the Full Swing Agreement. However, any breach of the payment terms contained in this Agreement shall also be considered a breach of the Full Swing Agreement. In the event that Client does not comply with the payment requirements herein or otherwise breaches the terms of this Agreement (each a "Non-Compliance Event") prior to the end of the Initial Term, Client shall pay GolfNow a fee totaling the following (the "Full Swing Termination Fee"):

$$\left[\frac{\text{Full Retail Price of Full Swing Technology Received}}{\text{Total Number of Months in Initial Term}}\right] \times \begin{array}{c}\text{Number of Months remaining in Initial Term}\\ \text{at time of the Non-Compliance Event}\end{array}$$

The Full Swing Termination Fee shall be due within thirty (30) days of Client's receipt of written notice from GolfNow, is in addition to any other fees set forth in the Agreement, and shall not limit any other remedies of GolfNow at law or equity.

GolfNow makes no representations or warranties with respect to the Full Swing Technology and disclaims any and all liability relating to the Full Swing Technology or Client's use of the Full Swing Technology. Full Swing, and not GolfNow, will be responsible for the installation of the Full Swing Technology and any related training, as well as any service, maintenance, or repairs to the Full Swing Technology required during the Term of the Agreement. Client agrees that all communications relating to the Full Swing Technology shall be directed to Full Swing.

Any disputes relating to the Full Swing Technology, excluding those relating to payment under this Agreement, shall be resolved between Client and Full Swing pursuant to the Full Swing Agreement. Client agrees to indemnify, defend and hold GolfNow, its parents and affiliates, and their respective officers, directors, employees, successors and assigns harmless from and against any and all losses, claims, damages, liabilities, costs and expenses (including reasonable attorney's fees and costs of litigation) (collectively, "Claims"), including any and all Claims which may be asserted by third-parties, incurred as a result of or in connection with the installation, receipt, and/or use of the Full Swing Technology, or other Full Swing product(s), by Client or Client's customers.

Client's rights to use the Full Swing Technology and the Full Swing Agreement shall both expire upon the termination of this Agreement, and any use of the Full Swing Technology beyond the expiration of this Agreement shall require a new agreement between Client and Full Swing not involving GolfNow.

D. Toptracer Terms and Conditions.

Client acknowledges and agrees that the Toptracer technology, hardware, software, products, and services (collectively the "**Toptracer Technology**") are provided solely by a third-party, Topgolf USA, Inc. ("**Topgolf**"), and that Client's receipt of the Toptracer Technology under the applicable Agreement with GolfNow is contingent upon Client's execution of a separate and distinct contract between Client and Topgolf, to which GolfNow will not be a party (the "**Topgolf Agreement**"). Client's use of the Toptracer Technology, including any related hardware and/or software, will at all times be governed by the terms and conditions of the Topgolf Agreement. In the event Client fails to execute the Topgolf Agreement within seven (7) days of the execution of this Agreement, GolfNow shall have the option to terminate this Agreement.

Client's payment for the Toptracer Technology shall be the payment to GolfNow set forth in the applicable GolfNow Order Form. Client's payment obligations to GolfNow will begin immediately upon the effective date of this Agreement, regardless of when the Toptracer Technology is installed. For the avoidance of doubt, Client's payment to GolfNow for the Toptracer Technology shall be subject to the terms and conditions of the Agreement, and not the Topgolf Agreement. However, any breach of the payment terms contained in the Agreement shall also be considered a breach of the Topgolf Agreement.

GolfNow makes no representations or warranties with respect to the Toptracer Technology and disclaims any and all liability relating to the Toptracer Technology or Client's use of the Toptracer Technology. Topgolf, and not GolfNow, will be responsible for the installation of the Toptracer Technology and any related training, as well as any service, maintenance, or repairs to the Toptracer Technology required during the Term of the Agreement. Client agrees that all communications relating to the Toptracer Technology shall be directed to Topgolf.
Any disputes relating to the Toptracer Technology, excluding those relating to payment under the Agreement, shall be resolved between Client and Topgolf pursuant to the Topgolf Agreement. Client agrees to indemnify, defend and hold GolfNow, its parents and affiliates, and their respective officers, directors, employees, successors and assigns harmless from and against any and all losses, claims, damages, liabilities, costs and expenses (including reasonable attorney's fees and costs of litigation) (collectively, "**Claims**"), including any and all Claims which may be asserted by third-parties, incurred as a result of or in connection with the installation, receipt, and/or use of the Toptracer Technology, or other Topgolf product(s), by Client or Client's customers.

Client's rights to use the Toptracer Technology and the Topgolf Agreement shall both expire upon the termination of the Agreement, and any use of the Toptracer Technology beyond the expiration of the Agreement shall require a new agreement between Client and Topgolf not involving GolfNow.

E. ClubBuy Terms and Conditions.

The following ClubBuy Terms and Conditions ("**ClubBuy Terms**") shall govern Client's participation in GolfNow's ClubBuy Group Participation Program during the Term of the Agreement and are expressly incorporated into and made a part of the applicable Agreement between GolfNow and Client.

1. ClubBuy Group Participation Program.

a. GolfNow has entered into group purchasing agreements with certain third-party vendors (the "**ClubBuy Vendors**") whereby the ClubBuy Vendors will grant select golf courses associated with GolfNow cost effective ways for such golf courses to make purchases of food, agronomy, and other products under the terms of separate agreements between such golf courses and the ClubBuy Vendors and/or the ClubBuy Vendors' third party partners (collectively referred to herein as the "**Group Purchasing Programs**" or "**GPP**").

b. If indicated on the applicable Order Form, GolfNow shall provide Client with access to the GPP, with such participation being at all times subject to these ClubBuy Terms and the terms of the Agreement.

c. Client acknowledges that participation in the GPP is conditioned upon the completion of certain letters of participation and/or membership applications (the "**Membership Application(s)**") designating the ClubBuy Vendors to act as Client's group purchasing agent(s) for certain products purchased through the GPP, and Client agrees all applicable Membership Applications must be completed prior to receiving access to the GPP.

2. Term and Termination.

a. Term. The term of Client's participation in the GPP shall be the Term set forth in Section 1 of the Standard Terms and Conditions and applicable Order Form.

b. Termination. In addition to the conditions for termination set forth in Section 1 of the Standard Terms and Conditions, Client's participation in the GPP shall automatically terminate on the date of the event of either: (i) the termination of the Membership Application with the applicable ClubBuy Vendors; or (ii) the termination of GolfNow's relationship with the applicable ClubBuy Vendors under the GPP; or (iii) Client's discontinued participation in the GPP for any reason, including any defaults under the Membership Application.

3. Client Obligations.

a. During the Term, Client shall continuously participate in the GPP. Client shall promptly complete all Membership Applications and other applicable paperwork as reasonably required from time to time by the ClubBuy Vendors and shall comply with all terms and conditions thereof. Client acknowledges and agrees that ongoing access to the GPP is contingent upon Client's timely and complete payment of all invoices, payments and amounts due under the GPP. Client agrees that GolfNow, in its sole and complete discretion, may withhold, or limit/restrict access to the GPP or other GolfNow products/services in the event Client fails to make timely payments in accordance with the specified payment terms of the ClubBuy Vendors or is otherwise delinquent in its participation in the GPP, until such time that the ClubBuy Vendors have certified to GolfNow that Client has become fully compliant with the terms of the GPP.

b. Purchase Minimum. If applicable, Client shall make the minimum purchases (net of returns, allowances, rebates, discounts and write-offs) set forth on the applicable Order Form through the GPP during each year of the Term (collectively the "**Purchase Minimum(s)**"). The Purchase Minimums shall apply for each and every year of the Term. Client agrees that the Purchase Minimum is a material element of the Agreement and agrees that GolfNow shall have no obligation to provide any consideration to Client if the Purchase Minimum is not met annually.

c. Penalties. Client acknowledges that GolfNow is providing Client with products and services in exchange for Client's participation in the GPP, and that if applicable, the Purchase Minimum(s) are a form of payment for those products and services. As such, in the event Client fails to meet the required Purchase Minimum(s) during a certain year of the Term, Client shall pay to GolfNow the penalties set forth on the applicable Order Form (the "**Penalties**").

Penalties will be calculated on the yearly anniversary of the Effective Date and Client shall pay any Penalties owed to GolfNow within thirty (30) days after the end of the Agreement year in which the Purchase Minimum(s) were not met.

For the avoidance of doubt, GolfNow reserves the right to terminate, limit, or restrict Client's access to the products and services provided to Client during any time in which the Purchase Minimum was not met and the Penalties have not been paid and Client's failure to pay any applicable Penalties shall constitute a Material Breach of the Agreement.

In the event the Agreement is terminated pursuant to Section 2(b) of these ClubBuy Terms and Client has failed to meet the Purchase Minimum(s) as of the date of termination, Client shall pay the Penalties to GolfNow based on the difference between the Purchase Minimums and Client's purchases through the GPP as of the date of termination. Such Penalties shall be paid by Client within thirty (30) days of the date of termination.

d. Client acknowledges that its legal rights and obligations with respect to the GPP are contained in the Membership Applications or other agreements that Client may enter into with the ClubBuy Vendors. Client acknowledges and agrees that GolfNow (i) is not a party to the Membership Applications and (ii) shall not be responsible for any obligations thereunder. Further, GolfNow shall not be involved with the administration of the GPP, including any purchases by Client through the ClubBuy Vendors, or any of the ClubBuy Vendors' vendors, and as such GolfNow shall have no liability with respect to such purchases. Client agrees that any dispute that arises under the Membership Applications will be resolved directly through and with the ClubBuy Vendors, without any obligation for GolfNow to resolve in any way; Client hereby releases GolfNow from any such claims. In turn, Client acknowledges and agrees that the ClubBuy Vendors (i) are not a party to this Agreement and (ii) shall not be responsible for any obligations hereunder. Client agrees that any dispute that arises under these ClubBuy Terms or the Agreement will be resolved directly with GolfNow, without any obligation for the ClubBuy Vendors to resolve in any way.

4. Limitation of Liability.

IN ADDITION TO THE LIMITATIONS SET FORTH IN SECTION 19 OF THE STANDARD TERMS AND CONDITIONS, CLIENT ACKNOWLEDGES AND AGREES THAT THE GROUP PURCHASING PROGRAM IS NOT ADMINISTERED BY GOLFNOW, AND AS SUCH, GOLFNOW IS SPECIFICALLY DISCLAIMING ANY AND ALL LIABILITY, WHETHER BASED IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, FOR DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, OR SPECIAL DAMAGES ARISING OUT OF EITHER (I) CLIENT'S PARTICIPATION IN THE GROUP PURCHASING PROGRAM OR (II) CLIENT'S AGREEMENTS WITH THE CLUBBUY VENDORS OR THE CLUBBUY VENDORS' CONTRACTED VENDORS, AS APPLICABLE. CLIENT AGREES THAT GOLFNOW SHALL NOT BE LIABLE TO CLIENT FOR ANY SUCH CLAIMS OR DAMAGES. CLIENT AGREES TO SEEK RELIEF DIRECTLY FROM THE CLUBBUY VENDORS OR THE CLUBBUY VENDORS' CONTRACTED VENDORS, AS APPLICABLE FOR ANY AND ALL LIABILITIES OR DAMAGES RELATED TO CLIENT'S PARTICIPATION IN THE GROUP PURCHASING PROGRAM.

F. GolfNow Payments Merchant Services Agreement for Sub-Merchants.

In connection with the Agreement Client has entered into with GolfNow, LLC ("Provider"), WorldPay, LLC, having its principal office at 8500 Governors Hill Drive, Symmes Township, OH 45249-1384 and its designated Member Bank (collectively "Acquirer(s)") may provide Client ("Sub-merchant") with certain payment processing services ("Acquirer Services") in accordance with the terms of this Sub-Merchant Agreement. For the avoidance of doubt, the Acquirer Services are not part of the services provided by Provider under the Agreement. The term "Service," as used in this Sub- Merchant Agreement, refers solely to the services provided by Provider under the Agreement.

In consideration of Sub-merchant's receipt of credit or debit card funded payments, and participation in programs affiliated with MasterCard International Inc. ("MasterCard"), VISA U.S.A. Inc. ("VISA"), Discover ("Discover"), and certain similar entities (collectively, "Associations"), Sub-merchant is required to (i) enter into a direct relationship with an entity that is a member of the Associations and (ii) agree to comply with Operating Regulations (defined below) and Association rules as they pertain to applicable credit and debit card payments. By entering into this Sub-Merchant Agreement, Sub-merchant is fulfilling the Association rule of entering into a direct relationship with a Member of the Associations; however, Acquirers understand that Sub-merchant has contracted with Provider to obtain certain processing services.

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises contained herein, the parties agree as follows:

1. Certain Sub-merchant Responsibilities.

For the purposes of this Sub-Merchant Agreement, the following terms shall have the meanings set forth below:

"**Cardholder**" shall mean any person authorized to use a Card or the accounts established in connection with a Card.

"**Cards**" shall mean MasterCard, VISA, Discover and Other Network cards, account numbers assigned to a Cardholder or other methods of payment accepted by Processor under this Sub-Merchant Agreement.

"**Issuer**" shall mean financial institution or other entity that issued the Card(s) to the Cardholders.

"**Other Network**" shall mean any network or card association other than VISA, MasterCard, or Discover in which Provider participates hereunder.

Sub-merchant agrees to participate, and to cause third parties acting as Sub-merchant's agent ("Agents"), to participate in the Associations in compliance with, and subject to, the by-laws, operating regulations and/or all other rules, policies and procedures of the Associations (collectively "Operating Regulations"). The Associations make excerpts of their Operating Regulations available online, including via:
https://www.mastercard.us/en-us/business/overview/support/rules.html;https://usa.visa.com/support/consumer/visa-rules.html;
https://www.americanexpress.com/merchantopguide; https://www.discoverglobalnetwork.com/content/dam/discover/en_us/dgn/pdfs/MIT-Implementation-Guide.pdf.

Each applicable Association's complete Operating Regulations are incorporated by reference into this Sub-Merchant Agreement and will control with respect to any conflict in terms between this Sub-Merchant Agreement and such Operating Regulation. Sub-merchant will not discriminate against Cards or Issuers (e.g., limited acceptance options) except in full compliance with the Operating Regulations, and will comply with all Operating Regulations, applicable laws, and regulations related to its business operations, PCI-DSS obligations, the use of an Association's marks, and each transaction acquired hereunder. Sub-merchant expressly agrees that it will accept Cards and protect, utilize, or restrict transaction data, including the magnetic stripe and CVV2, in accordance with the terms of this Agreement, applicable law or regulation, and the Operating Regulations, and will cooperate with any audit requested by an Association until such audit is completed.

In addition to complying with each Association's obligations or prohibitions related to acceptance, disbursement, or resubmission of a transaction, Sub-merchant may not submit any illegal, fraudulent, or unauthorized transaction and shall only submit transactions for the sale of its own goods or services, and not any other person or company, and may not receive payment on behalf of or, unless authorized by law, redirect payments to any other party. Sub-merchant covenants that it is not a third-party beneficiary under any agreement with an Association, however, an Association may be a third-party beneficiary of this Agreement, and shall have the rights, but not any obligation, necessary to fully enforce the terms of this Agreement against the Sub-merchant.

Sub-merchant authorizes Provider to conduct checks of Sub-merchant's background, credit, or banking information, as necessary, and agrees that all information obtained under this Agreement may be shared with an Association. Sub-merchant acknowledges and agrees that it is responsible for its employees' actions, it will notify Provider of any 3rd party that will have access to cardholder data, and it will immediately report all instances of a data breach to Provider immediately after it reasonably identifies an incident.

Sub-merchant also agrees to comply with all applicable state, federal, and local laws, rules, and regulations ("Laws"). Without limiting the foregoing, Sub-merchant agrees that it will fully comply with any and all confidentiality and security requirements of the USA Patriot Act (or similar law, rule or regulation), VISA, MasterCard, Discover, and/or Other Networks, including but not limited to the Payment Card Industry Data Security Standard, the VISA Cardholder Information Security Program, the MasterCard Site Data Protection Program, and any other program or requirement that may be published and/or mandated by the Associations. For purposes of this section, Agents include, but are not limited to, Sub-merchant's software providers and/or equipment providers.

Sub-merchant shall only complete sales transactions produced as the direct result of bona fide sales made by Sub-merchant to cardholders, and is expressly prohibited from processing, factoring, laundering, offering, and/or presenting sales transactions which are produced as a result of sales made by any person or entity other than Sub-merchant, or for any purposes related to any illegal or prohibited activity including but not limited to money-laundering or financing of terrorist activities.

Sub-merchant may set a minimum transaction amount to accept a card that provides access to a credit account, under the following conditions: (i) the minimum transaction amount does not differentiate between card issuers; (ii) the minimum transaction amount does not differentiate between MasterCard, Visa, or any other acceptance brand; and (iii) the minimum transaction amount does not exceed ten dollars (or any higher amount established by the Federal Reserve). Sub-merchant may set a maximum transaction amount to accept a card that provides access to a credit account, under the following conditions: Sub-merchant is a (i) department, agency or instrumentality of the U.S. government; (ii) corporation owned or controlled by the U.S. government; or (iii) Sub- merchant whose primary business is reflected by one of the following MCCs: 7992, 7997, 5812 –public golf course, private golf course or restaurant.; and the maximum transaction amount does not differentiate between MasterCard, Visa, or any other acceptance brand.

2. Sub-merchant Prohibitions.

Sub-merchant must not (i) require a cardholder to complete a postcard or similar device that includes the cardholder's account number, card expiration date, signature, or any other card account data in plain view when mailed, (ii) add any tax to transactions, unless applicable law expressly requires that a Sub-merchant impose a tax (any tax amount, if allowed, must be included in the transaction amount and not collected separately), (iii) request or use an account number for any purpose other than as payment for its goods or services, (iv) disburse funds in the form of travelers checks if the sole purpose is to allow the cardholder to make a cash purchase of goods or services from Sub-merchant, (v) disburse funds in the form of cash unless Sub-merchant is dispensing funds in the form of travelers checks, TravelMoney cards, or foreign currency (in such case, the transaction amount is limited to the value of the travelers checks, TravelMoney cards, or foreign currency, plus any commission or fee charged by the Sub-merchant), or Sub-merchant is participating in a cash back service, (vi) submit any transaction receipt for a transaction that was previously charged back to the acquirers and subsequently returned to Sub-merchant, irrespective of cardholder approval, (vii) accept a Visa consumer credit card or commercial Visa product issued by a U.S. issuer to collect or refinance an existing debt, (viii) accept a card to collect or refinance an existing debit that has been deemed uncollectable by Sub-merchant, or (ix) submit a transaction that represents collection of a dishonored check. Sub-merchant further agrees that, under no circumstance, will Sub-merchant store cardholder data in violation of the Laws or the Operating Regulations including but not limited to the storage of track-2 data. Neither Sub-merchant nor its Agent shall retain or store magnetic-stripe data subsequent to the authorization of a sales transaction.

In addition, Sub-merchant may not submit or knowingly permit any cardholder or other user of the Service to submit any transaction that is illegal or that Sub-merchant should have known is illegal, including but not limited to transactions involving pornography, money laundering, or financing terrorist activities. Sub-merchant agrees to comply with any and all instructions Provider gives Sub-merchant from time to time regarding payment processing provided hereunder. Sub-merchant agrees that Provider may investigate and audit Sub-merchant's compliance with this Sub-Merchant Agreement from time to time, and Sub-merchant agrees to cooperate fully with Provider in any investigation or audit. Sub-merchant acknowledges and agrees that this paragraph is a material obligation of this Sub-Merchant Agreement.

3. Rates and Settlement.

Provider's current rates for the Provider Services are as set forth on the applicable Order Form between GolfNow and Sub-merchant. Card Present and Card Not Present transactions are as defined/categorized by Provider. For the avoidance of doubt, Sub-merchant shall be fully and solely liable for any and all chargebacks, including any excessive chargebacks.

Upon receipt of Sub-merchant's sales data for card transactions, Acquirer will process Sub-merchant's sales data to facilitate the funds transfer between the various Associations and Sub-merchant. After Acquirer receives credit for such sales data, Provider will provide funding instructions to Acquirer, and Acquirer will then fund Sub-merchant through Sub-merchant's designated demand deposit account ("Sub-merchant-Owned

Designated Account") and/or Provider through Provider's designated demand deposit account ("Provided Designated Account") as directed. As applicable, Acquirer will debit the Provider Designated Account and/or Sub-merchant-Owned Designated Account for funds owed to Acquirer as a result of the Acquirer Services provided hereunder. Further, if a cardholder disputes a transaction, if a transaction is charged back for any reason, or if Acquirer or Provider reasonably believes a transaction is unauthorized or otherwise unacceptable, the amount of such transaction may be charged back and debited from Sub-merchant.

Provider, in its sole discretion, may change the following at any time for any reason upon providing Sub-Merchant with thirty (30) days written notice:

- The blended rate or any other rates charged for the Acquirer Services
- The frequency of settlement
- The chargeback fee
- The rates for any additional surcharges

4. Term and Termination.

Sub-merchant agrees to provide Provider with such information as Provider may request in order to confirm that Sub-merchant is eligible to use the Acquirer Services, and Sub-merchant agrees that all information Sub-merchant provides to Provider for that purpose will be accurate and complete. In addition, Sub-merchant will furnish to Provider from time to time, promptly upon Provider's request, (i) a list of the current addresses of all Sub-merchant's offices, (ii) a list of all assumed business names (d/b/a's) used by Sub-merchant, and (iii) a list of all products and services provided by Sub-merchant.

Sub-merchant acknowledges that even though Sub-merchant signs up for the payment processing feature of the Service, Sub-merchant is not guaranteed use of that feature of the Service. The payment processing feature will not be available to Sub-merchant unless and until Provider has confirmed that Sub-merchant is eligible to use the Acquirer Services and this Sub-Merchant has become binding on all parties, as set forth in the paragraph below. If that occurs, the services of Provider and Acquirer described herein will be part of the Service and will be provided to Sub-merchant subject to and in accordance with the Agreement; provided that, if there is any conflict between the terms of this Sub-Merchant Agreement and the Agreement, then to the extent such terms apply to payment processing, the terms of this Sub-Merchant Agreement shall control.

This Sub-Merchant Agreement shall be binding upon Sub-merchant's execution. The term of this Sub-Merchant Agreement shall begin, and the terms of the Agreement shall be deemed accepted and binding upon Acquirers and Provider, on the date Acquirers accept this Agreement by issuing a merchant identification number, and shall terminate when Provider's Agreement with Sub-merchant terminates.

Notwithstanding the foregoing, Acquirers may immediately cease providing Acquirer Services and/or terminate this Sub-Merchant Agreement without notice if (i) Sub-merchant or Provider fails to pay any amount to Acquirers when due, (ii) in Acquirers' opinion, provision of a service to Sub-merchant or Provider may be a violation of the Operating Regulations, or any applicable state, federal, or local laws, rules, and regulations ("Laws"), (iii) Acquirers believes that Sub-merchant has violated or is likely to violate the Operating Regulations or the Laws, (iv) Acquirer's agreement with Provider terminates, or (v) Acquirers or Providers are required to do so by any of the Associations.

Further, Provider may terminate this Sub-Merchant Agreement at any time, in Provider's sole discretion, without prior notice to Sub-merchant. If this Sub-Merchant Agreement is terminated by any party hereto, the provisions of section 3 above will continue to apply until Sub-merchant has paid all amounts owed to Acquirer and/or Provider in respect of the Acquirer Service provided by Provider prior to termination.

5. Indemnification and Limits of Liability.

Sub-merchant agrees to provide Acquirers, via a communication with Provider, with written notice, specifically detailing any alleged breach by Acquirer of this Sub-Merchant Agreement, within thirty (30) days of the date on which the alleged failure or error first occurred; failure to so provide notice shall be deemed an acceptance by Sub-merchant and a waiver of any and all rights to dispute such failure or error. Acquirers shall bear no liability and have no obligations to correct any errors resulting from Sub- merchant's failure to comply with the duties and obligations of the preceding sentence.

Sub-merchant shall indemnify and hold harmless Acquirers, and their directors, officers, employees, affiliates, and agents from and against all proceedings, claims, demands, losses, liabilities, damages and expenses resulting from or otherwise arising out of (i) the Acquirer Services in this Sub-Merchant Agreement, (ii) Sub-merchant's or Sub-merchant's employees and agents acts or omissions in connection with the Acquirer Services provided pursuant to this Sub-Merchant Agreement, (iii) any infiltration, hack, breach, or violation of the processing system resulting from, arising out of, or in any way related to Sub-merchant's ability to use of the Acquirer Services provided herein including but not limited to Sub-merchant's use of an Agent or any other third party processor or system or (iv) any issue between Sub-merchant and Provider. This indemnification shall survive the termination of the Sub-Merchant Agreement. Sub-merchant's sole and exclusive remedy for any and all claims against Acquirers arising out of or in any way related to the transactions contemplated herein shall be termination of this Sub-Merchant Agreement. In the event that Sub-merchant has any claim arising in connection with the Acquirer Services, rights, and/or obligations defined in this Sub-Merchant Agreement, Sub-merchant shall proceed against Provider and not against Acquirers, unless otherwise specifically set forth in the Operating Regulations. In no event shall Acquirers have any liability to Sub-merchant with respect to this Sub-Merchant Agreement or the Acquirer Services. Sub-merchant acknowledges Acquirers are only providing this Sub-Merchant Agreement to assist in Provider's processing relationship with Sub-merchant, that Acquirers are not liable for any action or failure to act by Provider, and that Acquirers shall have no liability whatsoever in connection with any products or services provided to Sub-merchant by Provider.

6. Special MasterCard Terms.

As used in this Section 7: (i) "Corporation" means MasterCard International Incorporated, Maestro International Inc., and their subsidiaries and affiliates; (ii) "Interchange System" means the computer hardware and software operated by and on behalf of the Corporation for the routing, processing, and settlement of transactions; (iii) "Marks" means the names, logos, trade names, logotypes, trademarks, service marks, trade designations, and other designations, symbols, and marks that the Corporation owns, manages, licenses, or otherwise controls and makes available for use by authorized entities in accordance with the Standards, and “Mark” means any one of the Marks; and (iv) “Standards” means the Amended and Restated Certificate of Incorporation and the bylaws, operating rules, regulations, policies, and procedures of the Corporation, including but not limited to any manuals, guides or bulletins, as may be amended from time to time.

Sub-merchant acknowledges and agrees: (i) Sub-merchant will comply at all times with all applicable Standards, as amended from time to time; (ii) the Corporation is the sole and exclusive owner of the Marks, and Sub-merchant will not contest the ownership of the Marks for any reason; (iii) the Corporation may at any time, immediately and without advance notice, prohibit the Sub-merchant from using any of the Marks for any reason; and (iv) the Corporation has the right to enforce any provision of the Standards and to prohibit the Sub-merchant and/or Provider from engaging in any conduct the Corporation deems could injure or could create a risk of injury to the Corporation, including injury to reputation, or that could adversely affect the integrity of the Interchange System, the Corporation’s “confidential information” (as defined in the Standards), or both; and Sub-merchant will not take any action that could interfere with or prevent the exercise of this right by the Corporation.

Sub-merchant agrees that Provider may require any changes to Sub-merchant’s website or otherwise that Provider deems necessary or appropriate to ensure that Sub-merchant remains in compliance with the Standards governing the use of the Marks.

In addition to the termination provisions set forth in Section 4, this Sub-Merchant Agreement will automatically and immediately terminate if the Corporation de-registers Provider or if an Acquirer ceases to be approved by the Corporation for any reason or if such Acquirer fails to have a valid license with the Corporation to use any Mark accepted by Sub-merchant. Further, Provider, at its discretion or at the direction of an Acquirer or the Corporation, may terminate the Sub-Merchant Agreement immediately for activity deemed to be fraudulent or otherwise wrongful by Provider, an Acquirer, or the Corporation.

In the event of any conflict or inconsistency between any provision of this Sub-Merchant Agreement and the Standards, the Standards will govern as to any transaction involving the Corporation or its cards.

7. Miscellaneous.

This Sub-Merchant Agreement is entered into, governed by, and construed pursuant to the laws of the State of Ohio for Acquirer and its Member Bank, and Florida for Provider, without regard to conflicts of law provisions. This Sub-Merchant Agreement may not be assigned by Sub-merchant without the prior written consent of both Acquirers and Provider. This Sub-Merchant Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, transferees and assignees. Acquirers and/or Provider may amend this Sub-Merchant Agreement upon notice to Sub-merchant. If any provision of this Sub-Merchant Agreement is determined to be illegal or invalid, such illegality or invalidity of that provision will not affect any of the remaining provisions and this Sub-Merchant Agreement will be construed as if such provision is not contained in the Sub-Merchant Agreement. “Member Bank” as used in this Sub-Merchant Agreement shall mean a member of VISA, MasterCard and/or Discover, as applicable, that provides sponsorship services in connection with this Sub-Merchant Agreement. As of the commencement of this Sub-Merchant Agreement, Member Banks shall be Fifth Third Bank, an Ohio Banking Corporation, located at 38 Fountain Square Plaza, Cincinnati, OH 45263. The Member Banks are party to this Sub-Merchant Agreement. The Member Banks may be changed, and their rights and obligations assigned to another party by Acquirers at any time without notice to Sub-merchant.

G. Clubhouse Bulletin Terms and Conditions.

The following Clubhouse Bulletin Terms and Conditions (“Clubhouse Bulletin Terms”) shall govern Client’s purchase and use of GolfNow’s Clubhouse Bulletin service during the Term of the Agreement and are expressly incorporated into the applicable Agreement between GolfNow and Client. These Clubhouse Bulletin Terms will not change or replace the Standard Terms and Conditions or any other terms of the Agreement unless expressly stated otherwise. Any capitalized terms not defined in these Clubhouse Bulletin Terms shall have the same meaning as otherwise set forth in the Agreement and in the event of an express conflict between these Clubhouse Bulletin Terms and the Agreement, the Clubhouse Bulletin Terms shall control.

1. **Clubhouse Bulletin Services.** During the Term, GolfNow shall produce and provide to Client GolfNow’s Clubhouse Bulletin video product (“Clubhouse Bulletin Video(s)”) in the frequency and manner set forth on the applicable Order Form (the “Clubhouse Bulletin Services”).

2. **Production; Approval.**

   (a) All Clubhouse Bulletin Videos shall be produced by GolfNow or its designated agent at high-quality industry standards.

   (b) The content of each Clubhouse Bulletin Video shall be mutually agreed upon by the Parties, however the Clubhouse Bulletin Video (including any b-roll) will be edited at the discretion of GolfNow. The format of all Clubhouse Bulletin Videos shall be at the discretion of GolfNow.

   (c) To the extent any Clubhouse Bulletin Video will feature GolfNow’s talent, such talent shall be chosen at the discretion of GolfNow.

   (d) Approval rights: GolfNow shall submit to each Clubhouse Bulletin Video to Client for approval, provided such approval right shall be subject to the following: (i) Client must be available as reasonably required by GolfNow for the exercise of such approval right; (ii) such right being exercised in a reasonable manner, so as not to frustrate the full and timely development, production, and/or exploitation of the content; (iii) in the event of a disagreement, GolfNow shall not be obligated to incur any additional non-de minimis costs with respect to the approval right unless due to disagreement arising from a breach of these Clubhouse Bulletin Terms by GolfNow or a failure by GolfNow to fulfill any of its obligations herein; and (iv) in the event of a disagreement over the content of a Clubhouse Bulletin Video, GolfNow’s determination shall be final.

   (e) Filming Limits (if applicable): In the event GolfNow will be filming on-site at Client’s Golf Course(s) (if indicated on the Order Form), such filming will be limited to a maximum of twelve (12) hours per day, unless expressly agreed upon otherwise by GolfNow. For the avoidance of doubt, if filming does not last 12 hours in any given day, unused filming time may not be carried over to the next day (i.e., if filming on Day One only lasts 10 hours, those two (2) unused hours may not be carried over to make Day Two a 14 hour filming day).

3. Rights; Restrictions. Client will have the following rights and restrictions with respect to all Clubhouse Bulletin Videos:

(a) Client may only use Clubhouse Bulletin Videos for the limited purposes of delivering to Client's members via email, uploading directly to Client's websites and/or social media channels, or Client's internal business purposes.

(b) Client shall not edit or alter any Clubhouse Bulletin Video footage for any purpose (e.g., to insert commercials or advertisements).

(c) Client's term of use for the Video shall be limited to the Term of the Agreement. Upon expiration of the Term, Client must immediately take down or remove all exhibitions of the Clubhouse Bulletin Videos. If GolfNow requests that Client cease exhibition of a Clubhouse Bulletin Video prior to expiration of the Term, Client shall cease exhibition immediately upon receiving notice from GolfNow.

4. Intellectual Property.

(a) Client grants to GolfNow a limited, non-exclusive, royalty-free license to use any service marks, logos, trademarks, word marks, symbols, emblems, trademark designs, or indicia as provided by Client ("Client Marks") to GolfNow for the purpose of exercising its rights or carrying out its obligations with respect to the Clubhouse Bulletin Services, including but not limited to for GolfNow's production and exhibition of the Clubhouse Bulletin Videos. GolfNow will not acquire any proprietary or other right, title or interest in or to the Client Marks, or any goodwill associated with the Client Marks, except the right to use the Client Marks as provided hereunder. Client represents and warrants that it is the owner of the Client Marks and otherwise possesses all rights to utilize the Client Marks without approval of any third party, and otherwise has the ability to perform its obligations hereunder.

(b) Client acknowledges that, as between the Parties, GolfNow shall own the copyright and all other rights to all content captured by GolfNow through its production of the Clubhouse Bulletin Videos, and may in its discretion distribute and exhibit any Clubhouse Bulletin Video in whole or substantial portions thereof at any time during or after the Term throughout the world in all forms of media, now know or hereafter created, in perpetuity. Notwithstanding the above, Client shall have the right to exhibit any Clubhouse Bulletin Video provided under this Agreement, or portions thereof, for the limited purposes set forth in these Clubhouse Bulletin Terms. Any other exhibitions of the Clubhouse Bulletin Video by Client require the prior written approval of GolfNow. Client shall be responsible for obtaining all necessary third-party permissions including right of publicity, public performance music rights, and paying any related fees in connection with such rights prior to its exhibition of any Clubhouse Bulletin Video. With the exception of the allowed uses of the Clubhouse Bulletin Videos outlined herein, Client may not use GolfNow's trademarks (registered and unregistered marks and logos) without GolfNow's express prior written permission.

(c) To the extent Client provides any content owned, licensed, or produced by Client ("Client Content") for use in any Clubhouse Bulletin Video, Client hereby grants to GolfNow the perpetual, fully sub-licensable, royalty-free, worldwide right and license to use, exhibit, display, duplicate, transmit, perform or otherwise exploit such Client Content as it appears in the applicable Clubhouse Bulletin Video or any related programming or derivative works thereof, in all languages, on a live, delayed and/or replay basis, via any and all forms of media distribution now contemplated or hereinafter developed.

DATE: February 6, 2024
TO: Mayor and City Council
FROM: Eric Anderson, Recreation Manager
Jenna Tuma, Parks, Trails, Recreation & Facilities Director
SUBJECT: Maintenance Agreement - Club Car

Purpose:
Approval of the Golf Cart Maintenance Agreement with Club Car LLC.

Background:
On June 6, 2023, the City Council approved a 42-month lease agreement with Club Car LLC for a fleet of 40 Golf Carts for the Brooktree Golf Course operating season. In addition to the lease agreement, an annual maintenance service agreement is utilized to do regular monthly cart service which includes maintaining proper: tire pressure, fluid levels, lubrication, batteries and inspection of brakes and drive systems. Service is performed monthly from May to the end of October with a per-cart cost of $25 on gas carts and $20 on electric carts for a total of $975 per month. Staff believe this is a valuable service to keep carts in operation and minimize downtime. The initial term of the maintenance agreement is for the 2024 Brooktree season, and will automatically renew annually over the duration of the lease agreement, unless the City provides a 30-day cancelation notice.

Budget Impact:
The total annual fee of the maintenance agreement is $5,850. This expense is included in the approved 2024 general operating budget.

Staff Recommendation:
Staff recommends approval of the agreement.

Attachments:
1. ClubCar Maintenance Agreement (2024-2026) - Legal Revisions 1-29-24

CLUB CAR MAINTENANCE AGREEMENT

This Club Car Maintenance Agreement is dated 12/04/2023 by and between Club Car LLC, PO Box 204658, Augusta Georgia 30917 ("Club Car") and CITY OF OWATONNA, MN DBA, USA, 540 WEST HILLS CIRCLE, OWATONNA MN 55060 ("Customer").

WHEREAS Customer has entered in a lease agreement with Club Car for the lease and/or rental of certain golf cars described in Exhibit A; and

WHEREAS Customer desires Club Car to provide regular maintenance services for the Equipment as detailed herein;

NOW THEREFORE, for the consideration set forth herein, the Parties agree as follows:

1. Compensation. Customer agrees to pay Club Car the amount indicated in Section 5 below to maintain, as provided below, the Equipment as set forth herein. The price does not include any present or future Federal, State, or local property, license, privilege, sales, use, excise, gross receipts or other like taxes or assessments applicable to this transaction or any services performed hereunder. Such taxes, if applicable, will be invoiced to Customer on a monthly basis. Except as specifically noted herein, all equipment, materials and labor necessary to perform the services enumerated in this Agreement are included within the compensation set forth in this paragraph. Customer shall pay all invoiced amounts due to Club Car within thirty (30) days after Customer's receipt of such invoice.

2. Term; Termination.

a. The initial term shall be for a period of 6 months commencing from 5/1/2024 to 10/31/2024. Upon expiration of the initial term, this Agreement will extend automatically at a price of $5,850.00 for successive 12 month terms unless Customer provides thirty days written notice of nonrenewal to Club Car. Any such notice shall be effective at the expiration of the initial Term or of any renewal Term.

b. If any party fails to perform its duties under this Agreement, the other party may at its option give written notice to the defaulting party, specifying the nature of the alleged default and demanding that the default be cured. Upon receipt of the notice, the party claimed to be in default shall have ten (10) days within which to cure any default that may exist. If the default is not cured within the time allowed, the non-defaulting party may terminate this Agreement by written notice, in addition to any other remedies available at law or in equity.

3. Warranty. Club Car warrants that services and parts furnished under this contract will be free of defects in material and workmanship for a period of six months from the date of service. Except for the foregoing warranty, Club Car offers no warranties, express or implied, concerning the Club Car Maintenance.

4. Maintenance.

a. Club Car and/or its contractor at its expense and at reasonable intervals shall cause an authorized representative to perform the Club Car Maintenance on the Equipment as specified in Paragraph 4 below (the "Scope of Work") and shall have the right to remove affected items of Equipment from Customer's premises in order to provide such maintenance and repairs. In the event of such removal, Club Car shall cause such item(s) to be returned to Customer as expeditiously as reasonably possible. All such work shall be performed in a good workmanlike fashion. Customer agrees to provide Club Car with full, free and safe access to Customer's premises and the Equipment during the term of this Agreement for the purposes of performing maintenance.

b. Except for the Scope of Work, Customer agrees to perform all required maintenance of the Equipment and to accomplish same in a good workmanlike fashion. Customer agrees at its expense to employ competent trained personnel to provide routine and preventative maintenance on the Equipment and to follow all instructions contained in Club Car's Owner's Manuals and Maintenance and Service Manuals concerning the operation and maintenance of the Equipment Customer agrees it is responsible for all parts associated with the replacement and/or repair of all wear and tear items. Customer agrees that any damage caused by negligence or abuse by operators of the Equipment or negligence in the preventative maintenance and any damage resulting from non-compliance with Club Car's Manuals stated above are the sole responsibility of the Customer. Customer is responsible for providing electricity and the cost of same for charging and/or gasoline and oil.

5. Club Car Maintenance Services. Club Car shall perform the Scope of Work indicated by the Customer's initials below:

Initial Selected Plan					
Plan	**Monthly**	**Quarterly**	**Semi-Annual**	**Annual**	**Water, Air, & Cursory Inspection**
Frequency	Weekly service of 25% of fleet	Every other week to service 17% of fleet.	Semi-Annual to service 100% of fleet.	Every other week to service 17% of fleet.Annual to service 100% of fleet.	Every other week to service 50% of the fleet each visit.
Tires	Monthly check and maintain proper pressure.	Quarterly check and maintain proper pressure.	Semi-annual check and maintain proper pressure.	Annual check and maintain proper pressure.	Monthly check and maintain proper pressure.
Front End	Quarterly inspection of ball joints, wheel bearings, bushings, alignment, springs, and shocks. Correct and adjust as needed.	Quarterly inspection of ball joints, wheel bearings, bushings, alignment, springs, and shocks. Correct and adjust as needed.	Quarterly inspection of ball joints, wheel bearings, bushings, alignment, springs, and shocks. Correct and adjust as needed.	Quarterly inspection of ball joints, wheel bearings, bushings, alignment, springs, and shocks. Correct and adjust as needed.	Not applicable.
Lubrication	Semi-annual lubrication of all fittings, clevises, cables, brake components, pedal groups, and linkages.	Semi-annual lubrication of all fittings, clevises, cables, brake components, pedal groups, and linkages.	Semi-annual lubrication of all fittings, clevises, cables, brake components, pedal groups, and linkages.	Annual lubrication of all fittings, clevises, cables, brake components, pedal groups, and linkages.	Not applicable.
Differential	Semi-annual check for leaks and damage to drive unit.	Semi-annual check for leaks and damage to drive unit.	Semi-annual check for leaks and damage to drive unit.	Annual check for leaks and damage to drive unit.	Not applicable.
Brakes	Semi-annual inspect and adjust brakes, and perform annual brake service.	Semi-annual inspect and adjust brakes, and perform annual brake service. Quarterly inspect and clean Dynamic Braking Resistor for Li Cars.	Semi-annual inspect and adjust brakes, and perform annual brake service.	Annual inspect and adjust brakes, and perform annual brake service.	Not applicable.
Drive System	• ***Gas:*** Monthly check engine oil level and quarterly inspection of belts, oil, terminal connections, reverse buzzer, and FNR switch. • ***Electric:*** Check connections, wiring, terminal connections, single point watering system, deionizer filter, reverse buzzer, FNR switch, nuts, and battery hold downs. All batteries will be watered.	• ***Gas:*** Quarterly check engine oil level and quarterly inspection of belts, oil, terminal connections, reverse buzzer, and FNR switch. • ***Electric:*** Check connections, wiring, terminal connections, single point watering system, deionizer filter, reverse buzzer, FNR switch, nuts, and battery hold downs.	• ***Gas:*** Semi-annual check belts and adjust, check oil level, terminal connections, reverse buzzer, FNR switch, and change oil. • ***Electric:*** Semi-annual check of connections, wiring, terminal connections, single point watering system, deionizer filter, reverse buzzer, FNR switch, nuts, and battery hold downs.	• ***Gas:*** Annual check belts and adjust, terminal connections, reverse buzzer, FNR switch, and change oil. • ***Electric:***Annual check connections, wiring, terminal connections, single point watering system, deionizer filter, reverse buzzer, FNR switch, nuts, and battery hold downs.	• Monthly all batteries will be inspected and watered to the proper level.

Battery Charger (Electric)	Monthly visually inspect battery charger, check cable connections, breakers, and lubricate receptacle with WD-40.	Quarterly visually inspect battery charger, check cable connections, breakers, and lubricate receptacle with WD-40.	Quarterly visually inspect battery charger, check cable connections, breakers, and lubricate receptacle with WD-40.	Annual visually inspect battery charger, check cable connections, breakers, and lubricate receptacle with WD-40.	Not applicable.
Price Per Month Per Car		$24.37/car			

Other Special Conditions: None

Club Car will not assess a trip charge or fee on billable repairs if a Customer selects a Monthly, Quarterly, or Water, Air & Cursory Inspection Plan.

6. Equipment Malfunction. Customer agrees to report to Club Car any malfunction of Equipment, identifying serial numbers and nature of complaints. Customer also agrees to report any damage, accidents, wrecks or vandalism to Club Car within twenty-four (24) hours of discovery. Customer is responsible for all costs associated with such incidents.

7. Force Majeure. The non-performance by Club Car of its obligations to deliver the maintenance hereunder shall be excused if such non-performance is caused by any strike, flood, fire, accident, or other casualty, act of God, war, governmental restrictions, shortage of, or inability to obtain parts or raw material from normal sources, damage by the elements, failure of equipment, power outages, or any other causes, whether of the kind herein enumerated or otherwise, beyond Club Car's reasonable control (the "Force Majeure") and Club Car shall have no liability to the Customer in connection with any such non-performance. If Club Car's performance of its obligations under this Agreement is prevented or delayed by Customer or its agents, subcontractors, consultants, or employees, Club Car shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges or losses sustained or incurred by Customer.

8. Safety Precautions. During the term of this Agreement, Customer will take all necessary precautions for the health and safety of Club Car personnel who will perform any maintenance at the Customer site and the safety of the Equipment. Club Car shall be under no obligation to provide any services if doing so might place any Club Car personnel or Equipment in unsafe circumstances.

9. Limitation of Liability. Neither Club Car nor Customer shall in any event be liable for any consequential, incidental, indirect, special or punitive damages arising out of this contract or any breach thereof, or any defect in or failure or malfunction of the equipment hereunder, whether or not such damage is based on contract, warranty, negligence, indemnity, strict liability, or otherwise. The total liability of Club Car with respect to this agreement shall not exceed $1.5 Million, the maximum liability of a municipality under Minn. Stat. 466.04"

10. Governing Law. This Agreement shall be construed in accordance with the laws of the State of Minnesota.

11. Independent Contractor Status. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. Customer may not assign this Agreement without Club Car's prior written consent.

12. Entirety of Agreement. This Agreement contains the entire agreement between Club Car and Customer regarding the subject matter contained herein. All prior negotiations and discussions (whether in writing or made orally) by and between the parties which are not set forth in this Agreement or incorporated herein are merged into this Agreement and have no force or effect separate and apart from this Agreement.

13. Attorneys' Fees.
In the event that any action, suit or other proceeding is instituted to remedy, prevent or obtain relief from a breach of this Agreement, The American Rule shall apply, and each party agrees to pay its own attorney's fees and costs, except for those costs as may be awarded by the Court.

CUSTOMER:

By:

Print Name: Eric Anderson

Its: Recreation Manager

By:

Print Name: Kris Busse
Its: City Administration

By: Thomas Kuntz
Its: Mayor

CLUB CAR

By:

Print Name: Mike Bickel

Its: North America Service Leader

EXHIBIT A

Equipment

(35) 2024 Tempo gas golf cars @ $25.00 per car per month

(5) 2024 Tempo electric golf cars @ $20.00 per car per month

Total Annual $5850.00 (blended rate $24.375/car/months- 6 months May through October)

DATE: February 6, 2024
TO: Mayor and City Council
FROM: Sean Murphy, Public Works Director
SUBJECT: 2024 Instrumentation and Control Support Services Agreement - AE2S

Purpose:
Requesting Council approval of the 2024 SCADA Services Agreement with Advanced Engineering and Environmental Services, LLC (AE2S) to render Instrumentation and Control (I&C) Support Services to the City of Owatonna Wastewater Treatment Facility.

Background:
AE2S will provide services as outlined in the attached agreement.

Budget Impact:
The agreement shall not exceed $10,000 without prior authorization. Costs will be paid for using Waste Water Treatment Operating Funds.

Staff Recommendation:
Staff recommends approval.

Attachments:
1. Owatonna WWTF - 2024 General SCADA Services - AE2S

January 10, 2024

Andrew Fischer
Wastewater Manager
City of Owatonna
1155 Industrial Blvd
Owatonna, MN 55060

RE: Letter Agreement between Client and AE2S
2024 Instrumentation and Control Support Services

Dear Mr. Fischer:

Advanced Engineering and Environmental Services, LLC (AE2S) proposes to render Instrumentation and Control (I&C) Support Services (Assignment) to the City of Owatonna Wastewater Treatment Facility (CLIENT).

This Agreement, including Exhibit A, sets forth the terms and conditions under which the CLIENT and AE2S shall be governed regarding the Assignment.

<u>Scope of Basic Services</u>

AE2S will perform the following tasks:

- Supervisory Control and Data Acquisition (SCADA) software programming services as requested by the CLIENT. Programming modifications and troubleshooting for computers, Programmable Logic Controller (PLC), and Human-Machine Interface (HMI) software.
- I&C General, Emergency, and Calibration Services
    - Service for system problems will be scheduled in accordance with the severity of the issue. AE2S will work with the CLIENT to assess the severity and discuss an appropriate timeline for a solution.
        - Problems that result in the inability for the operation of the facility will be assessed as soon as possible, inside or outside normal business hours.
        - Non-Emergency problems will be assessed within normal business hours.
    - Technicians will provide all required tools and computer software to perform Input/Output (I/O) Checkout and Instrumentation Calibrations as needed.
    - Provide service reports to CLIENT indicating the original problem, the testing procedures used to investigate the problem, the resolution to the problem and the time required to resolve the problem.
    - If the replacement of equipment is required to resolve the problem, the technician will discuss with the CLIENT and work to procure and replace the equipment under the CLIENT's direction. Costs of the devices, consumables for installing the devices, or other direct, non-labor expenses are reimbursable and shall be borne by the CLIENT.

<u>Additional Services</u>

Services resulting from significant changes in the general scope, extent, or character of the Assignment are not included as a part of the Scope of Basic Services. If authorized in writing by the CLIENT, AE2S will provide services beyond the scope of this Agreement on an hourly basis in accordance with the Hourly Fee Schedule attached as Exhibit B.

CLIENT'S Responsibilities

CLIENT shall do the following in a timely manner, so as not to delay the services of AE2S:

1. Designate a person to act as CLIENT's representative with respect to the services to be rendered under this Agreement. Such person shall have authority to transmit instructions, receive information, and interpret and define CLIENT's policies and decisions with respect to services for the Assignment.

2. Provide relevant information regarding requirements for the Assignment. AE2S shall be entitled to use and rely upon all information provided by CLIENT or others in performing AE2S's services under this Agreement.

3. Provide access to the relevant site sufficient for AE2S to performs its services under this Agreement.

4. CLIENT shall, so long as AE2S is not in default, promptly pay AE2S for such services as have been performed satisfactorily hereunder in accordance with the fee terms set forth herein.

CLIENT shall bear all costs incident to compliance with its responsibilities pursuant to this section.

Fees

AE2S shall render services under this Agreement on an hourly basis in accordance with the Fee Schedule attached as Exhibit B, as adjusted annually on January 1, plus reimbursement for all project related expenses. Not to exceed $10,000, without written approval from CLIENT.

Performance Schedule

AE2S shall use commercially reasonable efforts to complete Basic Services within a reasonable time period.

Contract Documents

This Agreement includes the following documents, incorporated herein by reference:

1. Exhibit A - Terms and Conditions;
2. Exhibit B - Hourly Fee and Expense Schedule;
3. Any drawings or specifications provided by the CLIENT in writing; and
4. Any duly executed written amendments.

There are no contract documents other than this Agreement and those documents listed above.

If this Agreement sets forth your understanding of our agreement, including the scope of work desired, fees, terms, and conditions, please sign in the space provided and return a copy to AE2S. Thank you for the opportunity to assist you. We look forward to working with you.

Sincerely,

Anthony Pittman
Instrumentation & Controls Regional Mgr.

AE2S

By: ______________________________
Justin Klabo, PE
Operations Manager

CLIENT

Accepted this _____ day of

_________________________, 2024

By: ______________________________

Name (Print):_______________________

Title: _____________________________

Standard Terms and Conditions

The Agreement is supplemented to include the following terms and conditions:

1. Standard of Care
   a. The standard of care for all professional services performed or furnished by AE2S under this Agreement will be the care and skill ordinarily used by members of AE2S's profession practicing under similar circumstances at the same time and in the same locality. AE2S makes no warranties, express or implied, under this Agreement or otherwise, in connection with AE2S's services.

   b. CLIENT shall be responsible for, and AE2S may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by CLIENT to AE2S pursuant to this Agreement. AE2S may use such requirements, reports, data, and information in performing or furnishing services under this Agreement.

2. Payments to AE2S
   Invoices will be prepared in accordance with AE2S's standard invoicing practices and will be submitted to CLIENT by AE2S monthly, unless otherwise agreed. Invoices are due and payable within 30 days. If CLIENT fails to make any payment due AE2S for services and expenses within 30 days, the amounts due AE2S will be increased at the rate of 1.75% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, AE2S may, after giving seven days written notice to CLIENT, suspend services under this Agreement until AE2S has been paid in full all amounts due for services, expenses, and other related charges. All payments shall be made in United States Dollars.

3. Insurance
   AE2S will maintain insurance coverage for Workers' Compensation, Professional Liability, General Liability, and Automobile Liability and will provide certificates of insurance to CLIENT upon request.

4. Exclusion of Special, Incidental, Indirect, and Consequential Damages
   To the fullest extent permitted by law, and notwithstanding any other provision in the Agreement, AE2S and AE2S's officers, directors, partners, employees, agents, and Consultants, or any of them, shall not be liable to CLIENT or anyone claiming by, through, or under CLIENT for any special, incidental, indirect, or consequential damages whatsoever arising out of, resulting from, or in any way related to the Assignment or this Agreement, from any cause or causes, including but not limited to any such damages caused by the negligence, professional errors or omissions, strict liability, breach of contract or warranties, express or implied, of AE2S or AE2S's officers, directors, partners, employees, agents, or AE2S's Consultants, or any of them.

5. Limit of Liability
   To the fullest extent permitted by law, notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of AE2S and AE2S's officers, directors, partners, employees, agents, and AE2S's Consultants, and any of them, to CLIENT and anyone claiming by, through, or under CLIENT for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract, or warranty express or implied of AE2S or AE2S's officers, directors, partners, employees, agents, or AE2S's Consultants, or any of them, shall not exceed total compensation received by AE2S as part of this Agreement.

6. Termination of Contract
   Either party may at any time, upon seven days prior written notice to the other party, terminate this Agreement. Upon such termination, CLIENT shall pay to AE2S all amounts owing to AE2S under this Agreement, for all work performed up to the effective date of termination, plus reasonable termination costs.

7. Access
   CLIENT shall arrange for safe access to and make all provisions for AE2S and AE2S's Consultants to enter upon public and private property as required for AE2S to perform services under this Agreement.

8. Patents
   AE2S shall not conduct patent searches in connection with its services under this Agreement and assumes no responsibility for any patent or copyright infringement arising therefrom. Nothing in this Agreement shall be construed as a warranty or representation that anything made, used, or sold arising out of the services performed under this Agreement will be free from infringement of patents or copyrights.

9. Ownership and Reuse of Documents
   All documents prepared or furnished by AE2S pursuant to this Agreement are instruments of service, and AE2S shall retain an ownership and property interest therein. Reuse of any such documents by CLIENT shall be at CLIENT's sole risk; and CLIENT agrees to indemnify, and hold AE2S harmless from all claims, damages, and expenses including attorney's fees arising out of such reuse of documents by CLIENT or by others acting through CLIENT.

10. **Limited Equipment Warranty**
    AE2S MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY PRODUCTS MANUFACTURED BY A THIRD PARTY, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. AE2S'S SOLE RESPONSIBILITY TO CLIENT WITH RESPECT TO ANY EQUIPMENT OR COMPONENTS AND PARTS MANUFACTURED BY A THIRD PARTY AND INCORPORATED INTO THE EQUIPMENT SHALL BE TO PASS THROUGH TO CLIENT SUCH ORIGINAL EQUIPMENT MANUFACTURER'S AVAILABLE PRODUCT WARRANTY. THE REMEDIES SET FORTH IN THE MANUFACTURER'S TERMS SHALL BE THE CLIENT'S SOLE AND EXCLUSIVE REMEDY AND AE2S'S ENTIRE LIABILITY FOR ANY BREACH OF THIS LIMITED WARRANTY

11. Contractors
    AE2S shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall AE2S have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at a project site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work. AE2S neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between CLIENT and such contractor. AE2S shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except AE2S's own employees) at a project site or otherwise furnishing or performing any construction work; or for any decision made regarding the construction contract requirements, or any application, interpretation, or clarification of the construction contract other than those made by AE2S.

12. Force Majeure
AE2S shall not be liable for any loss or damage due to failure or delay in rendering any service called for under this Agreement resulting from any cause beyond AE2S's reasonable control.

13. No Third Party Beneficiaries
All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of CLIENT and AE2S and not for the benefit of any other party. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either CLIENT or AE2S. AE2S's services under this Agreement are being performed solely for CLIENT's benefit, and no other entity shall have any claim against AE2S because of this Agreement or the performance or nonperformance of services hereunder.

14. Assignment
Neither party shall assign its rights, interests or obligations under this Agreement without the express written consent of the other party.

15. Binding Effect
This Agreement shall bind, and the benefits thereof shall inure to the respective parties hereto, their legal representatives, executors, administrators, successors, and assigns.

16. Severability and Waiver of Provisions
Any provision or part of the Agreement held to be void or unenforceable under any laws or regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon CLIENT and AE2S, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

17. Survival
All express representations, indemnifications, or limitations of liability included in this Agreement will survive its completion or termination for any reason.

18. Headings
The headings used in this Agreement are for general reference only and do not have special significance.

19. Controlling Law
This Agreement is to be governed by the law of the State of Minnesota without regard to its conflicts of laws principles.

20. Notices
Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page, or if to AE2S at 4050 Garden View Drive, Grand Forks, ND 58201, and given personally, or by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

21. Executed in Counterparts
This Agreement may be executed in counterparts, each of which together will constitute one and the same instrument. Delivery of an executed counterpart of this Agreement shall constitute effective delivery of this Agreement. Each party agrees that the delivery of the Agreement by facsimile or electronic mail shall have the same force and effect as delivery of original signature and that each party may use such facsimile or electronic mail signatures as evidence of the execution and delivery of the Agreement by the parties to the same extent that an original signature could be used.

This is EXHIBIT B, consisting of 2 pages, referred to in and part of the Agreement between CLIENT and AE2S dated January 10, 2024.

Hourly Fee and Expense Schedule

Reimbursable Expenses and Standard Hourly rates in effect on the date of the Agreement are set forth below. Rates are subject to annual adjustment effective January 1.

Labor Rates*

Administrative 1	$67.00
Administrative 2	$82.00
Administrative 3	$99.00
Communications Specialist 1	$109.00
Communications Specialist 2	$127.00
Communications Specialist 3	$146.00
Communications Specialist 4	$176.00
Communications Specialist 5	$194.00
Construction Services 1	$130.00
Construction Services 2	$159.00
Construction Services 3	$176.00
Construction Services 4	$195.00
Construction Services 5	$216.00
Engineering Assistant 1	$88.00
Engineering Assistant 2	$103.00
Engineering Assistant 3	$130.00
Engineer 1	$140.00
Engineer 2	$168.00
Engineer 3	$197.00
Engineer 4	$228.00
Engineer 5	$244.00
Engineering Technician 1	$87.00
Engineering Technician 2	$109.00
Engineering Technician 3	$131.00
Engineering Technician 4	$146.00
Engineering Technician 5	$167.00
Financial Analyst 1	$116.00
Financial Analyst 2	$132.00
Financial Analyst 3	$159.00
Financial Analyst 4	$173.00
Financial Analyst 5	$193.00
GIS Specialist 1	$109.00
GIS Specialist 2	$132.00
GIS Specialist 3	$156.00
GIS Specialist 4	$174.00
GIS Specialist 5	$194.00
I&C Assistant 1	$104.00
I&C Assistant 2	$129.00
I&C 1	$154.00
I&C 2	$182.00
I&C 3	$205.00
I&C 4	$218.00
I&C 5	$228.00
IT 1	$135.00
IT 2	$182.00
IT 3	$223.00
Land Surveyor Assistant	$99.00
Land Surveyor 1	$119.00
Land Surveyor 2	$144.00
Land Surveyor 3	$163.00
Land Surveyor 4	$179.00
Land Surveyor 5	$197.00
Operations Specialist 1	$104.00
Operations Specialist 2	$130.00
Operations Specialist 3	$161.00
Operations Specialist 4	$184.00
Operations Specialist 5	$206.00
Project Coordinator 1	$120.00
Project Coordinator 2	$135.00
Project Coordinator 3	$150.00
Project Coordinator 4	$166.00
Project Coordinator 5	$187.00
Project Manager 1	$213.00
Project Manager 2	$233.00
Project Manager 3	$249.00
Project Manager 4	$264.00
Project Manager 5	$282.00
Project Manager 6	$295.00
Sr. Designer 1	$185.00
Sr. Designer 2	$205.00
Sr. Designer 3	$220.00
Sr. Financial Analyst 1	$218.00
Sr. Financial Analyst 2	$239.00
Sr. Financial Analyst 3	$259.00
Technical Expert 1	$335.00
Technical Expert 2	Negotiable

Reimbursable Expense Rates

Transportation	$0.75/mile
Survey Vehicle	$0.95/mile
Laser Printouts/Photocopies	$0.30/copy
Plotter Printouts	$1.00/s.f.
UAS - Photo/Video Grade	$100.00/day
UAS – Survey	$50.00/day
Total Station – Robotic	$35.00/hour
Mapping GPS	$25.00/hour
Fast Static/RTK GPS	$50.00/hour
All-Terrain Vehicle/Boat	$100.00/day
Cellular Modem	$75.00/month
Web Hosting	$26.00/month
Legal Services Reimbursement	$280.00/hour
Outside Services	cost * 1.15
Geotechnical Services	cost * 1.30
Out of Pocket Expenses	cost * 1.15
Rental Car	cost * 1.20
Project Specific Equipment	Negotiable

*Position titles are for labor rate grade purposes only.
These rates are subject to adjustment each year on January 1.

CITY OF OWATONNA

DATE: February 6, 2024
TO: Mayor and City Council
FROM: Rhonda Moen, Finance Director
SUBJECT: Renew HR/Payroll Software Contract - UKG

Purpose:

Approve contract renewal with UKG for HR and payroll processing software.

Background:

The City entered into an agreement with UltiPro (now UKG) in December 2017 for a three-year period of time (5-1-2018 to 4-30-21). This contract was renewed in 2021 and will expire in April 2024. The City was presented with two alternatives for renewal. The City could renew for a one-year term at a 10% increase in rates or opt for a three-year term with guaranteed increases of 11%, 0% and 0%. Staff would recommend the three-year renewal.

This software has proven to be beneficial in the areas of time management, reporting, open enrollment and benefit management.

Budget Impact:

11% increase is estimated to cost an additional $8k. These costs are split between the HR and Finance budgets. This has been accounted for in the 2024 budget.

Staff Recommendation:

Staff would recommend approval.

Attachments:

1. 2024 HR-Payroll Software Contract Renewal - UKG

RENEWAL FORM

Quote#: Q-228319

Date: 02 Feb, 2024

Customer Legal Name:
CITY OF OWATONNA

Customer Legal Address:
540 W HILLS CIR, OWATONNA, MN 55060 USA

Bill To: CITY OF OWATONNA
540 W HILLS CIR
OWATONNA, MN 55060 USA

Ship To: CITY OF OWATONNA
540 W HILLS CIR
OWATONNA, MN 55060 USA

Bill To Contact:

Contact:
Email:

Currency: USD
Customer PO Number:
Solution ID: 6196411

Renewal Term: 36 months
Payment Terms: Net 30 Days

Subscription Services

Subscription Services	Monthly Minimum Quantity	Employee Type	Subscription Fee Per Employee Per Month	Billing Start Date / Billing Frequency
UKG PRO PAY AND PEOPLE CENTER UKG PRO ACA SERVICES UKG PRO PAYMENT SERVICES UKG PRO TAX FILING SERVICES UKG PRO CHECK PRINTING UKG PRO WAGE ATTACHMENT DISBURSEMENT UKG PRO PAY UKG PRO PEOPLE CENTER **UKG PRO MANAGER SELF SERVICE** **UKG PRO IMPORT TOOL** **UKG PRO ONBOARDING** **UKG PRO TIME MANAGEMENT (UTM)** **UKG PRO DOCUMENT ACKNOWLEDGMENT TOOL** **UKG PRO CAREER DEVELOPMENT** **UKG PRO OPEN ENROLLMENT** **UKG PRO LIFE EVENTS**	175	Compensated Employees	USD 26.71	May 1, 2024 / Quarterly in Advance
UKG PRO LIMITED ACCESS	0	Limited Access Employees	USD 1.20	May 1, 2024 / Quarterly in Advance
UKG PRO GLOBAL EMPLOYEES **UKG PRO HR ONLY/GLOBAL EMPLOYEES**	0	HR Only / Global Employees	USD 0.00	May 1, 2024 / Quarterly in Advance

Order Notes:

Customer may not terminate the Subscription Services during the Renewal Term as set forth herein. After the Renewal Term the Subscription Services shall automatically renew for successive renewal terms of one (1) year each.

36 month subscription term with 11% increase applied at year 1, no increase year 2 or 3.

This Renewal Order is subject to the terms and conditions of that certain master agreement between the parties along with various orders, addenda, supplements, amendments, etc. to same (collectively referred to as the "Agreement"). All other terms and conditions of the Agreement are reaffirmed and remain unchanged by this Renewal Order. In the event of a conflict between the terms of this Renewal Order and the Agreement, the terms of this Renewal Order will govern.

CITY OF OWATONNA		**UKG Inc.**	
Signature:	______________________________	Signature:	______________________________
Name:	______________________________	Name:	______________________________
Title:	______________________________	Title:	______________________________
Date:	______________________________	Date:	______________________________

The monthly price on this Order has been rounded to two decimal places for display purposes. As many as eight decimal places may be present in the actual price. Due to the rounding calculations, the actual price may not display as expected when displayed on your Order. Nonetheless, the actual price on your invoice is the true and binding total for this Order for purposes of amounts owed for the term.

CITY OF OWATONNA

DATE: February 6, 2024
TO: Mayor and City Council
FROM: Rhonda Moen, Finance Director
SUBJECT: Bonding Agreements - Minnesota Public Facilities Authority

Purpose:
Just received the bonding agreements for two $11 million dollar awards of funds for the WWTP expansion project.

Background:
The Minnesota Public Facilities Authority (PFA) approved project financing for the City of Owatonna on January 2, 2024. The Project consists of wastewater plant rehabilitation and treatment upgrades to reduce phosphorus discharge to the Cannon River Watershed.

PFA's financing is as follows:
SPAP 2023 Owatonna WW – General Fund $11,000,000
SPAP 2023 Owatonna Water Treatment – G.O. Bond Proceeds $11,000,000

These awards will place less of a burden on the rate payers for the expansion project. The City had previously been awarded a $7 million Point Source Implementation Grant (PSIG) and $1 million Clean Water SRF Principal Forgiveness Grant. This brings total outside funding sources to $30 million.

Budget Impact:
The wastewater expansion project is supported through user charges. These grants benefit the rate payers. There is no budget impact on the City.

Staff Recommendation:
Staff recommends approval.

Attachments:
1. Summary - PFA Bonding Agreements
2. General Fund Grant Agreement
3. General Obligation Bond Proceeds Agreement

DocuSign

Certificate Of Completion

Envelope Id: 4175811A6B774B81BBF055401154976B		Status: Sent
Subject: DocuSign: Owatonna_SPAP_02-03_Contract.pdf, Owatonna_SPAP_03-03_Contract.pdf		
Source Envelope:		
Document Pages: 81	Signatures: 4	Envelope Originator:
Certificate Pages: 2	Initials: 0	Jennie Brown
AutoNav: Enabled		332 Minnesota Street
EnvelopeId Stamping: Enabled		Suite E200
Time Zone: (UTC-06:00) Central Time (US & Canada)		St. Paul, MN 55101
		Jennie.Brown@state.mn.us
		IP Address: 156.99.30.162

Record Tracking

Status: Original 1/30/2024 12:37:15 PM	Holder: Jennie Brown Jennie.Brown@state.mn.us	Location: DocuSign
Security Appliance Status: Connected	Pool: StateLocal	
Storage Appliance Status: Connected	Pool: Department of Employment and Economic Development	Location: DocuSign

Signer Events	Signature	Timestamp
Kris Busse Kris.Busse@ci.owatonna.mn.us City Administrator Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	DocuSigned by: Kris Busse 2D9CD01BD765433... Signature Adoption: Pre-selected Style Using IP Address: 156.99.82.156	Sent: 1/30/2024 12:43:19 PM Viewed: 1/30/2024 4:01:29 PM Signed: 1/30/2024 4:03:20 PM
Steve Walter Steve.walter@state.mn.us Chief Financial Officer Department of Employment and Economic Development Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign		Sent: 1/30/2024 12:43:19 PM
Thomas Kuntz Thomas.Kuntz@ci.owatonna.mn.us Mayor Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	DocuSigned by: Thomas Kuntz 1EEF3FB7154149D... Signature Adoption: Pre-selected Style Using IP Address: 174.199.35.211 Signed using mobile	Sent: 1/30/2024 12:43:20 PM Viewed: 1/30/2024 1:12:26 PM Signed: 1/30/2024 1:17:15 PM

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

Agent Delivery Events	Status	Timestamp

Intermediary Delivery Events	Status	Timestamp

Certified Delivery Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp
Anita Gallentine Anita.gallentine@state.mn.us Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	COPIED	Sent: 1/30/2024 12:43:20 PM
Melissa Ralph Melissa.ralph@state.mn.us Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	COPIED	Sent: 1/30/2024 12:43:20 PM
Sean Murphy sean.murphy@ci.owatonna.mn.us Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	COPIED	Sent: 1/30/2024 12:43:21 PM

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	1/30/2024 12:43:21 PM
Certified Delivered	Security Checked	1/30/2024 1:12:26 PM
Signing Complete	Security Checked	1/30/2024 1:17:15 PM

Payment Events	Status	Timestamps

General Fund
Grant Agreement – Construction Grant
for the
Owatonna Wastewater Treatment Plant
Expansion and Upgrade Project

MPFA-SPAP-G-041-FY24

TABLE OF CONTENTS

General Fund

Grant Agreement - Construction Grant for the Owatonna Wastewater Treatment Plant Expansion and Upgrade Project

THIS AGREEMENT shall be effective as of January 2, 2024, and is between the City of Owatonna, a Home Rule Charter City (the "Grant Recipient"), and the Minnesota Public Facilities Authority (the "State Entity").

RECITALS

A. Under the provisions contained in Laws of Minnesota 2023, chapter 72, article 1, section 23, subd. 21, the State of Minnesota has allocated $11,000,000, which is to be given to the Grant Recipient as a grant to design, engineer, construct, furnish, and equip a wastewater treatment facility in the city of Owatonna; and

B. The monies allocated to fund the grant to the Grant Recipient are appropriated money from the State of Minnesota's general fund; and

C. The Grant Recipient and the State Entity desire to set forth herein the provisions relating to the granting of such monies and the disbursement thereof to the Grant Recipient.

IN CONSIDERATION of the grant described and other provisions in this Agreement, the parties to this Agreement agree as follows.

Article I - Definitions

Section 1.01 Defined Terms. As used in this Agreement, the following terms shall have the meanings set out respectively after each such term (the meanings to be equally applicable to both the singular and plural forms of the terms defined), unless the context specifically indicates otherwise:

"Advance(s)" – means an advance made or to be made by the State Entity to the Grant Recipient and disbursed in accordance with the provisions contained in Article IV hereof.

"Agreement" - means this General Funds Grant Agreement Construction Grant for the Owatonna Wastewater Treatment Plant Expansion and Upgrade Project.

"Commissioner of Management and Budget" - means the State of Minnesota acting through its Commissioner of Management and Budget, and any designated representatives thereof.

"Completion Date" – means June 30, 2025, the date of projected completion of the Project as specified in the Construction Contract Documents.

"Consulting Engineer", if any – means Nero Engineering, which will administer the Construction Contract Documents on behalf of the Grant Recipient.

"Contractor" - means any person engaged to work on or to furnish materials and supplies for the Project including, if applicable, a general contractor.

"Construction Contract Documents" - means the document or documents, in form and substance acceptable to the State Entity, including but not limited to any construction plans and specifications and any exhibits, amendments, change orders or supplements thereto, which collectively form the contract between the Grant Recipient and the Contractor or Contractors concerning the Project and which provide for the completion of the Project on or before the Completion Date for either a fixed price or a guaranteed maximum price.

"Declaration" - means a declaration, or declarations, in the form as **Attachment I** and all amendments thereto, indicating that the Grant Recipient's interest in the Real Property and, if applicable, the Facility is subject to the provisions of this Agreement.

"Draw Requisition" - means a draw requisition that the Grant Recipient, or its designee, will submit to the State Entity when an Advance is requested, and which is referred to in Section 4.02.

"Event of Default" - means those events delineated in Section 2.05.

"Facility", if applicable, - means the wastewater treatment plant, which is located, or will be constructed and located, on the Real Property.

"Fair Market Value" – means either (i) the price that would be paid by a willing and qualified buyer to a willing and qualified seller as determined by an appraisal which assumes that all mortgage liens or encumbrances on the property being sold, which negatively affect the value of such property, will be released, or (ii) the price bid by a purchaser under a public bid procedure after reasonable public notice, with the proviso that all mortgage liens or encumbrances on the property being sold, which negatively affect the value of such property, will be released at the time of acquisition by the purchaser.

"Grant" - means a grant of monies from the State Entity to the Grant Recipient in an amount of $11,000,000.

"Grant Recipient" - means the City of Owatonna, a Home Rule Charter City.

"Inspecting Engineer", if any - means the State Entity's construction inspector, or its designated consulting engineer.

"Project" - means the acquisition of an interest in the Real Property and, if applicable, the Facility, along with the performance of those activities indicated in Section 2.03.

"Real Property" - means the real property located in the County of Steele, State of Minnesota, legally described in **Attachment II**.

"State Entity" - means the Minnesota Public Facilities Authority.

"Use Contract" - means a lease, management contract or other similar contract between Grant Recipient and any other entity, and which involves or relates to the Real Property and, if applicable, the Facility.

"Usee" - means any entity with which the Grant Recipient contracts under a Use Contract.

"Useful Life of the Real Property and, if applicable, the Facility" – means the term set forth in Section 2.04.T. of this Agreement.

Article II - GRANT

Section 2.01 Grant of Monies. The State Entity shall issue the Grant to the Grant Recipient and disburse the proceeds in accordance with the provisions of this Agreement. The Grant is not intended to be a loan.

Section 2.02 Use of Grant Proceeds. The Grant Recipient shall use the Grant solely to reimburse itself for expenditures it has already made, or will make, in the performance of the following activities:

(Check all appropriate boxes.)

☐ Acquisition of fee simple title to the Real Property;

☐ Acquisition of a leasehold interest in the Real Property;

☐ Acquisition of an easement on the Real Property;

X Improvement of the Real Property;

☐ Acquisition of the Facility;

X Improvement of the Facility;

X Renovation or rehabilitation of the Facility;

X Construction of the Facility; or

☐ Other

Section 2.03 Operation of the Real Property and Facility. The Grant Recipient shall operate the Real Property and, if applicable, the Facility, or cause it to be operated, as a wastewater treatment plant, or for such other use as the Minnesota legislature may from time to time designate, and may enter into Use Contracts with Usees to so operate the Real Property and, if applicable, the Facility; provided that such Use Contracts must fully comply with all of the provisions contained in Section 3.01. The Grant Recipient shall also annually determine that the Real Property and, if applicable, the Facility are being so used, and shall annually supply a statement, sworn to before a notary public, to such effect to the State Entity.

Section 2.04 Grant Recipient Representations and Warranties. The Grant Recipient further covenants with, and represents and warrants to the State Entity as follows:

A. It has legal authority to enter into, execute, and deliver this Agreement, the Declaration, and all documents referred to herein, and it has taken all actions necessary to its execution and delivery of such documents.

B. This Agreement, the Declaration, and all other documents referred to herein are the legal, valid and binding obligations of the Grant Recipient enforceable against the Grant Recipient in accordance with their respective terms.

C. It will comply with all of the terms, conditions, provisions, covenants, requirements, and warranties in this Agreement, the Declaration, and all other documents referred to herein.

D. It has made no material false statement or misstatement of fact in connection with its receipt of the Grant, and all of the information it previously submitted to the State Entity or which it will submit to the State Entity in the future relating to the Grant or the disbursement of any of the Grant is and will be true and correct.

E. It is not in violation of any provisions of its charter or of the laws of the State of Minnesota, and there are no actions, suits, or proceedings pending, or to its knowledge threatened, before any judicial body or governmental authority against or affecting it relating to the Real Property and, if applicable, the Facility, and it is not in default with respect to any order, writ, injunction, decree, or demand of any court or any governmental authority which would impair its ability to enter into this Agreement, the Declaration, or any document referred to herein, or to perform any of the acts required of it in such documents.

F. Neither the execution and delivery of this Agreement, the Declaration, or any document referred to herein, nor compliance with any of the terms, conditions, requirements, or provisions contained in any of such documents is prevented by, is a breach of, or will result in a breach of, any term, condition, or provision of any agreement or document to which it is now a party or by which it is bound.

G. The contemplated use of the Real Property and, if applicable, the Facility will not violate any applicable zoning or use statute, ordinance, building code, rule or regulation, or any covenant or agreement of record relating thereto.

H. The Project was, or will be, completed in full compliance with all applicable laws, statutes, rules, ordinances, and regulations issued by any federal, state, or local political subdivisions having jurisdiction over the Project.

I. All applicable licenses, permits and bonds required for the performance and completion of the Project have been, or will be, obtained.

J. All applicable licenses, permits and bonds required for the operation of the Real Property and, if applicable, the Facility in the manner specified in Section 2.03 have been, or will be, obtained.

K. It will operate, maintain, and manage the Real Property and, if applicable, the Facility in compliance with all applicable laws, statutes, rules, ordinances, and regulations issued by any federal, state, or local political subdivisions having jurisdiction over the Real Property and, if applicable, the Facility.

L. It has, or will acquire, the following interest in the Real Property and, if applicable, the Facility, and, in addition, will possess all easements necessary for the operation, maintenance and management of the Real Property and, if applicable, the Facility in the manner specified in Section 2.03:

(Check the appropriate box for the Real Property and, if applicable, for the Facility.)

Ownership Interest in the Real Property:

X Fee simple ownership of the Real Property.

☐ A Real Property/Facility Lease for the Real Property, in form and substance acceptable to the State Entity, for a term of at least 125% of the Useful Life of the Real Property and, if applicable, Facility, which cannot be prematurely cancelled or terminated without the prior written consent of the State Entity.

(If the term of the Real Property/Facility Lease is for a term authorized by a Minnesota statute, rule or session law, then insert the citation: ________________.)

☐ An easement for the Real Property, in form and substance acceptable to the State Entity, for a term of at least 125% of the Useful Life of the Real Property and, if applicable, Facility, which cannot be prematurely cancelled or terminated without the prior written consent of the State Entity.

(If the term of the easement is for a term authorized by a Minnesota statute, rule or session law, then insert the citation: ________________.)

Ownership Interest in, if applicable, the Facility:

X Fee simple ownership of the Real Property.

☐ A Real Property/Facility Lease for the Real Property, in form and substance acceptable to the State Entity, for a term of at least 125% of the Useful Life of the Real Property and, if applicable, Facility, which cannot be prematurely cancelled or terminated without the prior written consent of the State Entity.

(If the term of the Real Property/Facility Lease is for a term authorized by a Minnesota statute, rule or session law, then insert the citation: ________________.)

☐ Not applicable because there is no Facility.

and such interests are or will be subject only to those easements, covenants, conditions and restrictions that will not materially interfere with the completion of the Project and the intended operation and use of the Real Property and, if applicable, the Facility, or those easements, covenants, conditions and restrictions which are specifically consented to, in writing, by the State Entity.

M. It will fully enforce the terms and conditions contained in any Use Contract.

N. It has complied with the matching funds requirement, if any, contained in Section 5.23.

O. It will supply, or cause to be supplied, whatever funds are needed above and beyond the amount of the Grant to complete and fully pay for the Project.

P. The Project will be completed substantially in accordance with the Construction Contract Documents by the Completion Date, and will be situated entirely on the Real Property.

Q. It will require the Contractor or Contractors to comply with all rules, regulations, ordinances, and laws bearing on its conduct of work on the Project.

R. It will not allow any lien or encumbrance that is prior and superior to the Declaration to be created on or imposed upon the Real Property, whether such lien or encumbrance is voluntary or involuntary and including but not limited to a mechanic's lien or a mortgage lien, without the prior written consent of the State Entity.

S. It will furnish to the State Entity as soon as possible and in any event within 7 calendar days after the Grant Recipient has obtained knowledge of the occurrence of each Event of Default, or each event which with the giving of notice or lapse of time or both would constitute an Event of Default, a statement setting forth details of each Event of Default, or event which with the giving of notice or upon the lapse of time or both would constitute an Event of Default, and the action which the Grant Recipient proposes to take with respect thereto.

T. The Useful Life of the Real Property and, if applicable, Facility is 23.9 years.

U. It shall furnish such satisfactory evidence regarding the representations and warranties described herein as may be required and requested in writing by either the State Entity or the Commissioner of Management and Budget.

Section 2.05 Event(s) of Default. The following events shall, unless waived in writing by the State Entity, constitute an Event of Default under this Agreement upon the State Entity giving the Grant Recipient 30 days written notice of such event, and the Grant Recipient's failure to cure such event during such 30 day time period for those Events of Default that can be cured within 30 days or within whatever time period is needed to cure those Events of Default that cannot be cured within 30 days as long as the Grant Recipient is using its best efforts to cure and is making reasonable progress in curing such Events of Default, however, in no event shall the time period to cure any Event of Default exceed 6 months. Notwithstanding the foregoing, any of the following events that cannot be cured shall, unless waived in writing by the State Entity, constitute an Event of Default under this Agreement immediately upon the State Entity giving the Grant Recipient written notice of such event.

A. If any representation, covenant, or warranty made by the Grant Recipient herein, in any Draw Requisition, or in any other document furnished pursuant to this Agreement, or in order to induce the State Entity to make any Advance, shall prove to have been untrue or incorrect in any material respect or materially misleading as of the time such representation, covenant, or warranty was made.

B. If the Grant Recipient fails to fully comply with any provision, term, condition, covenant, or warranty contained in this Agreement, the Declaration, or any other document referred to herein.

Section 2.06 Remedies. Upon the occurrence of an Event of Default and at any time thereafter until such Event of Default is cured to the satisfaction of the State Entity, the State Entity or the Commissioner of Management and Budget may enforce any or all of the following remedies.

A. The State Entity may refrain from disbursing the Grant; provided, however, the State Entity may make Advances after the occurrence of an Event of Default without thereby waiving its rights and remedies hereunder.

B. The Commissioner of Management and Budget, as a third-party beneficiary of this Agreement, may demand that the portion of the Grant already disbursed to the Grant Recipient be returned to it, and upon such demand the Grant Recipient shall return such portion to the Commissioner of Management and Budget.

C. Either the State Entity or the Commissioner of Management and Budget, as a third-party beneficiary of this Agreement, may enforce any additional remedies they may have in law or equity.

The rights and remedies herein specified are cumulative and not exclusive of any rights or remedies that the State Entity or the Commissioner of Management and Budget would otherwise possess.

If the Grant Recipient does not repay any portion of the amount specified in Section 2.06.B within 30 days of demand by either the State Entity or the Commissioner of Management and Budget, then such amount may, unless precluded by law, be taken from or off-set against any aids or other monies that the Grant Recipient is entitled to receive from the State of Minnesota.

Section 2.07 Notification of Event of Default. The Grant Recipient shall furnish to both the State Entity and the Commissioner of Management and Budget, as soon as possible and in any event within 7 calendar days after it has obtained knowledge of the occurrence of each Event of Default or each event which with the giving of notice or lapse of time or both would constitute an Event of Default, a statement setting forth details of each Event of Default or event which with the giving of notice or upon the lapse of time or both would constitute an Event of Default and the action which the Grant Recipient proposes to take with respect thereto.

Section 2.08 Term of Grant Agreement. This Agreement shall, unless earlier terminated in accordance with any of the provisions contained herein, remain in full force and effect for the time period starting on the effective date hereof and ending on the date that corresponds to the date established by adding a time period equal to 125% of Useful Life of the Real Property and, if applicable, Facility to the date on which the Real Property and, if applicable, Facility is first used for the purpose set forth in Section 2.03 after such effective date. If there are no uncured Events of Default as of such date this Agreement shall terminate and no longer be of any force or effect, and the State Entity shall execute whatever documents are needed to release the Real Property and, if applicable, Facility from the effect of this Agreement and the Declaration.

Section 2.09 Modification and/or Early Termination of Grant. If the Project is not started on or before December 31, 2027, or such later date to which the Grant Recipient and the State Entity may agree in writing, then, the State Entity's obligation to fund the Grant shall terminate, and, in such event, (i) if none of the Grant has been disbursed by such date then the State Entity's obligation to fund any portion of the Grant shall terminate and this Agreement shall also terminate and no longer be of any force or effect, and (ii) if some but not all of the Grant has been disbursed by such date then the State shall have no further obligation to provide any additional funding for the Grant and this Agreement shall remain in full force and effect but shall be modified and amended to reflect the amount of the Grant that was actually disbursed as of such date.

In addition, if all of the Grant has not been disbursed on or before the date that is 5 years from the effective date of this Agreement, then the State Entity's obligation to continue to fund the Grant shall terminate, and, in such event, (y) if none of the Grant has been disbursed by such date then the State Entity's obligation to fund any portion of the Grant shall terminate and this Agreement shall also terminate and no longer be of any force or effect, and (z) if some but not all of the Grant has been disbursed by such date then the State Entity shall have no further obligation to provide any additional funding under the Grant and this Agreement shall remain if full force and effect but shall be modified and amended to reflect the amount of the Grant that was actually disbursed as of such date.

This Agreement shall also terminate and no longer be of any force or effect upon (a) the termination of the Grant Recipient's leasehold or easement interest in the Real Property in accordance with the terms of such lease or easement, or (b) the sale of the Grant Recipient's interest in the Real Property and, if applicable, the Facility in accordance with the provisions contained in Section 3.02 and transmittal of all or a portion of the proceeds of such sale to the Commissioner of Management and Budget in compliance with the provisions contained in Section 3.03. Upon such termination the State Entity shall execute and deliver to the Grant Recipient such documents as are required to release the Real Property and, if applicable, the Facility, from the effect of the Declaration.

In the event that the legislation that authorized the Grant is amended to increase or reduce the amount of the Grant or in any other way, then this Agreement shall be deemed to have been automatically modified in accordance with such amendment and the amount of the Grant shall also be automatically modified in accordance with such amendment.

Section 2.10 Effect of Event of Default. If an Event of Default occurs and the Grant Recipient is required to and does return the amount specified in Section 2.06.B to the Commissioner of Management and Budget, then the following shall occur.

A. This Agreement shall survive and remain in full force and effect.

B. The amount returned by the Grant Recipient shall be credited against any amount that shall be due to the Commissioner of Management and Budget under Section 3.03 and against any amount that becomes due and payable because of any other Event of Default.

Section 2.11 Excess Funds. If the full amount of the Grant and any matching funds referred to in Section 5.23 are not needed to complete the Project, then, unless language in the legislation that authorized the Grant indicates otherwise, the Grant shall be reduced by the amount not needed.

Article III - USE AND SALE

Section 3.01 Use Contracts. Each and every Use Contract that the Grant Recipient enters into must comply with the following requirements:

A. The purpose for which the Use Contract was entered into must be a governmental purpose.

B. It must contain a provision setting forth the statutory authority under which the Grant Recipient is entering into the Use Contract, and must comply with the substantive and procedural provisions of such statute.

C. It must contain a provision stating that the Use Contract is being entered into in order to carry out the purpose for which the Grant was allocated, and must recite the purpose.

D. It must be for a term, including any renewals that are solely at the option of the Grant Recipient, that is, if applicable, substantially less than the useful life of the structures and improvements that make up the Facility, but may allow for renewals beyond the original term upon a determination by the Grant Recipient that the use continues to carry out the specific purpose for which the Grant was allocated. A term that is equal to or shorter than 50% of the useful life of the structures and improvements that make up the Facility will meet the requirement that it be for a time period that is substantially shorter than the useful life of such structures and improvements.

E. It must allow for termination by the Grant Recipient in the event of a default thereunder by the Usee, or in the event that the specific purpose for which the Grant was allocated is terminated or changed.

F. It must require the Usee to pay all costs of operation and maintenance of the Real Property and, if applicable, the Facility, unless the Grant Recipient is authorized by law to pay such costs and agrees to pay such costs.

G. If the amount of the Grant exceeds $200,000.00, then it must contain a provision requiring the Usee to list any vacant or new positions it may have with state workforce centers as required by Minn. Stat. § 116L.66, Subd. 1, as it may be amended, modified or replaced from time to time, for the term of the Use Contract.

Section 3.02 Sale. The Grant Recipient shall not sell any part of its ownership interest in the Real Property or, if applicable, the Facility unless all of the following provisions have been complied with fully.

A. The Grant Recipient determines, by official action, that it is no longer usable or needed as a wastewater treatment plant.

B. The sale is made as authorized by law.

C. The sale is for Fair Market Value.

D. Written notice of such proposed sale has been supplied to both the State Entity and the Commissioner of Management and Budget at least 30 days prior thereto.

The acquisition of the Grant Recipient's interest in the Real Property and, if applicable, the Facility at a foreclosure sale, by acceptance of a deed-in-lieu of foreclosure, or enforcement of a security interest in personal property used in the operation of thereof, by a lender that has provided monies for the acquisition of the Grant Recipient's interest in or betterment of the Real Property and, if applicable, the Facility shall not be considered a sale for the purposes of this Agreement if after such acquisition the lender operates such portion of the Real Property and, if applicable, the Facility in a manner which is not inconsistent with the program specified in Section 2.03 and the lender uses its best efforts to sell such acquired interest to a third party for Fair Market Value. The lender's ultimate sale or disposition of the acquired interest in the Real Property and, if applicable, the Facility shall be deemed to be a sale for the purposes of this Agreement, and the proceeds thereof shall be disbursed in accordance with the provisions contained in Section 3.03.

Section 3.03 Proceeds of a Sale. Upon the sale of the Grant Recipient's interest in the Real Property and, if applicable, the Facility the net proceeds thereof shall be disbursed in the following manner and order.

A. The first distribution shall be to the Commissioner of Management and Budget in an amount equal to the amount of the Grant actually disbursed, and if the amount of such net proceeds shall be less than the amount of the Grant actually disbursed then all of such net proceeds shall be distributed to the Commissioner of Management and Budget.

B. The remaining portion, after the distribution specified in Section 3.03.A, shall be distributed to pay in full any outstanding public or private debt incurred to acquire the Grant Recipient's interest in or for the betterment of the Real Property and, if applicable, the Facility in the order of priority of such debt.

C. Any remaining portion, after the distributions specified in Sections 3.03A and B, shall be divided and distributed in proportion to the shares contributed to the acquisition of the Grant Recipient's interest in or for the betterment of the Real Property and, if applicable, the Facilities by public and private entities, including the State Entity but not including any private entity that has been paid in full, that supplied funds in either real monies or like-kind contributions for such acquisition and betterment, and the State Entity's distribution shall be made to the Commissioner of Management and Budget. Such public and private entities may agree amongst themselves as to any redistribution of such distributed funds.

The Grant Recipient shall not be required to pay or reimburse the State Entity for any funds above and beyond the full net proceeds of such sale, even if such net proceeds are less than the amount of the Grant actually disbursed.

Article IV - DISBURSEMENT OF GRANT PROCEEDS

Section 4.01 The Advances. The State Entity agrees, on the terms and subject to the conditions set forth herein, to make Advances from the Grant to the Grant Recipient from time to time in an aggregate total amount equal to the amount of the Grant. Provided, however, in accordance with the provisions contained in Section 2.08, the State Entity's obligation to make Advances shall terminate as of the date which occurs 5 years from the effective date of this Agreement even if all of the Grant has not been disbursed by such date.

It is the intent of the parties hereto that the rate of disbursement of the Advances shall not exceed the rate of completion of the Project or the rate of disbursement of the matching funds required, if any, under Section 5.23. Therefore, the cumulative amount of all Advances disbursed by the State Entity at any point in time shall not exceed the portion of the Project that has been completed and the percentage of the matching funds required, if any, under Section 5.23 that have been disbursed as of such point in time. This requirement is expressed by way of the following two formulas:

Formula #1
Cumulative Advances $\leq$ (Program Grant) × (percentage of matching funds, if any, required under Section 5.23 that have been disbursed)

Formula #2
Cumulative Advances $\leq$ (Program Grant) × (percentage of Project completed)

Section 4.02 Draw Requisitions. Whenever the Grant Recipient desires a disbursement of a portion of the Grant, which shall be no more often than once each calendar month, the Grant Recipient shall submit to the State Entity a Draw Requisition duly executed on behalf of the Grant Recipient or its designee. Each Draw Requisition shall be submitted on or before the 15th day of the month in which an Advance is requested. Each Draw Requisition with respect to construction items shall be limited to amounts equal to: (i) the total value of the classes of the work by percentage of completion as approved by the Grant Recipient and the State Entity, plus (ii) the value of materials and equipment not incorporated in the Project but delivered and suitably stored on or off the Project site in a manner acceptable to the State Entity, less (iii) any applicable retainage, and less (iv) all prior Advances.

Notwithstanding anything herein to the contrary, no Advances for materials stored on or off the Project site will be made by the State Entity unless the Grant Recipient shall advise the State Entity, in writing, of its intention to so store materials prior to their delivery and the State Entity has not objected thereto.

At the time of submission of each Draw Requisition, other than the final Draw Requisition, the Grant Recipient shall submit to the State Entity such supporting evidence as may be requested by the State Entity to substantiate all payments which are to be made out of the relevant Draw Requisition or to substantiate all payments then made with respect to the Project.

At the time of submission of the final Draw Requisition which shall not be submitted before substantial completion of the Project, including all landscape requirements and off-site utilities and streets needed for access to the Project and correction of material defects in workmanship or materials (other than the completion of punch list items) as provided in the Construction Contract Documents, the Grant

Recipient shall submit to the State Entity: (i) such supporting evidence as may be requested by the State Entity to substantiate all payments which are to be made out of the final Draw Requisition or to substantiate all payments then made with respect to the Project, and (ii) satisfactory evidence that all work requiring inspection by municipal or other governmental authorities having jurisdiction has been duly inspected and approved by such authorities, and that all requisite certificates of occupancy and other approvals have been issued.

If on the date an Advance is desired the Grant Recipient has complied with all requirements of this Agreement and the State Entity approves the relevant Draw Requisition and receives a current construction report from the Inspecting Engineer recommending payment, then the State Entity shall disburse the amount of the requested Advance to the Grant Recipient.

Section 4.03 Additional Funds from Grant Recipient. If the State Entity shall at any time in good faith determine that the sum of the undisbursed amount of the Grant plus the amount of all other funds committed to the completion of the Project is less than the amount required to pay all costs and expenses of any kind which reasonably may be anticipated in connection with the completion of the Project, then the State Entity may send written notice thereof to the Grant Recipient specifying the amount which must be supplied in order to provide sufficient funds to complete the Project. The Grant Recipient agrees that it will, within 10 calendar days of receipt of any such notice, supply or have some other entity supply the amount of funds specified in the State Entity's notice.

Section 4.04 Conditions Precedent to Any Advance. The obligation of the State Entity to make any Advance hereunder (including the initial Advance) shall be subject to the following conditions precedent:

A. The State Entity shall have received a Draw Requisition for such Advance specifying the amount of funds being requested, which such amount when added to all prior requests for an Advance shall not exceed the maximum amount of the Grant set forth in Section 1.01.

B. The State Entity shall have either received a duly executed Declaration that has been duly recorded in the appropriate governmental office, with all of the recording information displayed thereon, or evidence that such Declaration will promptly be recorded and delivered to the State Entity.

C. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that (i) the Grant Recipient has legal authority to and has taken all actions necessary to enter into this Agreement and the Declaration, and (ii) this Agreement and the Declaration are binding on and enforceable against the Grant Recipient.

D. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that that the Grant Recipient has sufficient funds to fully and completely pay for the entire Project and all other expenses that may occur in conjunction therewith.

E. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Grant Recipient is in compliance with the matching funds requirements, if any, contained in Section 5.23.

F. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, showing that the Grant Recipient currently possesses or will use the Grant to acquire the ownership interest delineated in Section 2.04.L.

G. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Real Property and, if applicable, the Facility and the contemplated use thereof are permitted by and will comply with all applicable use or other restrictions and requirements imposed by applicable zoning ordinances or regulations, and have been duly approved by the applicable municipal or governmental authorities having jurisdiction.

H. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that that all applicable and required building permits, other permits, bonds and licenses necessary for the completion of the Project have been paid for, issued, and obtained, other than those permits, bonds and licenses which may not lawfully be obtained until a future date or those permits, bonds and licenses which in the ordinary course of business would normally not be obtained until a later date.

I. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that that all applicable and required permits, bonds and licenses necessary for the operation of the Real Property and, if applicable, the Facility in the manner specified in Section 2.03 have been paid for, issued, and obtained, other than those permits, bonds and licenses which may not lawfully be obtained until a future date or those permits, bonds and licenses which in the ordinary course of business would normally not be obtained until a later date.

J. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Project will be completed in a manner that will allow the Real Property and, if applicable, the Facility to be operated in the manner specified in Section 2.03.

K. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that that the Grant Recipient has the ability and a plan to fund the program which will be operated on the Real Property and, if applicable, in the Facility.

L. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Construction Contract Documents are in place and are fully and completely enforceable.

M. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Contractor will complete the Project substantially in conformance with the Construction Contract Documents and pay all amounts lawfully owing to all laborers and materialmen who worked on the Project or supplied materials therefor, other than amounts being contested in good faith. Such evidence may be in the form of payment and performance bonds in amounts equal to or greater than the amount of the fixed price or guaranteed maximum price contained in the Construction Contract Documents which name the State Entity and the Grant Recipient dual obligees thereunder, or such other evidence as may be acceptable to the Grant Recipient and the State Entity.

N. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that that the policies of insurance required under Section 5.01 are in full force and effect.

O. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, of compliance with the provisions and requirements specified in Section 5.10 and all additional applicable provisions and requirements contained in Minn. Stat. § 16B.335 that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time. Such evidence shall include, but not be limited to, evidence that: (i) the predesign package referred to in Section 5.10.B has been reviewed by and received a favorable recommendation from the Commissioner of Administration for the State of Minnesota, (ii) the program plan and cost estimates referred to in Section 5.10.C have received a recommendation by the Chairs of the Minnesota State Senate Finance Committee and Minnesota House of Representatives Ways and Means Committee, and (iii) the Chair and Ranking Minority Member of the Minnesota House of Representatives Capital Investment Committee and the Chair and Ranking Minority Member of the Minnesota Senate Capital Investment Committee have been notified pursuant to Section 5.10.G.

P. No determination shall have been made by the State Entity that the amount of funds committed to the completion of the Project is less than the amount required to pay all costs and expenses of any kind which reasonably may be anticipated in connection with the completion of the Project, or if such a determination has been made and notice thereof sent to the Grant Recipient then the Grant Recipient has supplied or has caused some other entity to supply the necessary funds in accordance with Section 4.03, or to provide evidence acceptable to the State Entity that sufficient funds are available.

Q. No Event of Default under this Agreement or event which would constitute an Event of Default but for the requirement that notice be given or that a period of grace or time elapse shall have occurred and be continuing.

R. The Grant Recipient has supplied to the State Entity all other items that the State Entity may reasonably require.

Section 4.05 Construction Inspections. The Grant Recipient and the Consulting Engineer, if any, shall be responsible for making their own inspections and observations of the Project, and shall determine to their own satisfaction that the work done or materials supplied by the Contractors to whom payment is to be made out of each Advance has been properly done or supplied in accordance with the applicable contracts with such Contractors. If any work done or materials supplied by a Contractor are not satisfactory to the Grant Recipient and the Consulting Engineer, if any, or if a Contractor is not in material compliance with the Construction Contract Documents in any respect, then the Grant Recipient shall immediately notify the State Entity, in writing. The State Entity and the Inspecting Engineer may conduct such inspections of the Project as either may deem necessary for the protection of the State Entity's interest, and that any inspections which may be made of the Project by the State Entity or the Inspecting Engineer are made and all certificates issued by the Inspecting Engineer will be issued solely for the benefit and protection of the State Entity, and the Grant Recipient will not rely thereon.

Article V - MISCELLANEOUS

Section 5.01 Insurance. The Grant Recipient shall maintain or cause to be maintained builders risk insurance and fire and extended coverage insurance on the Facility, if such exists, in an amount equal to the full insurable value thereof, and shall name the State Entity as loss payee thereunder. If damages which are covered by such required insurance occurs to the Facility, if such exists, then the Grant Recipient shall, at its sole option and discretion, either: (i) use or cause the insurance proceeds to be used to fully or partially repair such damage and to provide or cause to be provided whatever additional funds that may be needed to fully or partially repair such damage, or (ii) sell its interest in the Real Property and the damaged Facility, if such exists, in accordance with the provisions contained in Section 3.02. If the Grant Recipient elects to only partially repair such damage, then the portion of the insurance proceeds which are not used for such repair shall be applied in accordance with the provisions contained in Section 3.03 as if the Grant Recipient's interest in the Real Property and Facility, if such exists, had been sold, and such amounts shall be credited against the amounts due and owing under Section 3.03 upon the ultimate sale of the Grant Recipient's interest in the Real Property and Facility, if such exists. If the Grant Recipient elects to sell its interest in the Real Property and the damaged Facility, if such exists, then such sale must occur within a reasonable time period from the date the damage occurred and the cumulative sum of the insurance proceeds plus the proceeds of such sale must be applied in accordance with the provisions contained in Section 3.03, with the insurance proceeds being so applied within a reasonable time period from the date they are received by the Grant Recipient.

As loss payee under the insurance required herein the State Entity agrees to and will assign or pay over to the Grant Recipient all insurance proceeds it receives so that the Grant Recipient can comply with the requirements that this Section 5.01 imposes upon the Grant Recipient as to the use of such insurance proceeds.

If the Grant Recipient elects to maintain general comprehensive liability insurance regarding the Real Property and Facility, if such exists, then the Grant Recipient shall have the State Entity named as an additional named insured therein.

At the written request of either the State Entity or the Commissioner of Management and Budget, the Grant Recipient shall promptly furnish thereto all written notices and all paid premium receipts received by the Grant Recipient regarding the required insurance, or certificates of insurance evidencing the existence of such required insurance.

Section 5.02 Condemnation. If all or any portion of the Real Property and, if applicable, the Facility is condemned to an extent that the Grant Recipient can no longer comply with the provisions contained in Section 2.03, then the Grant Recipient shall, at its sole option and discretion, either: (i) use or cause the condemnation proceeds to be used to acquire an interest in additional real property needed for the Grant Recipient to continue to comply with the provisions contained in Section 2.03 and, if applicable, to fully or partially restore the Facility and to provide or cause to be provided whatever additional funds that may be needed for such purposes, or (ii) sell the remaining portion of its interest in the Real Property and, if applicable, the Facility in accordance with the provisions contained in Section 3.02. Any condemnation proceeds which are not used to acquire an interest in additional real property or to restore, if applicable, the Facility shall be applied in accordance with the provisions contained in Section 3.03 as if the Grant Recipient's interest in the Real Property and, if applicable, the Facility had been sold, and such amounts shall be credited against the amounts due and owing under Section 3.03 upon the ultimate sale of the Grant Recipient's interest in the Real Property and, if applicable, the Facility. If the Grant Recipient elects to sell its interest in the portion of the Real Property and, if applicable, the Facility that remains after the condemnation, then such sale must occur within a reasonable time period from the date the condemnation occurred and the cumulative sum of the condemnation proceeds plus the proceeds of such sale must be applied in accordance with the provisions contained in Section 3.03, with the condemnation proceeds being so applied within a reasonable time period from the date they are received by the Grant Recipient.

As recipient of any of condemnation awards or proceeds referred to herein, the State Entity agrees to and will disclaim, assign or pay over to the Grant Recipient all of such condemnation awards or proceeds it receives so that the Grant Recipient can comply with the requirements which this Section 5.02 imposes upon the Grant Recipient as to the use of such condemnation awards or proceeds.

Section 5.03. Use, Maintenance, Repair and Alterations. The Grant Recipient shall not, without the written consent of the State Entity, permit or suffer the use of any of the Real Property and, if applicable, the Facility, for any purpose other than the use for which the same is intended as of the effective date of this Agreement. In addition, the Grant Recipient: (i) shall keep the Real Property and, if applicable, the Facility, in good condition and repair, subject to reasonable and ordinary wear and tear, (ii) shall not, written consent of the State Entity, remove, demolish or substantially alter (except such alterations as may be required by laws, ordinances or regulations) any of the Facility, if applicable, (iii) shall not do any act or thing which would unduly impair or depreciate the value of the Real Property and, if applicable, the Facility, (iv) shall not abandon the Real Property and, if applicable, the Facility, (v) shall complete promptly and in good and workmanlike manner any building or other improvement which may be constructed on the Real Property and promptly restore in like manner any portion of the Facility, if applicable, which may be damaged or destroyed thereon and pay when due all claims for labor performed and materials furnished therefor, (vi) shall comply with all laws, ordinances, regulations, requirements, covenants, conditions and restrictions now or hereafter affecting the Real Property and, if applicable, the Facility, or any part thereof, or requiring any alterations or improvements thereto, (vii) shall not commit or permit any waste or deterioration of the Real Property and, if applicable, the Facility, (viii) shall keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair, (ix) shall comply with the provisions of any lease if the Grant Recipient's interest in the Real Property and, if applicable, the Facility, is a leasehold interest, (x) shall comply with the provisions of any condominium documents if the Real Property and, if applicable, the Facility, is part of a condominium regime, (xi) shall not remove any fixtures or personal property from the Real Property and, if applicable, the Facility, that was paid for with the proceeds of the Grant unless the same are immediately replaced with like property of at least equal value and utility, and (xii) shall not commit, suffer or permit any act to be done in or upon the Real Property and, if applicable, the Facility, in violation of any law, ordinance or regulation.

Section 5.04 Records Keeping and Reporting. The Grant Recipient shall maintain or cause to be maintained books, records, documents and other evidence pertaining to the costs or expenses associated with the completion of the Project and operation of the Real Property and, if applicable, the Facility, and compliance with the requirements contained in this Agreement, and upon request shall allow or cause the entity which is maintaining such items to allow the State Entity, auditors for the State Entity, the Legislative Auditor for the State of Minnesota, or the State Auditor for the State of Minnesota, to inspect, audit, copy, or abstract, all of its books, records, papers, or other documents relevant to the Grant. The Grant Recipient shall use or cause the entity which is maintaining such books and records to use generally accepted accounting principles in the maintenance of such books and records, and shall retain or cause to be retained all of such books, records, documents and other evidence for a period of 6 years from the date that the Project is fully completed and placed into operation.

Section 5.05 Inspection of Facility After Completion. Upon reasonable request by the State Entity the Grant Recipient shall allow, and will require any entity to whom it leases, subleases, or enters into a Use Contract for any portion of the Real Property and, if applicable, the Facility to allow, the State Entity to inspect the Real Property and, if applicable, the Facility.

Section 5.06 Data Practices. The Grant Recipient agrees with respect to any data that it possesses regarding the Grant, the Project, or the Real Property and, if applicable, the Facility, to comply with all of the provisions and restrictions contained in the Minnesota Government Data Practices Act contained in Chapter 13 of the Minnesota Statutes that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time.

Section 5.07 Non-Discrimination. The Grant Recipient agrees to not engage in discriminatory employment practices in the completion of the Project, or operation or management of the Real Property and, if applicable, the Facility, and it shall, with respect to such activities, fully comply with all of the provisions contained in Minn. Stat. Chapters 363A and 181 that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time.

Section 5.08 Worker's Compensation. The Grant Recipient agrees to comply with all of the provisions relating to worker's compensation contained in Minn. Stat. §§ 176.181, Subd. 2 and 176.182 that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time, with respect to the completion of the Project, and the operation or management of the Real Property and, if applicable, the Facility.

Section 5.09 Antitrust Claims. The Grant Recipient hereby assigns to the State Entity and the Commissioner of Management and Budget all claims it may have for over charges as to goods or services provided in its completion of the Project, and operation or management of the Real Property and, if applicable, the Facility that arise under the antitrust laws of the State of Minnesota or of the United States of America.

Section 5.10 Review of Plans and Cost Estimates. The Grant Recipient agrees to comply with all applicable provisions and requirements contained in Minn. Stat. § 16B.335 that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time, for the Project, and in accordance therewith the Grant Recipient and the State Entity agree to comply with the following provisions and requirements if such provisions and requirements are applicable.

A. The Grant Recipient shall provide all information that the State Entity may request in order for the State Entity to determine that the Project will comply with the provisions and requirements contained in Minn. Stat. § 16B.335, as it may be amended, modified or replaced from time to time.

B. Prior to its proceeding with design activities for the Project the Grant Recipient shall prepare a predesign package and submit it to the Commissioner of Administration for the State of Minnesota for review and comment. The predesign package must be sufficient to define the purpose, scope, cost, and projected schedule for the Project, and must demonstrate that the Project has been analyzed according to appropriate space and needs standards. Any substantial changes to such predesign package must be submitted to the Commissioner of Administration for the State of Minnesota for review and comment.

C. If the Project includes the construction of a new building, substantial addition to an existing building, a substantial change to the interior configuration of an existing building, or the acquisition of an interest in land, then the Grant Recipient shall not prepare final plans and specifications until it has prepared a program plan and cost estimates for all elements necessary to complete the Project and presented them to the Chairs of the Minnesota State Senate Finance Committee and Minnesota House of Representatives Ways and Means Committee and the chairs have made their recommendations, and it has notified the Chair and Ranking Minority Member of the Minnesota House of Representatives Capital Investment Committee and the Chair and Ranking Minority Member of the Minnesota State Senate Capital Investment Committee. The program plan and cost estimates must note any significant changes in the work to be performed on the Project, or in its costs, which have arisen since the appropriation from the legislature for the Project was enacted or which differ from any previous predesign submittal.

D. The Grant Recipient must notify the Chairs and Ranking Minority Members of the Minnesota State Senate Finance and Capital Investment Committees, and the Minnesota House of Representatives Capital Investment and Ways and Means Committees of any significant changes to the program plan and cost estimates referred to in Section 5.10.C.

E. The program plan and cost estimates referred to in Section 5.10.C must ensure that the Project will comply with all applicable energy conservation standards contained in law, including Minn. Stat. §§ 216C.19 to 216C.20, as they may be amended, modified or replaced from time to time, and all rules adopted thereunder.

F. If any of the Grant is to be used for the construction or remodeling of the Facility, then both the predesign package referred to in Section 5.10.B and the program plan and cost estimates referred to in Section 5.10.C must include provisions for cost-effective information technology investments that will enable the occupant of the Facility to reduce its need for office space, provide more of its services electronically, and decentralize its operations.

G. If the Project does not involve the construction of a new building, substantial addition to an existing building, substantial change to the interior configuration of an existing building, or the acquisition of an interest in land, then prior to beginning work on the Project the Grant Recipient shall just notify the Chairs and Ranking Minority Members of the Minnesota State Senate Finance and Capital Investment Committees, and the Minnesota House of Representatives Capital Investment and Ways and Means Committees that the work to be performed is ready to begin.

H. The Project must be: (i) completed in accordance with the program plan and cost estimates referred to in Section 5.10.C, (ii) completed in accordance with the time schedule contained in the program plan referred to in Section 5.10.C, and (iii) completed within the budgets contained in the cost estimates referred to in Section 5.10.C.

Provided, however, the provisions and requirements contained in this Section 5.10 only apply to public lands or buildings or other public improvements of a capital nature, and shall not apply to the demolition or decommissioning of state assets, hazardous material projects, utility infrastructure projects, environmental testing, parking lots, parking structures, park and ride facilities, bus rapid transit stations, light rail lines, passenger rail projects, exterior lighting, fencing, highway rest areas, truck stations, storage facilities not consisting primarily of offices or heated work areas, roads, bridges, trails, pathways, campgrounds, athletic fields, dams, floodwater retention systems, water access sites, harbors, sewer separation projects, water and wastewater facilities, port development projects for which the Commissioner of Transportation for the State of Minnesota has entered into an assistance agreement under Minn. Stat. § 457A.04, as it may be amended, modified or replaced from time to time, ice centers, local government projects with a construction cost of less than $1,500,000.00, or any other capital project with a construction cost of less than $750,000.00.

Section 5.11 Prevailing Wages. The Grant Recipient agrees to comply with all of the applicable provisions contained in Chapter 177 of the Minnesota Statutes, and specifically those provisions contained in Minn. Stat. §§ 177.41 through 177.435, as they may be amended, modified or replaced from time to time with respect to the Project and the operation of the Real Property and, if applicable, Facility as intended by the Minnesota Legislature. By agreeing to this provision, the Grant Recipient is not acknowledging or agreeing that the cited provisions apply to the Project or to the operation of the Real Property and, if applicable, Facility.

Section 5.12 Liability. The Grant Recipient and the State Entity agree that they will, subject to any indemnifications provided herein, be responsible for their own acts and the results thereof to the extent authorized by law, and they shall not be responsible for the acts of the other party and the results thereof. The liability of both the State Entity and the Commissioner of Management and Budget is governed by the provisions contained in Minn. Stat. § 3.736, as it may be amended, modified or replaced from time to time. If the Grant Recipient is a "municipality" as such term is used in Chapter 466 of the Minnesota Statutes that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time, then the liability of the Grant Recipient, including but not limited to the indemnification provided under Section 5.13, is governed by the provisions contained in such Chapter 466.

Section 5.13 Indemnification by the Grant Recipient. The Grant Recipient shall bear all loss, expense (including attorneys' fees), and damage in connection with the completion of the Project or operation of the Real Property and, if applicable, the Facility, and agrees to indemnify and hold harmless the State Entity, the Commissioner of Management and Budget, and the State of Minnesota, their agents, servants and employees from all claims, demands and judgments made or recovered against the State Entity, the Commissioner of Management and Budget, and the State of Minnesota, their agents, servants and employees, because of bodily injuries, including death at any time resulting therefrom, or because of damages to property of the State Entity, the State of Minnesota, or others (including loss of use) from any cause whatsoever, arising out of, incidental to, or in connection with the completion of the Project or operation of the Real Property and, if applicable, the Facility, whether or not due to any act of omission or commission, including negligence of the Grant Recipient or any Contractor or his or their employees, servants or agents, and whether or not due to any act of omission or commission (excluding, however, negligence or breach of statutory duty) of the State Entity, the Commissioner of Management and Budget, and the State of Minnesota, their employees, servants or agents.

The Grant Recipient further agrees to indemnify, save, and hold the State Entity, the Commissioner of Management and Budget, and the State of Minnesota, their agents and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation by the Grant Recipient, its officers, employees, or agents, or by any Usee, its officers, employees, or agents, of any provision of the Minnesota Government Data Practices Act, including legal fees and disbursements paid or incurred to enforce the provisions contained in Section 5.06.

The Grant Recipient's liability hereunder shall not be limited to the extent of insurance carried by or provided by the Grant Recipient, or subject to any exclusions from coverage in any insurance policy.

Section 5.14 Relationship of the Parties. Nothing contained in this Agreement is intended or should be construed in any manner as creating or establishing the relationship of co-partners or a joint venture between the Grant Recipient, the State Entity, or the Commissioner of Management and Budget, nor shall the Grant Recipient be considered or deemed to be an agent, representative, or employee of either the State Entity, the Commissioner of Management and Budget, or the State of Minnesota in the performance of this Agreement, the completion of the Project, or operation of the Real Property and, if applicable, the Facility.

The Grant Recipient represents that it has already or will secure or cause to be secured all personnel required for the performance of this Agreement and the completion of the Project and the operation and maintenance of the Real Property and, if applicable, the Facility. All personnel of the Grant Recipient or other persons while engaging in the performance of this Agreement, the completion of the Project, or the operation and maintenance of the Real Property and, if applicable, the Facility shall not have any contractual relationship with either the State Entity, the Commissioner of Management and Budget, or the State of Minnesota and shall not be considered employees of any of such entities. In addition, all claims that may arise on behalf of said personnel or other persons out of employment or alleged employment including, but not limited to, claims under the Workers' Compensation Act of the State of Minnesota, claims of discrimination against the Grant Recipient, its officers, agents, contractors, or employees shall in no way be the responsibility of either the State Entity, the Commissioner of Management and Budget, or the State of Minnesota. Such personnel or other persons shall not require nor be entitled to any compensation, rights or benefits of any kind whatsoever from either the State Entity, the Commissioner of Management and Budget, or the State of Minnesota including, but not limited to, tenure rights, medical and hospital care, sick and vacation leave, disability benefits, severance pay and retirement benefits.

Section 5.15 Notices. In addition to any notice required under applicable law to be given in another manner, any notices required hereunder must be in writing, and shall be sufficient if personally served or sent by prepaid, registered, or certified mail (return receipt requested), to the business address of the party to whom it is directed. Such business address shall be that address specified below or such different address as may hereafter be specified, by either party by written notice to the other:

To the Grant Recipient at:
City of Owatonna
540 West Hills Circle

Owatonna, MN 55060
Attention: Sean Murphy, Public Works Director

To the State Entity at:

Minnesota Public Facilities Authority
First National Bank Building, Suite W820
332 Minnesota Street
Saint Paul, MN 55101-1378
Attention: Executive Director

To the Commissioner of Management and Budget at:

Minnesota Department of Management and Budget
400 Centennial Office Bldg.
658 Cedar St.
St. Paul, MN 55155
Attention: Commissioner of Management and Budget

Section 5.16 Binding Effect and Assignment or Modification. This Agreement and the Declaration shall be binding upon and inure to the benefit of the Grant Recipient and the State Entity, and their respective successors and assigns. Provided, however, that neither the Grant Recipient nor the State Entity may assign any of its rights or obligations under this Agreement or the Declaration without the prior written consent of the other party. No change or modification of the terms or provisions of this Agreement or the Declaration shall be binding on either the Grant Recipient or the State Entity unless such change or modification is in writing and signed by an authorized official of the party against which such change or modification is to be imposed.

Section 5.17 Waiver. Neither the failure by the Grant Recipient, the State Entity, or the Commissioner of Management and Budget, as a third party beneficiary of this Agreement, in any one or more instances, to insist upon the complete and total observance or performance of any term or provision hereof, nor the failure of the Grant Recipient, the State Entity, or the Commissioner of Management and Budget, as a third party beneficiary of this Agreement, to exercise any right, privilege, or remedy conferred hereunder or afforded by law shall be construed as waiving any breach of such term, provision, or the right to exercise such right, privilege, or remedy thereafter. In addition, no delay on the part of either the Grant Recipient, the State Entity, or the Commissioner of Management and Budget, as a third party beneficiary of this Agreement, in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude other or further exercise thereof or the exercise of any other right or remedy.

Section 5.18 Entire Agreement. This Agreement, the Declaration, and the documents, if any, referred to and incorporated herein by reference embody the entire agreement between the Grant Recipient and the State Entity, and there are no other agreements, either oral or written, between the Grant Recipient and the State Entity on the subject matter hereof.

Section 5.19 Choice of Law and Venue. All matters relating to the validity, construction, performance, or enforcement of this Agreement or the Declaration shall be determined in accordance with the laws of the State of Minnesota. All legal actions initiated with respect to or arising from any provision contained in this Agreement shall be initiated, filed and venued in the State of Minnesota District Court located in the City of St. Paul, County of Ramsey, State of Minnesota.

Section 5.20 Severability. If any provision of this Agreement is finally judged by any court to be invalid, then the remaining provisions shall remain in full force and effect and they shall be interpreted, performed, and enforced as if the invalid provision did not appear herein.

Section 5.21 Time of Essence. Time is of the essence with respect to all of the matters contained in this Agreement.

Section 5.22 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall together constitute one and the same instrument.

Section 5.23 Matching Funds. The Grant Recipient must obtain and supply the following matching funds, if any, for the completion of the Project:

NONE

Any matching funds which are intended to meet the above requirements must either be in the form of (i) cash monies, (ii) legally binding commitments for money, or (iii) equivalent funds or contributions, including equity, which have been or will be used to complete or pay for the Project. The Grant Recipient shall supply to the Commissioner of Management and Budget whatever documentation the Commissioner of Management and Budget may request to substantiate the availability and source of any matching funds, and the source and terms relating to all matching funds must be consented to, in writing, by the Commissioner of Management and Budget.

Section 5.24 Source and Use of Funds. The Grant Recipient represents to the State Entity and the Commissioner of Management and Budget that **Attachment III** is intended to be and is a source and use of funds statement showing the total cost of the Project and all of the funds that are available for the completion of the Project, and that the information contained in such **Attachment III** correctly and accurately delineates the following information.

A. The total cost of the Project detailing all of the major elements that make up such total cost and how much of such total cost is attributed to each such major element.

B. The source of all funds needed to complete the Project broken down among the following categories:

(i) State funds including the Grant, identifying the source and amount of such funds.
(ii) Matching funds, identifying the source and amount of such funds.
(iii) Other funds supplied by the Grant Recipient, identifying the source and amount of such funds.
(iv) Loans, identifying each such loan, the entity providing the loan, the amount of each such loan, the terms and conditions of each such loan, and all collateral pledged for repayment of each such loan.

(v) Other funds, identifying the source and amount of such funds.

C. Such other financial information that is needed to correctly reflect the total funds available for the completion of the Project, the source of such funds and the expected use of such funds.

If any of the funds included under the source of funds have conditions precedent to the release of such funds, then the Grant Recipient must provide to the State Entity and the Commissioner of Management and Budget a detailed description of such conditions and what is being done to satisfy such conditions.

The Grant Recipient shall also supply whatever other information and documentation that the State Entity or the Commissioner of Management and Budget may request to support or explain any of the information contained in **Attachment III**.

The value of the Grant Recipient's ownership interest in the Real Property and, if applicable, Facility should only be shown in **Attachment III** if such ownership interest is being acquired and paid for with funds shown in such **Attachment III**, and for all other circumstances such value should be shown in the definition for Ownership Value in Section 1.01 and not included in such **Attachment III**.

The funds shown in **Attachment III** and to be supplied for the Project may, subject to any limitations contained in the legislation that authorized the Grant, be provided by either the Grant Recipient or a Usee under a Use Contract.

Section 5.25 Project Completion Schedule. The Grant Recipient represents to the State Entity and the Commissioner of Management and Budget that **Attachment IV** correctly and accurately delineates the projected schedule for the completion of the Project.

Section 5.26 Third-Party Beneficiary. The public program to be operated in conjunction with the Real Property and, if applicable, the Facility will benefit the State of Minnesota and the provisions and requirements contained herein are for the benefit of both the State Entity and the State of Minnesota. Therefore, the State of Minnesota, by and through its Commissioner of Management and Budget, is and shall be a third-party beneficiary of this Agreement.

Section 5.27 Applicability to Real Property and Facility. This Agreement applies to the Grant Recipient's interest in the Real Property and if a Facility exists to the Facility. The term "if applicable" appearing before the term "Facility" is meant to indicate that this Agreement will apply to a Facility if one exists, and if no Facility exists then this Agreement will only apply to the Grant Recipient's interest in the Real Property.

Section 5.28 E-Verification. The Grant Recipient agrees and acknowledges that it is aware of Minn. Stat. § 16C.075 regarding e-verification of employment of all newly hired employees to confirm that such employees are legally entitled to work in the United States, and that it will, if and when applicable, fully comply with such statute and impose a similar requirement in any Use Contract to which it is a party.

Section 5.29 Additional Requirements. The Grant Recipient and the State Entity agree to comply with the following additional requirements.

NONE

IN TESTIMONY HEREOF, the Grant Recipient and the State Entity have executed this General Fund Grant Agreement – Construction Grant for the Owatonna Wastewater Treatment Plant Expansion and Upgrade Project on the day and date indicated immediately below their respective signatures.

GRANT RECIPIENT:

the City of Owatonna,
a Home Rule Charter City

By: DocuSigned by: Thomas Kuntz
1EEF3FB7154149D...
Thomas Kuntz
Its: Mayor

Dated: 1/30/2024

And: DocuSigned by: Kris Busse
2D9CD01BD765433...
Kris Busse
Its: City Administrator

Dated: 1/30/2024

STATE ENTITY:
Minnesota Public Facilities Authority,

By: ____________
Matt Varilek
Its: Chair, or delegate

Dated: 01/26/2024

ENCUMBERED: Individual signing certified that funds have been encumbered as required by Minnesota Statute 16A

By: ______________________

PO date 1/02/2024
PO ID(s) B2401: 3000004130

Attachment I -

DECLARATION

The undersigned has the following interest in the real property legally described in Exhibit A attached hereto and all facilities situated thereon (the "Restricted Property"):

(*Check the appropriate box.)*

X a fee simple title

☐ a lease

☐ an easement,

and as owner of such fee title, lease or easement, does hereby declare that such interest in the Restricted Property is subject to those provisions, requirements, restrictions and encumbrances contained in the "General Fund Grant Agreement Construction Grant for the Owatonna Wastewater Treatment Plant Expansion and Upgrade Project" dated January 2, 2024, between the City of Owatonna and the Minnesota Public Facilities Authority. The Restricted Property shall remain subject to such provisions, requirements, restrictions, and encumbrances for 125% of the useful life of the Restricted Property or until the Restricted Property is sold pursuant to the terms of the Grant Agreement, at which time it shall be released therefrom by way of a written release in recordable form signed by the Executive Director of the Minnesota Public Facilities Authority, and such written release is recorded in the real estate records relating to the Restricted Property.

(SIGNATURE BLOCK AND ACKNOWLDEGEMENT)

____
(City of Owatonna)

By:____________________________

Title:____________________________

Dated: ____________________

STATE OF MINNESOTA)
) ss.
COUNTY OF _________)

This forgoing instrument was acknowledged before me this ___ day of ___________, 20__, by _________________________ the _________________ [insert name and title of first signatory], and __________________, the ________________________ [insert name ant title of second signatory], respectively, of the _____________________, a _______________________, [insert name and description of the entity receiving the funds].

____
Notary Public

This Declaration was drafted by:
[insert name and address]

Exhibit A to Declaration -
LEGAL DESCRIPTION OF RESTRICTED PROPERTY

Parts of Lot 1, and Lot 8, of the SW1/4 of the SE1/4 of Section 4-T107N-R20W; and parts of Lot 5, Lot 6, and OUTLOT 4, of Crooker & Parkers Second Addition to the Town (now City) of Owatonna, Steele County, Minnesota; described as follows:

Beginning at the northwest corner of said Lot 6, thence North 89°32'27" West a distance of 201.78 feet, on an assumed bearing on the north line of said Lot 1, to a corner described in Doc. No. A000221443, as the same is recorded in the office of the Steele County Recorder;

thence South 01°08'39" East a distance of 431.45 feet, on an east line described in Doc. No. A000221443;

thence North 89°32'55" West a distance of 7.12 feet, on a southerly line described in said Document;

thence South 01°08'33" East a distance of 209.00 feet, to a point 640.50 feet south and 209.00 feet west of the northwest corner of said Lot 6;

thence South 29°45'09" East a distance of 331.21 feet;

thence North 87°05'37" East a distance of 229.28 feet;

thence South 08°30'21" East a distance of 56.34 feet;

thence North 81°33'19" East a distance of 367 feet more or less, to the centerline of the Straight River;

thence Northwesterly 935 feet more or less, on the center line of said river, to the north line of said Lot 6;

thence North 89°32'02" West a distance of 367 feet more or less to the point of beginning.

Attachment II -
LEGAL DESCRIPTION

Parts of Lot 1, and Lot 8, of the SW1/4 of the SE1/4 of Section 4-T107N-R20W; and parts of Lot 5, Lot 6, and OUTLOT 4, of Crooker & Parkers Second Addition to the Town (now City) of Owatonna, Steele County, Minnesota; described as follows:

Beginning at the northwest corner of said Lot 6, thence North 89°32'27" West a distance of 201.78 feet, on an assumed bearing on the north line of said Lot 1, to a corner described in Doc. No. A000221443, as the same is recorded in the office of the Steele County Recorder;

thence South 01°08'39" East a distance of 431.45 feet, on an east line described in Doc. No. A000221443;

thence North 89°32'55" West a distance of 7.12 feet, on a southerly line described in said Document;

thence South 01°08'33" East a distance of 209.00 feet, to a point 640.50 feet south and 209.00 feet west of the northwest corner of said Lot 6;

thence South 29°45'09" East a distance of 331.21 feet;

thence North 87°05'37" East a distance of 229.28 feet;

thence South 08°30'21" East a distance of 56.34 feet;

thence North 81°33'19" East a distance of 367 feet more or less, to the centerline of the Straight River;

thence Northwesterly 935 feet more or less, on the center line of said river, to the north line of said Lot 6;

thence North 89°32'02" West a distance of 367 feet more or less to the point of beginning.

Attachment III
SOURCES AND USE OF FUNDS FOR THE PROJECT

Source of Funds		Use of Funds	
Identify Source of Funds	**Amount**	**Identify Items**	**Amount**
State Funds		**Ownership Acquisition and Other Items Paid for with Grant Funds**	
2023 General Fund Appropriation	$ 11,000,000.00	*Construction management of wastewater plant project*	$ 2,000,000.00
2023 G.O. Bonding Appropriation	$ 11,000,000.00	*Construction of wastewater plant*	$ 20,000,000.00
Other State Funds		Other Items of a Capital Nature	
Subtotal	$ 22,000,000.00	Subtotal	$ 22,000,000.00
Matching Funds		**Items Paid for with Non-State Grant Funds**	
	$ -		
		Design, engineering and construction management of wastewater plant project	$ 2,029,518.00
Subtotal	$ -	*Construction of wastewater plant project*	$ 44,828,680.00
Other Grant Recipient Funds		Subtotal	$ 46,858,198.00
Fed Green Principal Forgiveness (through PFA)	$ 1,000,000.00		
PFA Loan	$ 35,000,000.00		
Point Source Implementation Grant (PSIG)	$ 7,000,000.00		
Subtotal	$ 43,000,000.00		
Other Funds			
Local, City of Owatonna	$ 3,858,198.00		
Subtotal	$ 3,858,198.00		
Prepaid Project Expenses			
	$ -		
Subtotal			
TOTAL FUNDS	$ 68,858,198.00	**TOTAL PROJECT COSTS**	$ 68,858,198.00

Attachment IV -
PROJECT COMPLETION SCHEDULE

June 30, 2025

General Obligation Bond Proceeds

Grant Agreement - Construction Grant for the Owatonna Wastewater Treatment Plant Expansion and Upgrade Project

MPFA-SPAP-G-042-FY24

TABLE OF CONTENTS

General Obligation Bond Proceeds

Grant Agreement - Construction Grant for the Owatonna Wastewater Treatment Plant Expansion and Upgrade Project

THIS AGREEMENT shall be effective as of January 2, 2024, and is between the City of Owatonna, a Home Rule Charter City (the "Public Entity"), and the Minnesota Public Facilities Authority (the "State Entity").

RECITALS

A. Under the provisions contained in Minnesota Statues 444.075, Subd. 1a, the Public Entity has been given the authority to build, reconstruct, repair, enlarge, improve, or in any other manner obtain facilities; and

B. Under the provisions contained in Laws of Minnesota 2023, chapter 72, article 1, section 023, subd. 21, (the "G.O. Bonding Legislation") the State of Minnesota has allocated $11,000,000 (the "G.O. Grant"), which is to be given to the Public Entity as a grant to assist it to design, construct and equip improvements to expand and upgrade the city's wastewater treatment facility, as authorized by such legislation; and

C. Under the provisions contained in Minnesota Statutes 444.075, Subd. 1a, the Public Entity has been given the authority to maintain and operate the facilities; (the "Governmental Program") and

D. The monies allocated to fund the grant to the Public Entity are proceeds of state general obligation bonds authorized to be issued under Article XI, § 5(a) of the Minnesota Constitution; and

E. The Public Entity's receipt and use of the G.O. Grant to acquire an ownership interest in and/or improve real property (the "Real Property") and, if applicable, structures situated thereon (the "Facility") will cause the Public Entity's ownership interest in all of such real property and structures to become "state bond financed property", as such term is used in Minn. Stat. § 16A.695 (the "G.O. Compliance Legislation") and in that certain "Fourth Order Amending Order of the Commissioner of Finance Relating to Use and Sale of State Bond Financed Property" executed by the Commissioner of Minnesota Management and Budget and dated July 30, 2012, as amended (the "Commissioner's Order"), even though such funds may only be a portion of the funds being used to acquire such ownership interest and/or improve such real property and structures and that such funds may be used to only acquire such ownership interest and/or improve a part of such real property and structures.

F. The Public Entity and the State Entity desire to set forth herein the provisions relating to the granting of such monies and the disbursement thereof to the Public Entity, and the operation of the Real Property and, if applicable, Facility.

IN CONSIDERATION of the grant described and other provisions in this Agreement, the parties to this Agreement agree as follows.

Article I
DEFINITIONS

Section 1.01 **Defined Terms.** As used in this Agreement, the following terms shall have the meanings set out respectively after each such term (the meanings to be equally applicable to both the singular and plural forms of the terms defined), unless the context specifically indicates otherwise:

"Advance(s)" – means an advance made or to be made by the State Entity to the Public Entity and disbursed in accordance with the provisions contained in Article VI hereof.

"Agreement" - means this General Obligation Bond Proceeds Grant Agreement - Construction Grant for the Owatonna Wastewater Treatment Plant Expansion and Upgrade Project, as such exists on its original date and any amendments, modifications or restatements thereof.

"Approved Debt" – means public or private debt of the Public Entity that is consented to and approved, in writing, by the Commissioner of MMB, the proceeds of which were or will used to acquire an ownership interest in or improve the Real Property and, if applicable, Facility, other than the debt on the G.O. Bonds. Approved Debt includes, but is not limited to, all debt delineated in **Attachment III** to this Agreement; provided, however, the Commissioner of MMB is not bound by any amounts delineated in such attachment unless he/she has consented, in writing, to such amounts.

"Code" - means the Internal Revenue Code of 1986, as amended from time to time, and all treasury regulations, revenue procedures and revenue rulings issued pursuant thereto.

"Commissioner of MMB" - means the commissioner of Minnesota Management and Budget, and any designated representatives thereof.

"Commissioner's Order" - means that certain "Fourth Order Amending Order of the Commissioner of Finance Relating to Use and Sale of State Bond Financed Property" executed by the Commissioner of Minnesota Management and Budget and dated July 30, 2012, as amended.

"Completion Date" – means June 30, 2025, the date of projected completion of the Project.

"Consulting Engineer", if any – means Nero Engineering, which will administer the Construction Contract Documents on behalf of the Public Entity.

"Contractor" - means any person engaged to work on or to furnish materials and supplies for the Construction Items including, if applicable, a general contractor.

"Construction Contract Documents" - means the document or documents, in form and substance acceptable to the State Entity, including but not limited to any construction plans and specifications and any exhibits, amendments, change orders, modifications thereof or supplements thereto, which collectively form the contract between the Public Entity and the Contractor or Contractors for the completion of the Construction Items on or before the Completion Date for either a fixed price or a guaranteed maximum price.

"Construction Items" – means the work to be performed under the Construction Contract Documents.

"Counterparty" - means any entity with which the Public Entity contracts under a Use Contract. *This definition is only needed and only applies if the Public Entity enters into an agreement with another party under which such other party will operate the Real Property, and if applicable, Facility. For all other circumstances this definition is not needed and should be ignored and treated as if it were left blank, and any reference to this term in this Agreement shall be ignored and treated as if the reference did not exist.*

"Declaration" - means a declaration, or declarations, in the form contained in **Attachment I** to this Agreement and all amendments thereto, indicating that the Public Entity's ownership interest in the Real Property and, if applicable, Facility is bond financed property within the meaning of the G.O. Compliance Legislation and is subject to certain restrictions imposed thereby.

"Draw Requisition" - means a draw requisition that the Public Entity, or its designee, submits to the State Entity when an Advance is requested, as referred to in Section 6.02.

"Event of Default" - means one or more of those events delineated in Section 2.07.

"Facility", if applicable, - means the wastewater treatment plant, which is located, or will be constructed and located, on the Real Property and all equipment that is a part thereof that was purchased with the proceeds of the G.O. Grant.

"Fair Market Value" – means either (i) the price that would be paid by a willing and qualified buyer to a willing and qualified seller as determined by an appraisal that assumes that all liens and encumbrances on the property being sold that negatively affect the value of such property, will be paid and released, or (ii) the price bid by a purchaser under a public bid procedure after reasonable public notice, with the proviso that all liens and encumbrances on the property being sold that negatively affect the value of such property, will be paid and released at the time of acquisition by the purchaser.

"G.O. Bonding Legislation" – means the legislation delineated in Recital B hereinabove as the G.O. Bonding Legislation.

"G.O. Bonds" - means that portion of the state general obligation bonds issued under the authority granted in Article XI, § 5(a) of the Minnesota Constitution, the proceeds of which are used to fund the G.O. Grant and any bonds issued to refund or replace such bonds.

"G.O. Compliance Legislation" - means Minn. Stat. § 16A.695 as such may subsequently be amended, modified or replaced from time to time unless such amendment, modification or replacement imposes an unconstitutional impairment of a contract right.

"G.O. Grant" - means a grant of monies from the State Entity to the Public Entity in the amount identified as the "G.O. Grant" in Recital B to this Agreement, as the amount thereof may be modified under the provisions contained herein.

"Governmental Program" – means the operation of the Real Property and, if applicable, Facility for the purpose specified and identified in Recital C of this Agreement as the Governmental Program.

"Initial Acquisition and Betterment Costs" – means the cost to acquire the Public Entity's ownership interest in the Real Property and, if applicable, Facility if the Public Entity does not already possess the required ownership interest, and the costs of betterments of the Real Property and, if applicable, Facility; provided, however, the Commissioner of MMB is not bound by any specific amount of such alleged costs unless he/she has consented, in writing, to such amount.

"Inspecting Engineer", if any - means the State Entity's construction inspector, or its designated consulting engineer.

"Leased/Easement Premises" - means the real estate and structures, if any, that are leased to the Public Entity under a Real Property/Facility Lease or granted to the Public Entity under an easement. *This definition is only needed and only applies if the Public Entity's ownership interest in the Real Property, the Facility, if applicable, or both is by way of a leasehold interest under a Real Property/Facility Lease or by way of an easement. For all other circumstances this definition is not needed and <u>should be ignored and treated as if it were left blank, and any reference to this term in this Agreement shall be ignored and treated as if the reference did not exist</u>.*

"Lessor/Grantor" – means the fee owner/lessor or grantor of the Leased/Easement Premises. *This definition is only needed and only applies if the Public Entity's ownership interest in the Real Property, the Facility, if applicable, or both, is by way of a leasehold interest under a Real Property/Facility Lease or by way of an easement. For all other circumstances this definition is not needed and <u>should be ignored and treated as if it were</u>*

left blank, and any reference to this term in this Agreement shall be ignored and treated as if the reference did not exist.

"Outstanding Balance of the G.O. Grant" – means the portion of the G.O. Grant that has been disbursed to or on behalf of the Public Entity minus any portion thereof previously paid back to the Commissioner of MMB.

"Ownership Value", if any – means the value, if any, of the Public Entity's ownership interest in the Real Property and, if applicable, Facility that existed concurrent with the Public Entity's execution of this Agreement. Such value shall be established by way of an appraisal or by such other manner as may be acceptable to the State Entity and the Commissioner of MMB. The parties hereto agree and acknowledge that such value is $95,000,000; provided, however, the Commissioner of MMB is not bound by any inserted dollar amount unless he/she has consented, in writing, to such amount. If no dollar amount is inserted and the blank "Not Applicable" is not checked, a rebuttable presumption that the Ownership Value is $0.00 shall be created. (*The blank "Not Applicable" should only be selected and checked when a portion of the funds delineated in* ***Attachment III*** *attached hereto are to be used to acquire the Public Entity's ownership interest in the Real Property and, if applicable, Facility, and in such event the value of such ownership interest should be shown in* ***Attachment III*** *and not in this definition for Ownership Value).*

"Project" - means the Public Entity's acquisition, if applicable, of the ownership interests in the Real Property and, if applicable, Facility denoted in Section 2.02 along with the performance of activities denoted in Section 2.03. (*If the Public Entity is not using any portion of the G.O. Grant to acquire the ownership interest denoted in Section 2.02, then this definition for Project shall not include the acquisition of such ownership interest, and the value of such ownership interest shall not be included in* ***Attachment III*** *hereto and instead shall be included in the definition for Ownership Value under this Section.)*

"Public Entity" - means the entity identified as the "Public Entity" in the lead-in paragraph of this Agreement.

"Real Property" - means the real property located in the County of Steele, State of Minnesota, legally described in **Attachment II** to this Agreement.

"Real Property/Facility Lease" - means a long-term lease of the Real Property, the Facility, if applicable, or both by the Public Entity as lessee thereunder. *This definition is only needed and only applies if the Public Entity's ownership interest in the Real Property, the Facility, if applicable, or both is a leasehold interest under a lease. For all other circumstances this definition is not needed and should be ignored and treated as if it were left blank, and any reference to this term in this Agreement shall be ignored and treated as if the reference did not exist*.

"State Entity" - means the entity identified as the "State Entity" in the lead-in paragraph of this Agreement.

"Subsequent Betterment Costs" – means the costs of betterments of the Real Property and, if applicable, Facility that occur subsequent to the date of this Agreement, are not part of the Project, would qualify as a public improvement of a capital nature (as such term in used in Minn. Constitution Art. XI, §5(a) of the Minnesota Constitution), and the cost of which has been established by way of written documentation that is acceptable to and approved, in writing, by the State Entity and the Commissioner of MMB.

"Use Contract" - means a lease, management contract or other similar contract between the Public Entity and any other entity that involves or relates to any part of the Real Property and/or, if applicable, Facility. *This definition is only needed and only applies if the Public Entity enters into an agreement with another party under which such other party will operate the Real Property and/or, if applicable, Facility. For all other circumstances this definition is not needed and should be ignored and treated as if it were left blank, and any reference to this term in this Agreement shall be ignored and treated as if the reference did not exist.*

"Useful Life of the Real Property and, if applicable, Facility" – means the term set forth in Section 2.05.X, which was derived as follows: (i) 30 years for Real Property that has no structure situated thereon or if any structures situated thereon will be removed, and no new structures will be constructed thereon, (ii) the remaining useful life of the Facility as of the effective date of this Agreement for Facilities that are situated on the Real Property as of the date of this Agreement, that will remain on the Real Property, and that will not be bettered, or (iii) the useful life of the Facility after the completion of the construction or betterments for Facilities that are to be constructed or bettered.

Article II
GRANT

Section 2.01 **Grant of Monies.** The State Entity shall make and issue the G.O. Grant to the Public Entity, and disburse the proceeds in accordance with the provisions of this Agreement. The G.O. Grant is not intended to be a loan even though the portion thereof that is disbursed may need to be returned to the State Entity or the Commissioner of MMB under certain circumstances.

Section 2.02 **Public Ownership.** The Public Entity acknowledges and agrees that the G.O. Grant is being funded with the proceeds of G.O. Bonds, and as a result thereof all of the Real Property and, if applicable, Facility must be owned by one or more public entities. Such ownership may be in the form of fee ownership, a Real Property/Facility Lease, or an easement. In order to establish that this public ownership requirement is satisfied, the Public Entity represents and warrants to the State Entity that it has, or will acquire, the following ownership interests in the Real Property and, if applicable, Facility, and, in addition, that it possess, or will possess, all easements necessary for the operation, maintenance and management of the Real Property and, if applicable, Facility in the manner specified in Section 2.04:

(Check the appropriate box for the Real Property and, if applicable, for the Facility.)

Ownership Interest in the Real Property.

☐ Fee simple ownership of the Real Property.

☐ A Real Property/Facility Lease for the Real Property that complies with the requirements contained in Section 2.06.
(If the term of the Real Property/Facility Lease is for a term authorized by a Minnesota statute, rule or session law, then insert the citation: ________________.)

☐ An easement for the Real Property that complies with the requirements contained in Section 2.06.
(If the term of the easement is for a term authorized by a Minnesota statute, rule or session law, then insert the citation: ________________.)

Ownership Interest in, if applicable, the Facility.

☒ Fee simple ownership of the Facility.

☐ A Real Property/Facility Lease for the Facility that complies with all of the requirements contained in Section 2.06.
(If the term of the Real Property/Facility Lease is for a term authorized by a Minnesota statute, rule or session law, then insert the citation: ______________.)

☐ Not applicable because there is no Facility.

Section 2.03 **Use of Grant Proceeds.** The Public Entity shall use the G.O. Grant solely to reimburse itself for expenditures it has already made, or will make, in the performance of the following activities, and may not use the G.O. Grant for any other purpose.

(Check all appropriate boxes.)

☐ Acquisition of fee simple title to the Real Property.

☐ Acquisition of a leasehold interest in the Real Property.

☐ Acquisition of an easement for the Real Property.

☒ Improvement of the Real Property.

☐ Acquisition of fee simple title to the Facility.

☐ Acquisition of a leasehold interest in the Facility.

☒ Construction of the Facility.

☒ Renovation of the Facility.

☐ ____.
(Describe other or additional purposes.)

Section 2.04 **Operation of the Real Property and Facility.** The Real Property and, if applicable, Facility must be used by the Public Entity or the Public Entity must cause such Real Property and, if applicable, Facility to be used for the operation of the Governmental Program or for such other use as the Minnesota legislature may from time to time designate, and for no other purposes or uses.

The Public Entity may enter into Use Contracts with Counterparties for the operation of all or any portion of the Real Property and, if applicable, Facility; provided that all such Use Contracts must have been approved, in writing, by the Commissioner of MMB and fully comply with all of the provisions contained in Sections 3.01, 3.02 and 3.03.

The Public Entity must, whether it is operating the Real Property and, if applicable, Facility or has contracted with a Counterparty under a Use Contract to operate all or any portion of the Real Property and, if applicable, Facility, annually determine that the Real Property and, if applicable, Facility is being used for the purpose required by this Agreement, and shall annually supply a statement, sworn to before a notary public, to such effect to the State Entity and the Commissioner of MMB.

For those programs, if any, that the Public Entity will directly operate on all or any portion of the Real Property and, if applicable, Facility, the Public Entity covenants with and represents and warrants to the State Entity that: (i) it has the ability and a plan to fund such programs, (ii) it has demonstrated such ability by way of a plan that it submitted to the State Entity, and (iii) it will annually adopt, by resolution, a budget for the operation of such programs that clearly shows that forecast program revenues along with other funds available for the operation of such program will be equal to or greater than forecast program expenses for each fiscal year, and will supply to the State Entity and the Commissioner of MMB certified copies of such resolution and budget.

For those programs, if any, that will be operated on all or any portion of the Real Property and, if applicable, Facility by a Counterparty under a Use Contract, the Public Entity covenants with and represents and warrants to the State Entity that: (i) it will not enter into such Use Contract unless the Counterparty has demonstrated that it has the ability and a plan to fund such program, (ii) it will require the Counterparty to provide an initial program budget and annual program budgets that clearly show that forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than forecast program expenses for each fiscal year, (iii) it will promptly review all submitted program budgets to determine if such budget clearly and accurately shows that the forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than forecast program expenses for each fiscal year, (iv) it will reject any program budget that it believes does not accurately reflect forecast program revenues or expenses or does not show that forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than forecast program expenses, and require the Counterparty to prepare and submit a revised program budget, and (v) upon receipt of a program budget that it believes accurately reflects forecast program revenues and expenses and that shows that forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than forecast program expenses, it will approve such budget by resolution and supply to the State Entity and the Commissioner of MMB certified copies of such resolution and budget.

Section 2.05 **Public Entity Representations and Warranties.** The Public Entity further covenants with, and represents and warrants to the State Entity as follows:

A. It has legal authority to enter into, execute, and deliver this Agreement, the Declaration, and all documents referred to herein, and it has taken all actions necessary to its execution and delivery of such documents.

B. It has legal authority to use the G.O. Grant for the purpose or purposes described in Recital B of this Agreement.

C. It has legal authority to operate the Governmental Program.

D. This Agreement, the Declaration, and all other documents referred to herein are the legal, valid and binding obligations of the Public Entity enforceable against the Public Entity in accordance with their respective terms.

E. It will comply with all of the terms, conditions, provisions, covenants, requirements, and warranties in this Agreement, the Declaration, and all other documents referred to herein.

F. It will comply with all of the provisions and requirements contained in and imposed by the G.O. Compliance Legislation, the Commissioner's Order, and the G.O. Bonding Legislation.

G. It has made no material false statement or misstatement of fact in connection with its receipt of the G.O. Grant, and all of the information it has submitted or will submit to the State Entity or Commissioner of MMB relating to the G.O. Grant or the disbursement of any of the G.O. Grant is and will be true and correct.

H. It is not in violation of any provisions of its charter or of the laws of the State of Minnesota, and there are no actions, suits, or proceedings pending, or to its knowledge threatened, before any judicial body or governmental authority against or affecting it relating to the Real Property and, if applicable, Facility, or its ownership interest therein, and it is not in default with respect to any order, writ, injunction, decree, or demand of any court or any governmental authority which would impair its ability to enter into this Agreement, the Declaration, or any document referred to herein, or to perform any of the acts required of it in such documents.

I. Neither the execution and delivery of this Agreement, the Declaration, or any document referred to herein nor compliance with any of the terms, conditions, requirements, or provisions contained in any of such documents is prevented by, is a breach of, or will result in a breach of, any term, condition, or provision of any agreement or document to which it is now a party or by which it is bound.

J. The contemplated use of the Real Property and, if applicable, Facility will not violate any applicable zoning or use statute, ordinance, building code, rule or regulation, or any covenant or agreement of record relating thereto.

K. The Project will be completed in full compliance with all applicable laws, statutes, rules, ordinances, and regulations issued by any federal, state, or local political subdivisions having jurisdiction over the Project.

L. All applicable licenses, permits and bonds required for the performance and completion of the Project have been, or will be, obtained.

M. All applicable licenses, permits and bonds required for the operation of the Real Property and, if applicable, Facility in the manner specified in Section 2.04 have been, or will be, obtained.

N. It will operate, maintain, and manage the Real Property and, if applicable, Facility or cause the Real Property and, if applicable, Facility, to be operated, maintained and managed in compliance with all applicable laws, statutes, rules, ordinances, and regulations issued by any federal, state, or local political subdivisions having jurisdiction over the Real Property and, if applicable, Facility.

O. It will fully enforce the terms and conditions contained in any Use Contract.

P. It has complied with the matching funds requirement, if any, contained in Section 7.23.

Q. It will not, without the prior written consent of the State Entity and the Commissioner of MMB, allow any voluntary lien or encumbrance or involuntary lien or encumbrance that can be satisfied by the payment of monies and which is not being actively contested to be created or exist against the Public Entity's ownership interest in the Real Property or, if applicable, Facility, or the Counterparty's interest in the Use Contract, whether such lien or encumbrance is superior or subordinate to the Declaration. Provided, however, the State Entity and the Commissioner of MMB will consent to any such lien or encumbrance that secures the repayment of a loan the repayment of which will not impair or burden the funds needed to operate the Real Property and, if applicable, Facility in the manner specified in Section 2.04, and for which the entire amount is used (i) to acquire additional real estate that is needed to so operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04 and will be included in and as part of the Public Entity's ownership interest in the Real Property and, if applicable, Facility, and/or (ii) to pay for capital improvements that are needed to so operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04.

R. It reasonably expects to possess the ownership interest in the Real Property and, if applicable, Facility described Section 2.02 for the entire Useful Life of the Real Property and, if applicable, Facility, and it does not expect to sell such ownership interest.

S. It does not reasonably expect to receive payments under a Use Contract in excess of the amount the Public Entity needs and is authorized to use to pay the operating expenses of the portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract or to pay the principal, interest, redemption premiums, and other expenses on any Approved Debt.

T. It will supply, or cause to be supplied, whatever funds are needed above and beyond the amount of the G.O. Grant to complete and fully pay for the Project.

U. The Construction Items will be completed substantially in accordance with the Construction Contract Documents by the Completion Date, and all such items along with, if applicable, the Facility will be situated entirely on the Real Property.

V. It will require the Contractor or Contractors to comply with all rules, regulations, ordinances, and laws bearing on its performance under the Construction Contract Documents.

W. It has or will promptly record a fully executed Declaration with the appropriate governmental office and deliver a copy thereof to the State Entity and to Minnesota Management and Budget (attention: Capital Projects Manager) that contains all of the recording information.

X. The Useful Life of the Real Property and, if applicable, Facility is 23.9 years.

Y. It shall furnish such satisfactory evidence regarding the representations and warranties described herein as may be required and requested by either the State Entity or the Commissioner of MMB.

Section 2.06 **Ownership by Leasehold or Easement**. *This Section shall only apply if the Public Entity's ownership interest in the Real Property, the Facility, if applicable, or both is by way of a Real Property/Facility Lease or an easement. For all other circumstances this Section is* *not needed and <u>should be ignored and treated as if it were left blank, and any reference to this Section in this Agreement shall be ignored and treated as if the reference did not exist</u>.*

A. A Real Property/Facility Lease or easement must comply with the following provisions.

1. It must be in form and contents acceptable to the Commissioner of MMB, and specifically state that it may not be modified, restated, amended, changed in any way, or prematurely terminated or cancelled without the prior written consent and authorization by the Commissioner of MMB.

2. It must be for a term that is equal to or greater than 125% of the Useful Life of the Real Property and, if applicable, Facility, or such other period of time specifically authorized by a Minnesota statute, rule or session law.

3. Any payments to be made under it by the Public Entity, whether designated as rent or in any other manner, must be by way of a single lump sum payment that is due and payable on the date that it is first made and entered into.

4. It must not contain any requirements or obligations of the Public Entity that if not complied with could result in a termination thereof.

5. It must contain a provision that provides sufficient authority to allow the Public Entity to operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04.

6. It must not contain any provisions that would limit or impair the Public Entity's operation of the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04.

7. It must contain a provision that prohibits the Lessor/Grantor from creating or allowing, without the prior written consent of the State Entity and the Commissioner of MMB, any voluntary lien or encumbrance or involuntary lien or encumbrance that can be satisfied by the payment of monies and which is not being actively contested against the Leased/Easement Premises or the Lessor's/Grantor's interest in the Real Property/Facility Lease or easement, whether such lien or encumbrance is superior or subordinate to the Declaration. Provided, however, the State Entity and the Commissioner of MMB will consent to any such lien or encumbrance if the holder of such lien or encumbrance executes and files of record a document under which such holder subordinates such lien or encumbrance to the Real Property/Facility Lease or easement and agrees that upon foreclosure of such lien or encumbrance to be bound by and comply with all of the terms, conditions and covenants contained in the Real Property/Facility Lease or easement as if such holder had been an original Lessor/Grantor under the Real Property/Facility Lease or easement.

8. It must acknowledge the existence of this Agreement and contain a provision that the terms, conditions and provisions contained in this Agreement shall control over any inconsistent or contrary terms, conditions and provisions contained in the Real Property/Facility Lease or easement.

9. It must provide that any use restrictions contained therein only apply as long as the Public Entity is the lessee under the Real Property/Facility Lease or grantee under the easement, and that such use restrictions will terminate and not apply to any successor lessee or grantee who purchases the Public Entity's ownership interest in the Real Property/Facility Lease or easement. Provided, however, it may contain a provisions that limits the construction of any new structures on the Real Property or modifications of any existing structures on the Real Property without the written consent of Lessor/Grantor, which will apply to any such successor lessee or grantee.

10. It must allow for a transfer thereof in the event that the lessee under the Real Property/Lease or grantee under the easement makes the necessary determination to sell its interest therein, and allow such interest to be transferred to the purchaser of such interest.

11. It must contain a provision that prohibits and prevents the sale of the underlying fee interest in the Real Property and, if applicable, Facility without first obtaining the written consent of the Commissioner of MMB.

12. The Public Entity must be the lessee under the Real Property/Lease or grantee under the easement.

B. The provisions contained in this Section are not intended to and shall not prevent the Public Entity from including additional provisions in the Real Property/Facility Lease or easement that are not inconsistent with or contrary to the requirements contained in this Section.

C. The expiration of the term of a Real Property/Facility Lease or easement shall not be an event that requires the Public Entity to reimburse the State Entity for any portion of the G.O. Grant, and upon such expiration the Public Entity's ownership interest in the Real Property and, if applicable, Facility shall no longer be subject to this Agreement.

D. The Public Entity shall fully and completely comply with all of the terms, conditions and provisions contained in a Real Property/Facility Lease or easement, and shall obtain and file, in the Office of the County Recorder or the Registrar of Titles, whichever is applicable, the Real Property/Facility Lease or easement or a short form or memorandum thereof.

Section 2.07 **Event(s) of Default.** The following events shall, unless waived in writing by the State Entity and the Commissioner of MMB, constitute an Event of Default under this Agreement upon either the State Entity or the Commissioner of MMB giving the Public Entity 30 days written notice of such event and the Public Entity's failure to cure such event during such 30 day time period for those Events of Default that can be cured within 30 days or within whatever time period is needed to cure those Events of Default that cannot be cured within 30 days as long as the Public Entity is using its best efforts to cure and is making reasonable progress in curing such Events of Default, however, in no event shall the time period to cure any Event of Default exceed 6 months unless otherwise consented to, in writing, by the State Entity and the Commissioner of MMB.

A. If any representation, covenant, or warranty made by the Public Entity in this Agreement, in any Draw Requisition, in any other document furnished pursuant to this Agreement, or in order to induce the State Entity to disburse any of the G.O. Grant, shall prove to have been untrue or incorrect in any material respect or materially misleading as of the time such representation, covenant, or warranty was made.

B. If the Public Entity fails to fully comply with any provision, term, condition, covenant, or warranty contained in this Agreement, the Declaration, or any other document referred to herein.

C. If the Public Entity fails to fully comply with any provision, term, condition, covenant or warranty contained in the G.O. Compliance Legislation, the Commissioner's Order, or the G.O. Bonding Legislation.

D. If the Public Entity fails to complete the Project, or cause the Project to be completed, by the Completion Date.

E. If the Public Entity fails to provide and expend the full amount of the matching funds, if any, required under Section 7.23 for the Project.

F. If the Public Entity fails to record the Declaration and deliver copies thereof as set forth in Section 2.05.W.

Notwithstanding the foregoing, any of the above delineated events that cannot be cured shall, unless waived in writing by the State Entity and the Commissioner of MMB, constitute an Event of Default under this Agreement immediately upon either the State Entity or the Commissioner of MMB giving the Public Entity written notice of such event.

Section 2.08 **Remedies.** Upon the occurrence of an Event of Default and at any time thereafter until such Event of Default is cured to the satisfaction of the State Entity, the State Entity or the Commissioner of MMB may enforce any or all of the following remedies.

A. The State Entity may refrain from disbursing the G.O. Grant; provided, however, the State Entity may make such disbursements after the occurrence of an Event of Default without thereby waiving its rights and remedies hereunder.

B. If the Event of Default involves a failure to comply with any of the provisions contained herein other than the provisions of Sections 4.01 or 4.02, then the Commissioner of MMB, as a third party beneficiary of this Agreement, may demand that the Outstanding Balance of the G.O. Grant be returned to it, and upon such demand the Public Entity shall return such amount to the Commissioner of MMB.

C. If the Event of Default involves a failure to comply with the provisions of Sections 4.01 or 4.02, then the Commissioner of MMB, as a third party beneficiary of this Agreement, may demand that the Public Entity pay the amounts that would have been paid if there had been full and complete compliance with such provisions, and upon such demand the Public Entity shall pay such amount to the Commissioner of MMB.

D. Either the State Entity or the Commissioner of MMB, as a third party beneficiary of this Agreement, may enforce any additional remedies they may have in law or equity.

The rights and remedies herein specified are cumulative and not exclusive of any rights or remedies that the State Entity or the Commissioner of MMB would otherwise possess.

If the Public Entity does not repay the amounts required to be paid under this Section or under any other provision contained in this Agreement within 30 days of demand by the Commissioner of MMB, or any amount ordered by a court of competent jurisdiction within 30 days of entry of judgment against the Public Entity and in favor of the State Entity and/or the Commissioner of MMB, then such amount may, unless precluded by law, be taken from or off-set against any aids or other monies that the Public Entity is entitled to receive from the State of Minnesota.

Section 2.09 **Notification of Event of Default.** The Public Entity shall furnish to the State Entity and the Commissioner of MMB, as soon as possible and in any event within 7 days after it has obtained knowledge of the occurrence of each Event of Default or each event which with the giving of notice or lapse of time or both would constitute an Event of Default, a statement setting forth details of each Event of Default or event which with the giving of notice or upon the lapse of time or both would constitute an Event of Default and the action which the Public Entity proposes to take with respect thereto.

Section 2.10 **Survival of Event of Default.** This Agreement shall survive any and all Events of Default and remain in full force and effect even upon the payment of any amounts due under this Agreement, and shall only terminate in accordance with the provisions contained in Section 2.12 and at the end of its term in accordance with the provisions contained in Section 2.11.

Section 2.11 **Term of Grant Agreement.** This Agreement shall, unless earlier terminated in accordance with any of the provisions contained herein, remain in full force and effect for the time period starting on the effective date hereof and ending on the date that corresponds to the date established by adding a time period equal to 125% of Useful Life of the Real Property and, if applicable, Facility to the date on which the Real Property and, if applicable, Facility is first used for the operation of the Governmental Program after such effective date. If there are no uncured Events of Default as of such date this Agreement shall terminate and no longer be of any force or effect, and the Commissioner of MMB shall execute whatever documents are needed to release the Real Property and, if applicable, Facility from the effect of this Agreement and the Declaration.

Section 2.12 **Modification and/or Early Termination of Grant.** If the Project is not started on or before the date that is 5 years from the effective date of this Agreement or all of the G.O. Grant has not been disbursed as of the date that is 4 years from the date on which the Project is started, or such later dates to which the Public Entity and the State Entity may agree in writing, then the State Entity's obligation to fund the G.O. Grant shall terminate. In such event, (i) if none of the G.O. Grant has been disbursed by such dates then the State Entity's obligation to fund any portion of the G.O. Grant shall terminate and this Agreement shall terminate and no longer be of any force or effect, and (ii) if some but not all of the G.O. Grant has been disbursed by such dates then the State Entity shall have no further obligation to provide any additional funding for the G.O. Grant and this Agreement shall remain in full force and effect but shall be modified and amended to reflect the amount of the G.O. Grant that was actually disbursed as of such date. This provision shall not, in any way, affect the Public Entity's obligation to complete the Project by the Completion Date.

This Agreement shall also terminate and no longer be of any force or effect upon the Public Entity's sale of its ownership interest in the Real Property and, if applicable, Facility in accordance with the provisions contained in Section 4.01 and transmittal of all or a portion of the proceeds of such sale to the Commissioner of MMB in compliance with the provisions contained in Section 4.02, or upon the termination of Public Entity's ownership interest in the Real Property and, if applicable, Facility if such ownership interest is by way of an easement or under a Real Property/Facility Lease. Upon such termination the State Entity shall execute, or have executed, and deliver to the Public Entity such documents as are required to release the Public Entity's ownership interest in the Real Property and, if applicable, Facility, from the effect of this Agreement and the Declaration.

Section 2.13 **Excess Funds.** If the full amount of the G.O. Grant and any matching funds referred to in Section 7.23 are not needed to complete the Project, then, unless language in the G.O. Bonding Legislation indicates otherwise, the G.O. Grant shall be reduced by the amount not needed.

Article III
USE CONTRACTS

This Article III and its contents is only needed and only applies if the Public Entity enters into an agreement with another party under which such other party will operate any portion of the Real Property, and if applicable, Facility. For all other circumstances this Article III and its contents are not needed and should be ignored and treated as if it were left blank, and any reference to this Article III, its contents, and the term Use Contract in this Agreement shall be ignored and treated as if the references did not exist.

Section 3.01 **General Provisions.** If the Public Entity has statutory authority to enter into a Use Contract, then it may enter into Use Contracts for various portions of the Real Property and, if applicable, Facility; provided that each and every Use Contract that the Public Entity enters into must comply with the following requirements:

A. The purpose for which it was entered into must be to operate the Governmental Program in the Real Property and, if applicable, Facility.

B. It must contain a provision setting forth the statutory authority under which the Public Entity is entering into such contract, and must comply with the substantive and procedural provisions of such statute.

C. It must contain a provision stating that it is being entered into in order for the Counterparty to operate the Governmental Program and must describe such program.

D. It must contain a provision that will provide for oversight by the Public Entity. Such oversight may be accomplished by way of a provision that will require the Counterparty to provide to the Public Entity: (i) an initial program evaluation report for the first fiscal year that the Counterparty will operate the Governmental Program, (ii) program budgets for each succeeding fiscal year showing that forecast program revenues and additional revenues available for the operation of the Governmental Program (from all sources) by the Counterparty will equal or exceed expenses for such operation for each succeeding fiscal year, and (iii) a mechanism under which the Public Entity will annually determine that the Counterparty is using the portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract to operate the Governmental Program.

E. It must allow for termination by the Public Entity in the event of a default thereunder by the Counterparty, or in the event that the Governmental Program is terminated or changed in a manner that precludes the operation of such program in the portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract.

F. It must terminate upon the termination of the statutory authority under which the Public Entity is operating the Governmental Program.

G. It must require the Counterparty to pay all costs of operation and maintenance of that portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract, unless the Public Entity is authorized by law to pay such costs and agrees to pay such costs.

H. If the Public Entity pays monies to a Counterparty under a Use Contract, such Use Contract must meet the requirements of Rev. Proc. 97-13, 1997-1 CB 632, so that such Use Contract does not result in "private business use" under Section 141(b) of the Code.

I. It must be approved, in writing, by the Commissioner of MMB, and any Use Contract that is not approved, in writing, by the Commissioner of MMB shall be null and void and of no force or effect.

J. It must contain a provision requiring that each and every party thereto shall, upon direction by the Commissioner of MMB, take such actions and furnish such documents to the Commissioner of MMB as the Commissioner of MMB determines to be necessary to ensure that the interest to be paid on the G.O. Bonds is exempt from federal income taxation.

K. It must contain a provision that prohibits the Counterparty from creating or allowing, without the prior written consent of the State Entity and the Commissioner of MMB, any voluntary lien or encumbrance or involuntary lien or encumbrance that can be satisfied by the payment of monies and which is not being actively contested against the Real Property or, if applicable, Facility, the Public Entity's ownership interest in the Real Property or, if applicable, Facility, or the Counterparty's interest in the Use Contract, whether such lien or encumbrance is superior or subordinate to the Declaration. Provided, however, the State Entity and the Commissioner of MMB will consent, in writing, to any such lien or encumbrance that secures the repayment of a loan the repayment of which will not impair or burden the funds needed to operate the portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract in the manner specified in Section 2.04 and for which the entire amount is used (i) to acquire additional real estate that is needed to so operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04 and will be included in and as part of the Public Entity's ownership interest in the Real Property and, if applicable, Facility, and/or (ii) to pay for capital improvements that are needed to so operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04.

L. If the amount of the G.O. Grant exceeds $200,000.00, then it must contain a provision requiring the Counterparty to list any vacant or new positions it may have with state workforce centers as required by Minn. Stat. § 116L.66, as it may be amended, modified or replaced from time to time, for the term of the Use Contract.

M. It must contain a provision that clearly states that the Public Entity is not required to renew the Use Contract beyond the original term thereof and that the Public Entity may, at its sole option and discretion, allow the Use Contract to expire at the end of its original term and thereafter directly operate the governmental program in the Real Property and, if applicable, Facility or contract with some other entity to operate the governmental program in the Real Property and, if applicable, Facility.

Section 3.02 **Initial Term and Renewal.** The initial term for a Use Contract may not exceed the lesser of (i) 50% of the Useful Life of the Real Property and, if applicable, Facility for the portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract, or (ii) the shortest term of the Public Entity's ownership interest in the Real Property and, if applicable, Facility.

A Use Contract may allow for renewals beyond its initial term on the conditions that (a) the term of any renewal may not exceed the initial term, (b) the Public Entity must make a determination that renewal will continue to carry out the Governmental Program and that the Counterparty is suited and able to perform the functions contained in Use Contract that is to be renewed, (c) the Use Contract may not include any provisions that would require, either directly or indirectly, the Public Entity to either make the determination referred to in this Section or to renew the Use Contract with the Counterparty after the expiration of the initial term or any renewal term, and (d) no such renewal may occur prior to the date that is 6 months prior to the date on which the Use Contract is scheduled to terminate. Provided, however, notwithstanding anything to the contrary contained herein the Public Entity's voluntary agreement to reimburse the Counterparty for any investment that the Counterparty provided for the acquisition or betterment of the Real Property and, if applicable, Facility that is the subject of the Use Contract if the Public Entity does not renew a Use Contract if requested by the Counterparty is not deemed to be a provision that directly or indirectly requires the Public Entity to renew such Use Contract.

Section 3.03 **Reimbursement of Counterparty.** A Use Contract may but need not contain, at the sole option and discretion of the Public Entity, a provision that requires the Public Entity to reimburse the Counterparty for any investment that the Counterparty provided for the acquisition or betterment of the Real Property and, if applicable, Facility that is the subject of the Use Contract if the Public Entity does not renew a Use Contract if requested by the Counterparty. If agreed to by the Public Entity, such reimbursement shall be on terms and conditions agreed to by the Public Entity and the Counterparty.

Section 3.04 **Receipt of Monies Under a Use Contract.** The Public Entity does not anticipate the receipt of any funds under a Use Contract, provided, however, if the Public Entity does receive any monies under a Use Contract in excess of the amount the Public Entity needs and is authorized to use to pay the operating expenses of the portion of the Real Property and, if applicable, Facility that is the subject of a Use Contract, and to pay the principal, interest, redemption premiums, and other expenses on Approved Debt, then a portion of such excess monies must be paid by the Public Entity to the Commissioner of MMB. The portion of such excess monies that the Public Entity must and shall pay to the Commissioner of MMB shall be determined by the Commissioner of MMB, and absent circumstances which would indicate otherwise such portion shall be determined by multiplying such excess monies by a fraction the numerator of which is the G.O. Grant and the denominator of which is sum of the G.O. Grant and the Approved Debt.

Article IV
SALE

Section 4.01 **Sale.** The Public Entity shall not sell any part of its ownership interest in the Real Property and, if applicable, Facility unless all of the following provisions have been complied with fully.

A. The Public Entity determines, by official action, that such ownership interest is no longer usable or needed for the operation of the Governmental Program, which such determination may be based on a determination that the portion of the Real Property or, if applicable, Facility to which such ownership interest applies is no longer suitable or financially feasible for such purpose.

B. The sale is made as authorized by law.

C. The sale is for Fair Market Value.

D. The written consent of the Commissioner of MMB has been obtained.

The acquisition of the Public Entity's ownership interest in the Real Property and, if applicable, Facility at a foreclosure sale, by acceptance of a deed-in-lieu of foreclosure, or enforcement of a security interest in personal property used in the operation thereof, by a lender that has provided monies for the acquisition of the Public Entity's ownership interest in or betterment of the Real Property and, if applicable, Facility shall not be considered a sale for the purposes of this Agreement if after such acquisition the lender operates such portion of the Real Property and, if applicable, Facility in a manner which is not inconsistent with the requirements imposed under Section 2.04 and the lender uses its best efforts to sell such acquired interest to a third party for Fair Market Value. The lender's ultimate sale or disposition of the acquired interest in the Real Property and, if applicable, Facility shall be deemed to be a sale for the purposes of this Agreement, and the proceeds thereof shall be disbursed in accordance with the provisions contained in Section 4.02.

The Public Entity may participate in any public auction of its ownership interest in the Real Property and, if applicable, Facility and bid thereon; provided that the Public Entity agrees that if it is the successful purchaser it will not use any part of the Real Property or, if applicable, Facility for the Governmental Program.

Section 4.02 **Proceeds of a Sale.** Upon the sale of the Public Entity's ownership interest in the Real Property and, if applicable, Facility the proceeds thereof after the deduction of all costs directly associated and incurred in conjunction with such sale and such other costs that are approved, in writing, by the Commissioner of MMB, but not including the repayment of any debt associated with the Public Entity's ownership interest in the Real Property and, if applicable, Facility, shall be disbursed in the following manner and order.

A. The first distribution shall be to the Commissioner of MMB in an amount equal to the Outstanding Balance of the G.O. Grant, and if the amount of such net proceeds shall be less than the amount of the Outstanding Balance of the G.O. Grant then all of such net proceeds shall be distributed to the Commissioner of MMB.

B. The remaining portion, after the distribution specified in Section 4.02A, shall be distributed to (i) pay in full any outstanding Approved Debt, (ii) reimburse the Public Entity for its Ownership Value, and (iii) to pay interested public and private entities, other than any such entity that has already received the full amount of its contribution (such as the State Entity under Section 4.02.A and the holders of Approved Debt paid under this Section 4.02.B), the amount of money that such entity contributed to the Initial Acquisition and Betterment Costs and the Subsequent Betterment Costs. If such remaining portion is not sufficient to reimburse interested public and private entities for the full amount that such entities contributed to the acquisition or betterment of the Real Property and, if applicable, Facility, then the amount available shall be distributed as such entities may agree in writing and if such entities cannot agree by an appropriately issued court order.

C. The remaining portion, after the distributions specified in Sections 4.02.A and B, shall be divided and distributed to the State Entity, the Public Entity, and any other public and private entity that contributed funds to the Initial Acquisition and Betterment Costs and the Subsequent Betterment Costs, other than lenders who supplied any of such funds, in proportion to the contributions that the State Entity, the Public Entity, and such other public and private entities made to the acquisition and betterment of the Real Property and, if applicable, Facility as such amounts are part of the Ownership Value, Initial Acquisition and Betterment Costs, and Subsequent Betterment Costs.

The distribution to the State Entity shall be made to the Commissioner of MMB, and the Public Entity may direct its distribution to be made to any other entity including, but not limited to, a Counterparty.

All amounts to be disbursed under this Section 4.02 must be consented to, in writing, by the Commissioner of MMB, and no such disbursements shall be made without such consent.

The Public Entity shall not be required to pay or reimburse the State Entity or the Commissioner of MMB for any funds above and beyond the full net proceeds of such sale, even if such net proceeds are less than the amount of the Outstanding Balance of the G.O. Grant.

Article V
COMPLIANCE WITH G.O. COMPLIANCE LEGISLATION AND THE COMMISSIONER'S ORDER

Section 5.01 **State Bond Financed Property**. The Public Entity and the State Entity acknowledge and agree that the Public Entity's ownership interest in the Real Property and, if applicable, Facility is, or when acquired by the Public Entity will be, "state bond financed property", as such term is used in the G.O. Compliance Legislation and the Commissioner's Order, and, therefore, the provisions contained in such statute and order apply, or will apply, to the Public Entity's ownership interest in the Real Property and, if applicable, Facility and any Use Contracts relating thereto.

Section 5.02 **Preservation of Tax Exempt Status.** In order to preserve the tax-exempt status of the G.O. Bonds, the Public Entity agrees as follows:

A. It will not use the Real Property or, if applicable, Facility, or use or invest the G.O. Grant or any other sums treated as "bond proceeds" under Section 148 of the Code including "investment proceeds," "invested sinking funds," and "replacement proceeds," in such a manner as to cause the G.O. Bonds to be classified as "arbitrage bonds" under Section 148 of the Code.

B. It will deposit into and hold all of the G.O. Grant that it receives under this Agreement in a segregated non-interest bearing account until such funds are used for payments for the Project in accordance with the provisions contained herein.

C. It will, upon written request, provide the Commissioner of MMB all information required to satisfy the informational requirements set forth in the Code including, but not limited to, Sections 103 and 148 thereof, with respect to the G.O. Bonds.

D. It will, upon the occurrence of any act or omission by the Public Entity or any Counterparty that could cause the interest on the G.O. Bonds to no longer be tax exempt and upon direction from the Commissioner of MMB, take such actions and furnish such documents as the Commissioner of MMB determines to be necessary to ensure that the interest to be paid on the G.O. Bonds is exempt from federal taxation, which such action may include either: (i) compliance with proceedings intended to classify the G.O. Bonds as a "qualified bond" within the meaning of Section 141(e) of the Code, (ii) changing the nature or terms of the Use Contract so that it complies with Revenue Procedure 97-13, as amended by Rev. Proc 2016-44 and Rev. Proc. 2017-13, or (iii) changing the nature of the use of the Real Property or, if applicable, Facility so that none of the net proceeds of the G.O. Bonds will be used, directly or indirectly, in an "unrelated trade or business" or for any "private business use" (within the meaning of Sections 141(b) and 145(a) of the Code), or (iv) compliance with other Code provisions, regulations, or revenue procedures which amend or supersede the foregoing.

E. It will not otherwise use any of the G.O. Grant, including earnings thereon, if any, or take or permit to or cause to be taken any action that would adversely affect the exemption from federal income taxation of the interest on the G.O. Bonds, nor omit to take any action necessary to maintain such tax exempt status, and if it should take, permit, omit to take, or cause to be taken, as appropriate, any such action, it shall take all lawful actions necessary to rescind or correct such actions or omissions promptly upon having knowledge thereof.

Section 5.03 **Changes to G.O. Compliance Legislation or the Commissioner's Order.** In the event that the G.O. Compliance Legislation or the Commissioner's Order is amended in a manner that reduces any requirement imposed against the Public Entity, or if the Public Entity's ownership interest in the Real Property or, if applicable, Facility is exempt from the G.O. Compliance Legislation and the Commissioner's Order, then upon written request by the Public Entity the State Entity shall enter into and execute an amendment to this Agreement to implement herein such amendment to or exempt the Public Entity's ownership interest in the Real Property and, if applicable, Facility from the G.O. Compliance Legislation or the Commissioner's Order.

Article VI
DISBURSEMENT OF GRANT PROCEEDS

Section 6.01 **The Advances.** The State Entity agrees, on the terms and subject to the conditions set forth herein, to make Advances from the G.O. Grant to the Public Entity from time to time in an aggregate total amount not to exceed the amount of the G.O. Grant. If the amount of G.O. Grant that the State Entity cumulatively disburses hereunder to the Public Entity is less than the amount of the G.O. Grant delineated in Section 1.01, then the State Entity and the Public Entity shall enter into and execute whatever documents the State Entity may request in order to amend or modify this Agreement to reduce the amount of the G.O. Grant to the amount actually disbursed. Provided, however, in accordance with the provisions contained in Section 2.11, the State Entity's obligation to make Advances shall terminate as of the dates specified in such Section even if the entire G.O. Grant has not been disbursed by such dates.

Advances shall only be for expenses that (i) are for those items of a capital nature for the Project, (ii) accrued no earlier than the effective date of the G.O. Bonding Legislation, or (iii) have otherwise been consented to, in writing, by the State Entity and the Commissioner of MMB.

It is the intent of the parties hereto that the rate of disbursement of the Advances shall not exceed the rate of completion of the Project or the rate of disbursement of the matching funds required, if any, under Section 7.23. Therefore, the cumulative amount of all Advances disbursed by the State Entity at any point in time shall not exceed the portion of the Project that has been completed and the percentage of the matching funds required, if any, under Section 7.23 that have been disbursed as of such point in time. This requirement is expressed by way of the following two formulas:

Formula #1
Cumulative Advances $\leq$ (G.O. Grant) × (percentage of matching funds, if any, required under Section 7.23 that have been disbursed)

Formula #2
Cumulative Advances $\leq$ (G.O. Grant) × (percentage of Project completed)

Section 6.02 **Draw Requisitions.** Whenever the Public Entity desires a disbursement of a portion of the G.O. Grant, which shall be no more often than once each calendar month, the Public Entity shall submit to the State Entity a Draw Requisition duly executed on behalf of the Public Entity or its designee. Each Draw Requisition shall be submitted on or before the 15th day of the month in which an Advance is requested. Each Draw Requisition with respect to construction items shall be limited to amounts equal to: (i) the total value of the classes of the work by percentage of completion as approved by the Public Entity and the State Entity, plus (ii) the value of materials and equipment not incorporated in the Project but delivered and suitably stored on or off the Real Property in a manner acceptable to the State Entity, less (iii) any applicable retainage, and less (iv) all prior Advances.

Notwithstanding anything herein to the contrary, no Advances for materials stored on or off the Real Property will be made by the State Entity unless the Public Entity shall advise the State Entity, in writing, of its intention to so store materials prior to their delivery and the State Entity has not objected thereto.

At the time of submission of each Draw Requisition, other than the final Draw Requisition, the Public Entity shall submit to the State Entity such supporting evidence as may be requested by the State Entity to substantiate all payments which are to be made out of the relevant Draw Requisition or to substantiate all payments then made with respect to the Project.

At the time of submission of the final Draw Requisition which shall not be submitted before completion of the Project, including all landscape requirements and off-site utilities and streets needed for access to the Real Property and, if applicable, Facility and correction of material defects in workmanship or materials (other than the completion of punch list items) as provided in the Construction Contract Documents, the Public Entity shall submit to the State Entity: (i) such supporting evidence as may be requested by the State Entity to substantiate all payments which are to be made out of the final Draw Requisition or to substantiate all payments then made with respect to the Project, and (ii) satisfactory evidence that all work requiring inspection by municipal or other governmental authorities having jurisdiction has been duly inspected and approved by such authorities, and that all requisite certificates of occupancy and other approvals have been issued.

If on the date an Advance is desired the Public Entity has complied with all requirements of this Agreement and the State Entity approves the relevant Draw Requisition and receives a current construction report from the Inspecting Engineer recommending payment, then the State Entity shall disburse the amount of the requested Advance to the Public Entity.

Section 6.03 **Additional Funds.** If the State Entity shall at any time in good faith determine that the sum of the undisbursed amount of the G.O. Grant plus the amount of all other funds committed to the Project is less than the amount required to pay all costs and expenses of any kind which reasonably may be anticipated in connection with the Project, then the State Entity may send written notice thereof to the Public Entity specifying the amount which must be supplied in order to provide sufficient funds to complete the Project. The Public Entity agrees that it will, within 10 calendar days of receipt of any such notice, supply or have some other entity supply the amount of funds specified in the State Entity's notice.

Section 6.04 **Conditions Precedent to Any Advance.** The obligation of the State Entity to make any Advance hereunder (including the initial Advance) shall be subject to the following conditions precedent:

A. The State Entity shall have received a Draw Requisition for such Advance specifying the amount of funds being requested, which such amount when added to all prior requests for an Advance shall not exceed the amount of the G.O. Grant delineated in Section 1.01.

B. The State Entity shall have either received a duly executed Declaration that has been duly recorded in the appropriate governmental office, with all of the recording information displayed thereon, or evidence that such Declaration will promptly be recorded and delivered to the State Entity.

C. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that (i) the Public Entity has legal authority to and has taken all actions necessary to enter into this Agreement and the Declaration, and (ii) this Agreement and the Declaration are binding on and enforceable against the Public Entity.

D. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Public Entity has sufficient funds to fully and completely pay for the Project and all other expenses that may occur in conjunction therewith.

E. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Public Entity is in compliance with the matching funds requirements, if any, contained in Section 7.23.

F. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, showing that the Public Entity possesses the ownership interest delineated in Section 2.02.

G. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Real Property and, if applicable, Facility, and the contemplated use thereof are permitted by and will comply with all applicable use or other restrictions and requirements imposed by applicable zoning ordinances or regulations, and, if required by law, have been duly approved by the applicable municipal or governmental authorities having jurisdiction thereover.

H. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that that all applicable and required building permits, other permits, bonds and licenses necessary for the Project have been paid for, issued, and obtained, other than those permits, bonds and licenses which may not lawfully be obtained until a future date or those permits, bonds and licenses which in the ordinary course of business would normally not be obtained until a later date.

I. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that that all applicable and required permits, bonds and licenses necessary for the operation of the Real Property and, if applicable, Facility in the manner specified in Section 2.04 have been paid for, issued, and obtained, other than those permits, bonds and licenses which may not lawfully be obtained until a future date or those permits, bonds and licenses which in the ordinary course of business would normally not be obtained until a later date.

J. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Project will be completed in a manner that will allow the Real Property and, if applicable, Facility to be operated in the manner specified in Section 2.04.

K. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Public Entity has the ability and a plan to fund the operation of the Real Property and, if applicable, Facility in the manner specified in Section 2.04.

L. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the insurance requirements under Section 7.01 have been satisfied.

M. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, of compliance with the provisions and requirements specified in Section 7.10 and all additional applicable provisions and requirements, if any, contained in Minn. Stat. § 16B.335, as it may be amended, modified or replaced from time to time. Such evidence shall include, but not be limited to, evidence that: (i) the predesign package referred to in Section 7.10.B has, if required, been reviewed by and received a favorable recommendation from the Commissioner of Administration for the State of Minnesota, (ii) the program plan and cost estimates referred to in Section 7.10.C have, if required, received a recommendation by the Chairs of the Minnesota State Senate Finance Committee and Minnesota House of Representatives Ways and Means Committee, and (iii) the Chair and Ranking Minority Member of the Minnesota House of Representatives Capital Investment Committee and the Chair and Ranking Minority Member of the Minnesota Senate Capital Investment Committee have, if required, been notified pursuant to Section 7.10.G.

N. No Event of Default under this Agreement or event which would constitute an Event of Default but for the requirement that notice be given or that a period of grace or time elapse shall have occurred and be continuing.

O. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Contractor will complete the Construction Items substantially in conformance with the Construction Contract Documents and pay all amounts lawfully owing to all laborers and materialmen who worked on the Construction Items or supplied materials therefor, other than amounts being contested in good faith. Such evidence may be in the form of payment and performance bonds in amounts equal to or greater than the amount of the fixed price or guaranteed maximum price contained in the Construction Contract Documents that name the State Entity and the Public Entity dual obligees thereunder, or such other evidence as may be acceptable to the Public Entity and the State Entity.

P. No determination shall have been made by the State Entity that the amount of funds committed to the Project is less than the amount required to pay all costs and expenses of any kind that may reasonably be anticipated in connection with the Project, or if such a determination has been made and notice thereof sent to the Public Entity under Section 6.03, then the Public Entity has supplied, or has caused some other entity to supply, the necessary funds in accordance with such section or has provided evidence acceptable to the State Entity that sufficient funds are available.

Q. The Public Entity has supplied to the State Entity all other items that the State Entity may reasonably require.

Section 6.05 **Construction Inspections.** The Public Entity and the Consulting Engineer, if any, shall be responsible for making their own inspections and observations of the Construction Items, and shall determine to their own satisfaction that the work done or materials supplied by the Contractors to whom payment is to be made out of each Advance has been properly done or supplied in accordance with the Construction Contract Documents. If any work done or materials supplied by a Contractor are not satisfactory to the Public Entity or the Consulting Engineer, if any, or if a Contractor is not in material compliance with the Construction Contract Documents in any respect, then the Public Entity shall immediately notify the State Entity, in writing. The State Entity and the Inspecting Engineer, if any, may conduct such inspections of the Construction Items as either may deem necessary for the protection of the State Entity's interest, and that any inspections which may be made of the Project by the State Entity or the Inspecting Engineer, if any, are made and all certificates issued by the Inspecting Engineer, if any, will be issued solely for the benefit and protection of the State Entity, and the Public Entity will not rely thereon.

Article VII
MISCELLANEOUS

Section 7.01 **Insurance.** The Public Entity shall, upon acquisition of the ownership interest delineated in Section 2.02, insure the Facility, if such exists, in an amount equal to the full insurable value thereof (i) by self insuring under a program of self insurance legally adopted, maintained and adequately funded by the Public Entity, or (ii) by way of builders risk insurance and fire and extended coverage insurance with a deductible in an amount acceptable to the State Entity under which the State Entity and the Public Entity are named as loss payees. If damages which are covered by such required insurance occur, then the Public Entity shall, at its sole option and discretion, either: (y) use or cause the insurance proceeds to be used to fully or partially repair such damage and to provide or cause to be provided whatever additional funds that may be needed to fully or partially repair such damage, or (z) sell its ownership interest in the damaged Facility and portion of the Real Property associated therewith in accordance with the provisions contained in Section 4.01.

If the Public Entity elects to only partially repair such damage, then the portion of the insurance proceeds not used for such repair shall be applied in accordance with the provisions contained in Section 4.02 as if the Public Entity's ownership interest in the Real Property and Facility had been sold, and such amounts shall be credited against the amounts due and owing under Section 4.02 upon the ultimate sale of the Public Entity's ownership interest in the Real Property and Facility. If the Public Entity elects to sell its ownership interest in the damaged Facility and portion of the Real Property associated therewith, then such sale must occur within a reasonable time period from the date the damage occurred and the cumulative sum of the insurance proceeds plus the proceeds of such sale must be applied in accordance with the provisions contained in Section 4.02, with the insurance proceeds being so applied within a reasonable time period from the date they are received by the Public Entity.

The State Entity agrees to and will assign or pay over to the Public Entity all insurance proceeds it receives so that the Public Entity can comply with the requirements that this Section imposes thereon as to the use of such insurance proceeds.

If the Public Entity elects to maintain general comprehensive liability insurance regarding the Real Property and, if applicable, Facility, then the Public Entity shall have the State Entity named as an additional named insured therein.

The Public Entity may require a Counterparty to provide and maintain any or all of the insurance required under this Section; provided that the Public Entity continues to be responsible for the providing of such insurance in the event that the Counterparty fails to provide or maintain such insurance.

At the written request of either the State Entity or the Commissioner of MMB, the Public Entity shall promptly furnish to the requesting entity all written notices and all paid premium receipts received by the Public Entity regarding the required insurance, or certificates of insurance evidencing the existence of such required insurance.

If the Public Entity fails to provide and maintain the insurance required under this Section, then the State Entity may, at its sole option and discretion, obtain and maintain insurance of an equivalent nature and any funds expended by the State Entity to obtain or maintain such insurance shall be due and payable on demand by the State Entity and bear interest from the date of advancement by the State Entity at a rate equal to the lesser of the maximum interest rate allowed by law or 18% per annum based upon a 365-day year. Provided, however, nothing contained herein, including but not limited to this Section, shall require the State Entity to obtain or maintain such insurance, and the State Entity's decision to not obtain or maintain such insurance shall not lessen the Public Entity's duty to obtain and maintain such insurance.

Section 7.02 **Condemnation.** If after the Public Entity has acquired the ownership interest delineated in Section 2.02 all or any portion of the Real Property and, if applicable, Facility is condemned to an extent that the Public Entity can no longer comply with the provisions contained in Section 2.04, then the Public Entity shall, at its sole option and discretion, either: (i) use or cause the condemnation proceeds to be used to acquire an interest in additional real property needed for the Public Entity to continue to comply with the provisions contained in Section 2.04 and, if applicable, to fully or partially restore the Facility and to provide or cause to be provided whatever additional funds that may be needed for such purposes, or (ii) sell the remaining portion of its ownership interest in the Real Property and, if applicable, Facility in accordance with the provisions contained in Section 4.01. Any condemnation proceeds which are not used to acquire an interest in additional real property or to restore, if applicable, the Facility shall be applied in accordance with the provisions contained in Section 4.02 as if the Public Entity's ownership interest in the Real Property and, if applicable, Facility had been sold, and such amounts shall be credited against the amounts due and owing under Section 4.02 upon the ultimate sale of the Public Entity's ownership interest in the remaining Real Property and, if applicable, Facility. If the Public Entity elects to sell its ownership interest in the portion of the Real Property and, if applicable, Facility that remains after the condemnation, then such sale must occur within a reasonable time period from the date the condemnation occurred and the cumulative sum of the condemnation proceeds plus the proceeds of such sale must be applied in accordance with the provisions contained in Section 4.02, with the condemnation proceeds being so applied within a reasonable time period from the date they are received by the Public Entity.

As recipient of any of condemnation awards or proceeds referred to herein, the State Entity agrees to and will disclaim, assign or pay over to the Public Entity all of such condemnation awards or proceeds it receives so that the Public Entity can comply with the requirements that this Section imposes upon the Public Entity as to the use of such condemnation awards or proceeds.

Section 7.03 **Use, Maintenance, Repair and Alterations.** The Public Entity shall (i) keep the Real Property and, if applicable, Facility, in good condition and repair, subject to reasonable and ordinary wear and tear, (ii) complete promptly and in good and workmanlike manner any building or other improvement which may be constructed on the Real Property and promptly restore in like manner any portion of the Facility, if applicable, which may be damaged or destroyed thereon and pay when due all claims for labor performed and materials furnished therefor, (iii) comply with all laws, ordinances, regulations, requirements, covenants, conditions and restrictions now or hereafter affecting the Real Property or, if applicable, Facility, or any part thereof, or requiring any alterations or improvements thereto, (iv) keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair, (v) comply with the provisions of any Real Property/Facility Lease if the Public Entity's ownership interest in the Real Property and, if applicable, Facility, is a leasehold interest, (vi) comply with the provisions of any easement if its ownership interest in the Real Property and, if applicable, Facility is by way of such easement, and (vii) comply with the provisions of any condominium documents and any applicable reciprocal easement or operating agreements if the Real Property and, if applicable, Facility, is part of a condominium regime or is subject to a reciprocal easement or use contract.

The Public Entity shall not, without the written consent of the State Entity and the Commissioner of MMB, (a) permit or suffer the use of any of the Real Property or, if applicable, Facility, for any purpose other than the purposes specified in Section 2.04, (b) remove, demolish or substantially alter any of the Real Property or, if applicable, Facility, except such alterations as may be required by laws, ordinances or regulations or such other alterations as may improve such Real Property or, if applicable, Facility by increasing the value thereof or improving its ability to be used to operate the Governmental Program thereon or therein, (c) do any act or thing which would unduly impair or depreciate the value of the Real Property or, if applicable, Facility, (d) abandon the Real Property or, if applicable, Facility, (e) commit or permit any waste or deterioration of the Real Property or, if applicable, Facility, (f) remove any fixtures or personal property from the Real Property or, if applicable, Facility, that was paid for with the proceeds of the G.O. Grant unless the same are immediately replaced with like property of at least equal value and utility, or (g) commit, suffer or permit any act to be done in or upon the Real Property or, if applicable, Facility, in violation of any law, ordinance or regulation.

If the Public Entity fails to maintain the Real Property and, if applicable, Facility in accordance with the provisions contained in this Section, then the State Entity may perform whatever acts and expend whatever funds that are necessary to so maintain the Real Property and, if applicable, Facility and the Public Entity irrevocably authorizes and empowers the State Entity to enter upon the Real Property and, if applicable, Facility, to perform such acts as may to necessary to so maintain the Real Property and, if applicable, Facility. Any actions taken or funds expended by the State Entity hereunder shall be at its sole option and discretion, and nothing contained herein, including but not limited to this Section, shall require the State Entity to take any action, incur any expense, or expend any funds, and the State Entity shall not be responsible for or liable to the Public Entity or any other entity for any such acts that are undertaken and performed in good faith and not in a negligent manner. Any funds expended by the State Entity to perform such acts as may to necessary to so maintain the Real Property and, if applicable, Facility shall be due and payable on demand by the State Entity and bear interest from the date of advancement by the State Entity at a rate equal to the lesser of the maximum interest rate allowed by law or 18% per annum based upon a 365 day year.

Section 7.04 **Records Keeping and Reporting.** The Public Entity shall maintain or cause to be maintained books, records, documents and other evidence pertaining to the costs or expenses associated with the Project and operation of the Real Property and, if applicable, Facility needed to comply with the requirements contained in this Agreement, the G.O. Compliance Legislation, the Commissioner's Order, and the G.O. Bonding Legislation, and upon request shall allow or cause the entity which is maintaining such items to allow the State Entity, auditors for the State Entity, the Legislative Auditor for the State of Minnesota, or the State Auditor for the State of Minnesota, to inspect, audit, copy, or abstract, all of such items. The Public Entity shall use or cause the entity which is maintaining such items to use generally accepted accounting principles in the maintenance of such items, and shall retain or cause to be retained (i) all of such items that relate to the Project for a period of 6 years from the date that the Project is fully completed and placed into operation, and (ii) all of such items that relate to the operation of the Real Property and, if applicable, Facility for a period of 6 years from the date such operation is initiated.

Section 7.05 **Inspections by State Entity.** Upon reasonable request by the State Entity and without interfering with the normal use of the Real Property and, if applicable, Facility, the Public Entity shall allow and will require any entity to whom it leases, subleases, or enters into a Use Contract for any portion of the Real Property and, if applicable, Facility to allow the State Entity to inspect the Real Property and, if applicable, Facility.

Section 7.06 **Data Practices.** The Public Entity agrees with respect to any data that it possesses regarding the G.O. Grant, the Project, or the operation of the Real Property and, if applicable, Facility, to comply with all of the provisions and restrictions contained in the Minnesota Government Data Practices Act contained in Chapter 13 of the Minnesota Statutes that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time.

Section 7.07 **Non-Discrimination.** The Public Entity agrees to not engage in discriminatory employment practices regarding the Project, or operation or management of the Real Property and, if applicable, Facility, and it shall, with respect to such activities, fully comply with all of the provisions contained in Chapters 363A and 181 of the Minnesota Statutes that exist as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time.

Section 7.08 **Worker's Compensation.** The Public Entity agrees to comply with all of the provisions relating to worker's compensation contained in Minn. Stat. §§ 176.181, subd. 2 and 176.182, as they may be amended, modified or replaced from time to time, with respect to the Project and the operation or management of the Real Property and, if applicable, Facility.

Section 7.09 **Antitrust Claims.** The Public Entity hereby assigns to the State Entity and the Commissioner of MMB all claims it may have for overcharges as to goods or services provided with respect to the Project, and operation or management of the Real Property and, if applicable, Facility that arise under the antitrust laws of the State of Minnesota or of the United States of America.

Section 7.10 **Review of Plans and Cost Estimates.** The Public Entity agrees to comply with all applicable provisions and requirements, if any, contained in Minn. Stat. § 16B.335, as it may be amended, modified or replaced from time to time, for the Project, and in accordance therewith the Public Entity agrees to comply with the following provisions and requirements if such provisions and requirements are applicable.

A. The Public Entity shall provide all information that the State Entity may request in order for the State Entity to determine that the Project will comply with the provisions and requirements contained in Minn. Stat. § 16B.335, as it may be amended, modified or replaced from time to time.

B. Prior to its proceeding with design activities for the Project the Public Entity shall prepare a predesign package and submit it to the Commissioner of Administration for the State of Minnesota for review and comment. The predesign package must be sufficient to define the purpose, scope, cost, and projected schedule for the Project, and must demonstrate that the Project has been analyzed according to appropriate space and needs standards. Any substantial changes to such predesign package must be submitted to the Commissioner of Administration for the State of Minnesota for review and comment.

C. If the Project includes the construction of a new building, substantial addition to an existing building, a substantial change to the interior configuration of an existing building, or the acquisition of an interest in land, then the Public Entity shall not prepare final plans and specifications until it has prepared a program plan and cost estimates for all elements necessary to complete the Project and presented them to the Chairs of the Minnesota State Senate Finance Committee and Minnesota House of Representatives Ways and Means Committee and the chairs have made their recommendations, and it has notified the Chair and Ranking Minority Member of the Minnesota House of Representatives Capital Investment Committee and the Chair and Ranking Minority Member of the Minnesota State Senate Capital Investment Committee. The program plan and cost estimates must note any significant changes in the work to be performed on the Project, or in its costs, which have arisen since the appropriation from the legislature for the Project was enacted or which differ from any previous predesign submittal.

D. The Public Entity must notify the Chairs and Ranking Minority Members of the Minnesota State Senate Finance and Capital Investment Committees, and the Minnesota House of Representatives Capital Investment and Ways and Means Committees of any significant changes to the program plan and cost estimates referred to in Section 7.10.C.

E. The program plan and cost estimates referred to in Section 7.10.C must ensure that the Project will comply with all applicable energy conservation standards contained in law, including Minn. Stat. §§ 216C.19 to 216C.20, as they may be amended, modified or replaced from time to time, and all rules adopted thereunder.

F. If any of the G.O. Grant is to be used for the construction or remodeling of the Facility, then both the predesign package referred to in Section 7.10.B and the program plan and cost estimates referred to in Section 7.10.C must include provisions for cost-effective information technology investments that will enable the occupant of the Facility to reduce its need for office space, provide more of its services electronically, and decentralize its operations.

G. If the Project does not involve the construction of a new building, substantial addition to an existing building, substantial change to the interior configuration of an existing building, or the acquisition of an interest in land, then prior to beginning work on the Project the Public Entity shall just notify the Chairs and Ranking Minority Members of the Minnesota State Senate Finance and Capital Investment Committees, and the Minnesota House of Representatives Capital Investment and Ways and Means Committees that the work to be performed is ready to begin.

H. The Project must be: (i) substantially completed in accordance with the program plan and cost estimates referred to in Section 7.10.C, (ii) completed in accordance with the time schedule contained in the program plan referred to in Section 7.10.C, and (iii) completed within the budgets contained in the cost estimates referred to in Section 7.10.C.

Provided, however, the provisions and requirements contained in this Section only apply to public lands or buildings or other public improvements of a capital nature, and shall not apply to the demolition or decommissioning of state assets, hazardous material projects, utility infrastructure projects, environmental testing, parking lots, parking structures, park and ride facilities, bus rapid transit stations, light rail lines, passenger rail projects, exterior lighting, fencing, highway rest areas, truck stations, storage facilities not consisting primarily of offices or heated work areas, roads, bridges, trails, pathways, campgrounds, athletic fields, dams, floodwater retention systems, water access sites, harbors, sewer separation projects, water and wastewater facilities, port development projects for which the Commissioner of Transportation for the State of Minnesota has entered into an assistance agreement under Minn. Stat. § 457A.04, as it may be amended, modified or replaced from time to time, ice centers, local government projects with a construction cost of less than $1,500,000.00, or any other capital project with a construction cost of less than $750,000.00.

Section 7.11 **Prevailing Wages.** The Public Entity agrees to comply with all of the applicable provisions contained in Chapter 177 of the Minnesota Statutes, and specifically those provisions contained in Minn. Stat. §§ 177.41 through 177.435, as they may be amended, modified or replaced from time to time with respect to the Project and the operation of the Governmental Program on or in the Real Property and, if applicable, Facility. By agreeing to this provision, the Public Entity is not acknowledging or agreeing that the cited provisions apply to the Project or the operation of the Governmental Program on or in the Real Property and, if applicable, Facility.

Section 7.12 **Liability.** The Public Entity and the State Entity agree that they will, subject to any indemnifications provided herein, be responsible for their own acts and the results thereof to the extent authorized by law, and they shall not be responsible for the acts of the other party and the results thereof. The liability of the State Entity and the Commissioner of MMB is governed by the provisions contained in Minn. Stat. § 3.736, as it may be amended, modified or replaced from time to time. If the Public Entity is a "municipality" as such term is used in Chapter 466 of the Minnesota Statutes that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time, then the liability of the Public Entity, including but not limited to the indemnification provided under Section 7.13, is governed by the provisions contained in such Chapter 466.

Section 7.13 **Indemnification by the Public Entity.** The Public Entity shall bear all loss, expense (including attorneys' fees), and damage in connection with the Project and operation of the Real Property and, if applicable, Facility, and agrees to indemnify and hold harmless the State Entity, the Commissioner of MMB, and the State of Minnesota, their agents, servants and employees from all claims, demands and judgments made or recovered against the State Entity, the Commissioner of MMB, and the State of Minnesota, their agents, servants and employees, because of bodily injuries, including death at any time resulting therefrom, or because of damages to property of the State Entity, the Commissioner of MMB, or the State of Minnesota, or others (including loss of use) from any cause whatsoever, arising out of, incidental to, or in connection with the Project or operation of the Real Property and, if applicable, Facility, whether or not due to any act of omission or commission, including negligence of the Public Entity or any contractor or his or their employees, servants or agents, and whether or not due to any act of omission or commission (excluding, however, negligence or breach of statutory duty) of the State Entity, the Commissioner of MMB, or the State of Minnesota, their employees, servants or agents.

The Public Entity further agrees to indemnify, save, and hold the State Entity, the Commissioner of MMB, and the State of Minnesota, their agents and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation by the Public Entity, its officers, employees, or agents, or by any Counterparty, its officers, employees, or agents, of any provision of the Minnesota Government Data Practices Act, including legal fees and disbursements paid or incurred to enforce the provisions contained in Section 7.06.

The Public Entity's liability hereunder shall not be limited to the extent of insurance carried by or provided by the Public Entity, or subject to any exclusions from coverage in any insurance policy.

Section 7.14 **Relationship of the Parties.** Nothing contained in this Agreement is intended or should be construed in any manner as creating or establishing the relationship of co-partners or a joint venture between the Public Entity, the State Entity, or the Commissioner of MMB, nor shall the Public Entity be considered or deemed to be an agent, representative, or employee of the State Entity, the Commissioner of MMB, or the State of Minnesota in the performance of this Agreement, the Project, or operation of the Real Property and, if applicable, Facility.

The Public Entity represents that it has already or will secure or cause to be secured all personnel required for the performance of this Agreement and the Project, and the operation and maintenance of the Real Property and, if applicable, Facility. All personnel of the Public Entity or other persons while engaging in the performance of this Agreement, the Project, or the operation and maintenance of the Real Property and, if applicable, Facility shall not have any contractual relationship with the State Entity, the Commissioner of MMB, or the State of Minnesota, and shall not be considered employees of any of such entities. In addition, all claims that may arise on behalf of said personnel or other persons out of employment or alleged employment including, but not limited to, claims under the Workers' Compensation Act of the State of Minnesota, claims of discrimination against the Public Entity, its officers, agents, contractors, or employees shall in no way be the responsibility of the State Entity, the Commissioner of MMB, or the State of Minnesota. Such personnel or other persons shall not require nor be entitled to any compensation, rights or benefits of any kind whatsoever from the State Entity, the Commissioner of MMB, or the State of

Minnesota including, but not limited to, tenure rights, medical and hospital care, sick and vacation leave, disability benefits, severance pay and retirement benefits.

Section 7.15 **Notices.** In addition to any notice required under applicable law to be given in another manner, any notices required hereunder must be in writing and shall be sufficient if personally served or sent by prepaid, registered, or certified mail (return receipt requested), to the business address of the party to whom it is directed. Such business address shall be that address specified below or such different address as may hereafter be specified, by either party by written notice to the other:

To the Public Entity at:

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

To the State Entity at:

Minnesota Public Facilities Authority
First National Bank Building, Suite W820
332 Minnesota Street
Saint Paul, MN 55101-1378
Attention: Executive Director

To the Commissioner of MMB at:

Minnesota Department of Management and Budget
400 Centennial Office Bldg.
658 Cedar St.
St. Paul, MN 55155
Attention: Commissioner

Section 7.16 **Binding Effect and Assignment or Modification.** This Agreement and the Declaration shall be binding upon and inure to the benefit of the Public Entity and the State Entity, and their respective successors and assigns. Provided, however, that neither the Public Entity nor the State Entity may assign any of its rights or obligations under this Agreement or the Declaration without the prior written consent of the other party. No change or modification of the terms or provisions of this Agreement or the Declaration shall be binding on either the Public Entity or the State Entity unless such change or modification is in writing and signed by an authorized official of the party against which such change or modification is to be imposed.

Section 7.17 **Waiver.** Neither the failure by the Public Entity, the State Entity, or the Commissioner of MMB, as a third party beneficiary of this Agreement, in any one or more instances to insist upon the complete and total observance or performance of any term or provision hereof, nor the failure of the Public Entity, the State Entity, or the Commissioner of MMB, as a third party beneficiary of this Agreement, to exercise any right, privilege, or remedy conferred hereunder or afforded by law shall be construed as waiving any breach of such term, provision, or the right to exercise such right, privilege, or remedy thereafter. In addition, no delay on the part of the Public Entity, the State Entity, or the Commissioner of MMB, as a third party beneficiary of this Agreement, in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude other or further exercise thereof or the exercise of any other right or remedy.

Section 7.18 **Entire Agreement.** This Agreement, the Declaration, and the documents, if any, referred to and incorporated herein by reference embody the entire agreement between the Public Entity and the State Entity, and there are no other agreements, either oral or written, between the Public Entity and the State Entity on the subject matter hereof.

Section 7.19 **Choice of Law and Venue.** All matters relating to the validity, construction, performance, or enforcement of this Agreement or the Declaration shall be determined in accordance with the laws of the State of Minnesota. All legal actions initiated with respect to or arising from any provision contained in this Agreement shall be initiated, filed and venued in the State of Minnesota District Court located in the City of St. Paul, County of Ramsey, State of Minnesota.

Section 7.20 **Severability.** If any provision of this Agreement is finally judged by any court to be invalid, then the remaining provisions shall remain in full force and effect and they shall be interpreted, performed, and enforced as if the invalid provision did not appear herein.

Section 7.21 **Time of Essence.** Time is of the essence with respect to all of the matters contained in this Agreement.

Section 7.22 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall together constitute one and the same instrument.

Section 7.23 **Matching Funds.** The Public Entity must obtain and supply the following matching funds, if any, for the Project:

NONE

Any matching funds which are intended to meet the above requirements must either be in the form of (i) cash monies, (ii) legally binding commitments for money, or (iii) equivalent funds or contributions, including equity, which have been or will be used to pay for the Project. The Public Entity shall supply to the Commissioner of MMB whatever documentation the Commissioner of MMB may request to substantiate the availability and source of any matching funds, and the source and terms relating to all matching funds must be consented to, in writing, by the Commissioner of MMB.

Section 7.24 **Source and Use of Funds.** The Public Entity represents to the State Entity and the Commissioner of MMB that **Attachment III** is intended to be and is a source and use of funds statement showing the total cost of the Project and all of the funds that are available for the completion of the Project, and that the information contained in such **Attachment III** correctly and accurately delineates the following information.

A. The total cost of the Project detailing all of the major elements that make up such total cost and how much of such total cost is attributed to each such major element.

B. The source of all funds needed to complete the Project broken down among the following categories:

(i) State funds including the G.O. Grant, identifying the source and amount of such funds.
(ii) Matching funds, identifying the source and amount of such funds.
(iii) Other funds supplied by the Public Entity, identifying the source and amount of such funds.
(iv) Loans, identifying each such loan, the entity providing the loan, the amount of each such loan, the terms and conditions of each such loan, and all collateral pledged for repayment of each such loan.
(v) Other funds, identifying the source and amount of such funds.

C. Such other financial information that is needed to correctly reflect the total funds available for the completion of the Project, the source of such funds and the expected use of such funds.

Previously paid project expenses that are to be reimbursed and paid from proceeds of the G.O. Grant may only be included as a source of funds and included in **Attachment III** if such items have been approved, in writing, by the Commissioner of MMB.

If any of the funds included under the source of funds have conditions precedent to the release of such funds, then the Public Entity must provide to the State Entity and the Commissioner of MMB a detailed description of such conditions and what is being done to satisfy such conditions.

The Public Entity shall also supply whatever other information and documentation that the State Entity or the Commissioner of MMB may request to support or explain any of the information contained in **Attachment III**.

The value of the Public Entity's ownership interest in the Real Property and, if applicable, Facility should only be shown in **Attachment III** if such ownership interest is being acquired and paid for with funds shown in such **Attachment III**, and for all other circumstances such value should be shown in the definition for Ownership Value in Section 1.01 and not included in such **Attachment III**.

The funds shown in **Attachment III** and to be supplied for the Project may, subject to any limitations contained in the G.O. Bonding Legislation, be provided by either the Public Entity or a Counterparty under a Use Contract.

Section 7.25 **Project Completion Schedule.** The Public Entity represents to the State Entity and the Commissioner of MMB that **Attachment IV** correctly and accurately delineates the projected schedule for the completion of the Project.

Section 7.26 **Third-Party Beneficiary.** The Governmental Program will benefit the State of Minnesota and the provisions and requirements contained herein are for the benefit of both the State Entity and the State of Minnesota. Therefore, the State of Minnesota, by and through its Commissioner of MMB, is and shall be a third-party beneficiary of this Agreement.

Section 7.27 **Public Entity Tasks**. Any tasks that this Agreement imposes upon the Public Entity may be performed by such other entity as the Public Entity may select or designate, provided that the failure of such other entity to perform said tasks shall be deemed to be a failure to perform by the Public Entity.

Section 7.28 **State Entity and Commissioner Required Acts and Approvals.** The State Entity and the Commissioner of MMB shall not (i) perform any act herein required or authorized by it in an unreasonable manner, (ii) unreasonably refuse to perform any act that it is required to perform hereunder, or (iii) unreasonably refuse to provide or withhold any approval that is required of it herein.

Section 7.29 **Applicability to Real Property and Facility.** This Agreement applies to the Public Entity's ownership interest in the Real Property and if a Facility exists to the Facility. The term "if applicable" appearing in conjunction with the term "Facility" is meant to indicate that this Agreement will apply to a Facility if one exists, and if no Facility exists then this Agreement will only apply to the Public Entity's ownership interest in the Real Property.

Section 7.30 **E-Verification.** The Public Entity agrees and acknowledges that it is aware of Minn. Stat. § 16C.075 regarding e-verification of employment of all newly hired employees to confirm that such employees are legally entitled to work in the United States, and that it will, if and when applicable, fully comply with such statute and impose a similar requirement in any Use Contract to which it is a party.

Section 7.31 **Additional Requirements.** The Public Entity and the State Entity agree to comply with the following additional requirements. In the event of any conflict or inconsistency between the following additional requirements and any other provisions or requirement contained in this Agreement, the following additional requirements contained in this Section shall control.

NONE

IN TESTIMONY HEREOF, the Public Entity and the State Entity have executed this General Obligation Bond Proceeds Grant Agreement Construction Grant for the Owatonna Wastewater Treatment Plant Expansion and Upgrade Project on the day and date indicated immediately below their respective signatures.

PUBLIC ENTITY:

The City of Owatonna,
a Home Rule Charter City

DocuSigned by:

By: Thomas Kuntz
1EEF3FB7154149D...
Thomas Kuntz
Its: Mayor

Dated: 1/30/2024

DocuSigned by:

And: Kris Busse
2D9CD01BD765433...
Kris Busse
Its: City Administrator

Dated: 1/30/2024

STATE ENTITY:
Minnesota Public Facilities Authority,

By:
Matt Varilek
Its: Chair, or delegate

Dated: 01/26/2024

ENCUMBERED: Individual signing certified that funds have been encumbered as required by Minnesota Statute 16A

By: ______________________

PO date 1/02/2024
PO ID(s) B2401: 3000004131

Attachment I to Grant Agreement

State of Minnesota
General Obligation Bond Financed
DECLARATION

The undersigned has the following interest in the real property located in the County of Steele, State of Minnesota that is legally described in **Exhibit A** attached and all facilities situated thereon (collectively, the "Restricted Property"):

(Check the appropriate box.)

[X] a fee simple title,

[ ] a lease, or

[ ] an easement,

and as owner of such fee title, lease or easement, does hereby declare that such interest in the Restricted Property is hereby made subject to the following restrictions and encumbrances:

A. The Restricted Property is bond financed property within the meaning of Minn. Stat. § 16A.695, is subject to the encumbrance created and requirements imposed by such statute, and cannot be sold, mortgaged, encumbered or otherwise disposed of without the approval of the Commissioner of Minnesota Management and Budget, which approval must be evidenced by a written statement signed by said commissioner and attached to the deed, mortgage, encumbrance or instrument used to sell or otherwise dispose of the Restricted Property; and

B. The Restricted Property is subject to all of the terms, conditions, provisions, and limitations contained in that certain Grant Agreement - Construction Grant for the Owatonna Wastewater Treatment Plant Expansion and Upgrade Project between the Minnesota Public Facilities Authority and the City of Owatonna, dated January 2, 2024.

The Restricted Property shall remain subject to this State of Minnesota General Obligation Bond Financed Declaration for 125% of the useful life of the Restricted Property or until the Restricted Property is sold with the written approval of the Commissioner of Minnesota Management and Budget, at which time it shall be released therefrom by way of a written release in recordable form signed by both the Executive Director of the Minnesota Public Facilities Authority and the Commissioner of Minnesota Management and Budget, and such written release is recorded in the real estate records relating to the Restricted Property. This Declaration may not be terminated, amended, or in any way modified without the specific written consent of the Commissioner of Minnesota Management and Budget.

(SIGNATURE BLOCK, ACKNOWLEDGMENTS, AND STATEMENT AS TO WHOM IT WAS DRAFTED BY.)

Exhibit A to Declaration
LEGAL DESCRIPTION OF RESTRICTED PROPERTY

Parts of Lot 1, and Lot 8, of the SW1/4 of the SE1/4 of Section 4-T107N-R20W; and parts of Lot 5, Lot 6, and OUTLOT 4, of Crooker & Parkers Second Addition to the Town (now City) of Owatonna, Steele County, Minnesota; described as follows:

Beginning at the northwest corner of said Lot 6, thence North 89°32'27" West a distance of 201.78 feet, on an assumed bearing on the north line of said Lot 1, to a corner described in Doc. No. A000221443, as the same is recorded in the office of the Steele County Recorder;

thence South 01°08'39" East a distance of 431.45 feet, on an east line described in Doc. No. A000221443;

thence North 89°32'55" West a distance of 7.12 feet, on a southerly line described in said Document;

thence South 01°08'33" East a distance of 209.00 feet, to a point 640.50 feet south and 209.00 feet west of the northwest corner of said Lot 6;

thence South 29°45'09" East a distance of 331.21 feet;

thence North 87°05'37" East a distance of 229.28 feet;

thence South 08°30'21" East a distance of 56.34 feet;

thence North 81°33'19" East a distance of 367 feet more or less, to the centerline of the Straight River;

thence Northwesterly 935 feet more or less, on the center line of said river, to the north line of said Lot 6;

thence North 89°32'02" West a distance of 367 feet more or less to the point of beginning.

Attachment II to Grant Agreement
LEGAL DESCRIPTION OF REAL PROPERTY

Parts of Lot 1, and Lot 8, of the SW1/4 of the SE1/4 of Section 4-T107N-R20W; and parts of Lot 5, Lot 6, and OUTLOT 4, of Crooker & Parkers Second Addition to the Town (now City) of Owatonna, Steele County, Minnesota; described as follows:

Beginning at the northwest corner of said Lot 6, thence North 89°32'27" West a distance of 201.78 feet, on an assumed bearing on the north line of said Lot 1, to a corner described in Doc. No. A000221443, as the same is recorded in the office of the Steele County Recorder;

thence South 01°08'39" East a distance of 431.45 feet, on an east line described in Doc. No. A000221443;

thence North 89°32'55" West a distance of 7.12 feet, on a southerly line described in said Document;

thence South 01°08'33" East a distance of 209.00 feet, to a point 640.50 feet south and 209.00 feet west of the northwest corner of said Lot 6;

thence South 29°45'09" East a distance of 331.21 feet;

thence North 87°05'37" East a distance of 229.28 feet;

thence South 08°30'21" East a distance of 56.34 feet;

thence North 81°33'19" East a distance of 367 feet more or less, to the centerline of the Straight River;

thence Northwesterly 935 feet more or less, on the center line of said river, to the north line of said Lot 6;

thence North 89°32'02" West a distance of 367 feet more or less to the point of beginning.

Attachment III
SOURCES AND USE OF FUNDS FOR THE PROJECT

Source of Funds

Identify Source of Funds	Amount
State Funds	
2023 General Fund Appropriation	$ 11,000,000.00
2023 G.O. Bonding Appropriation	$ 11,000,000.00
Other State Funds	
Subtotal	$ 22,000,000.00
Matching Funds	
	$ -
Subtotal	$ -
Other Grant Recipient Funds	
Fed Green Principal Forgiveness (through PFA)	$ 1,000,000.00
PFA Loan	$ 35,000,000.00
Point Source Implementation Grant (PSIG)	$ 7,000,000.00
Subtotal	$ 43,000,000.00
Other Funds	
Local, City of Owatonna	$ 3,858,198.00
Subtotal	$ 3,858,198.00
Prepaid Project Expenses	
	$ -
Subtotal	
TOTAL FUNDS	$ 68,858,198.00

Use of Funds

Identify Items	Amount
Ownership Acquisition and Other Items Paid for with Grant Funds	
Construction management of wastewater plant project	$ 2,000,000.00
Construction of wastewater plant	$ 20,000,000.00
Other Items of a Capital Nature	
Subtotal	$ 22,000,000.00
Items Paid for with Non-State Grant Funds	
Design, engineering and construction management of wastewater plant project	$ 2,029,518.00
Construction of wastewater plant project	$ 44,828,680.00
Subtotal	$ 46,858,198.00
TOTAL PROJECT COSTS	$ 68,858,198.00

Attachment IV to Grant Agreement
PROJECT COMPLETION SCHEDULE

June 30, 2025

DATE: February 6, 2024
TO: Mayor and City Council
FROM: Kris Busse, City Administrator
SUBJECT: Set Date for 2024 Local Board of Appeal and Equalization Meeting - April 16, 2024

Purpose:
Council to set the date for the City's 2024 Local Board of Appeal and Equalization (LBAE) Meeting.

Background:
The Steele County Assessor's Office requests the date for the City's 2024 LBAE Meeting be set for Tuesday, April 16, 2024, at 6:00 pm. The purpose of the annual LBAE Meeting is to provide a fair and objective forum for property owners to appeal their valuation and/or classification with the goal of addressing property owner’s issues fairly and objectively. The Steele County Assessor’s Department analyzes real estate sales during a 12-month period to modify the mass appraisal system for the current market as well as to improve the equalization of property values.

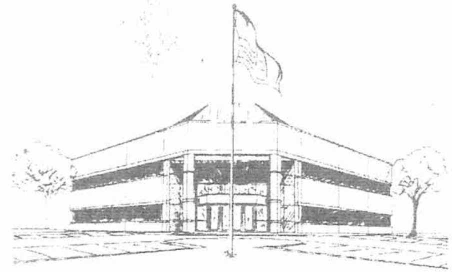
Budget Impact:
None

Staff Recommendation:
Staff recommends approval.

Attachments:
1. Steele County Assessor LBAE Meeting Request

STEELE COUNTY ASSESSOR

630 Florence Ave
P.O. Box 890
Owatonna, MN 55060
Phone: 507-444-7435
Fax: 507-444-7419



To: Township Officers and City Clerks

Re: 2024 Board of Appeal and Equalization Meeting Date

To Whom It May Concern:

Our office is writing to inform you that **Tuesday, April 16, 2024 at 6:00 PM** the Local Board of Appeal and Equalization Meeting will take place at the **Charles S. Crandall Center Council Chambers, City Hall.**

Please verify below and return to our office if the above listed date will work to hold your meeting. *If for some reason this date does not work, please contact our office at your earliest convenience so we can reschedule the date.* Please return the bottom portion to our office by **January 25, 2024.**

In February 2024, I will send out the Township and City Official's Packet for you to post in your jurisdiction, so please look for those documents to come.

If you should have any questions or concerns, please contact our office at (507)444-7438.

Sincerely,

Lacy Standke
Assessment Technician II

(Please return bottom of page)

LOCAL BOARD OF APPEAL AND EQUALIZATION MEETING INFO:

Tuesday, April 16, 2024 at 6:00 PM at Charles S. Crandall Center Council Chambers, City Hall.

______**Accept** this Date/Time/Place

______**Decline** this Date/Time/Place

"An Equal Opportunity Employer"

DATE: February 6, 2024
TO: Mayor and City Council
FROM: Emily Thamert, Human Resources Director
SUBJECT: Statement of Work & Scope of Services - Gallagher

Purpose:

Approve the Statement of Work & Scope of Services with Gallagher.

Background:

The City approved a Master Agreement for Professional Services with Gallagher in 2022. The Statement of Work & Scope of Services with Gallagher will include ongoing job evaluations and development of job descriptions in 2024. These ongoing services with Gallagher will be utilized in administering and maintaining compensation fo city of Owatonna employees, in alignment with the Compensation Plan.

Budget Impact:

The budget impact of this agreemnt is $12,500.

Staff Recommendation:

Staff recommends approval of the Statement of Work & Scope of Services with Gallagher.

Attachments:

1. City of Owatonna - Ongoing Services SoWPA - 2024

Gallagher

Statement of Work & Scope of Services

Upon agreement with this Statement of Work & Scope of Services and Project Assignment, pursuant to the Client's existing Master Service Agreement (MSA), Gallagher Benefits Services' Public Sector & Higher Education Practice will provide the following services:

Job Evaluation

- ***Provision of Job Evaluation Recommendations***
  - Review of existing job materials
  - Evaluation of role placement in the current structure
  - Provision of recommendation memo outlining findings

Revision and Development of Job Descriptions

- Develop and draft job descriptions as necessary to support the client's existing structure

Engagement Timeline

- This engagement is for a period not to exceed beyond December 31, 2024, beginning January 1, 2024 for an agreement period of 12 months. Additional years of service support may be agreed to annually.
- This engagement includes up to twenty-five (25) requests per agreement period. A request constitutes each deliverable to be provided, recognizing a client outreach for services may include multiple requests for a single position instance. For example: evaluation review, classification review, and JD review constitutes three (3) requests/credits.
  - In the event that the full volume of available job evaluations and/or job descriptions are not requested during the agreement period, the full balance will continue to be invoiced.
- Additional ongoing services may be added to this agreement as an addendum should the need extend beyond that outlined above.

Consulting Fees

Consulting fees for this engagement will be $12,500 as a fixed fee, invoiced monthly in equal increments. The fees shown exclude travel and accommodation expenses. Should the client request and approve onsite services, any expenses, if incurred, will be subject to Gallagher's travel and expense policies, which are designed to minimize costs.

Project Assignment: Ongoing Consulting Work

This Project Assignment is issued according to the attached proposal with an Effective Date 01/01/2024, by and between Gallagher Benefit Services, Inc. ("Gallagher") and City of Owatonna, MN ("Client"), pursuant and as an addendum to the existing Master Service Agreement in place with the Client and Gallagher Benefit Services.

Scope of Services:

- Deliverables and timeline as outlined on page 1 of this document ("Statement of Work & Scope of Services") and as outlined in the original project proposal.

Schedule / Period of Performance:

- Deliverables and timeline as outlined on page 1 of this document ("Statement of Work & Scope of Services") and as outlined in the original project proposal.

Fees & Expenses:
$12,500 billed in equal monthly installments of $1,041.XX through the agreement end date.

Key Assumptions:
The client will provide Gallagher access to data or other necessary resources to complete the assignment.

Special Requirements/Notes:
N/A

ACCEPTED AND AGREED:

CLIENT

By:

Name:

Title:

Date:

Address:

Gallagher Benefit Services, Inc.

By:

Name: Erik Henry-Smetana

Title: Managing Director

Date: December 21, 2023

Address: 8 Cadillac Dr, Suite 200
Brentwood TN, 37203

RECAP:

$	22,419.62	Cargill Inc - Road salt
	116,193.31	Ebert Inc - Council Chambers Renovation Est 10
	41,483.75	Everstrong Const Inc - 10 Unit T-Hanger Final Pay Est 6
	146,287.16	Insitufrom Technologies USA LLC - Pay est #1 - 2023 CIPPS proj #23010
	20,097.44	Owatonna Area Chamber of Commerce - Lodging Tax-Nov 23
	31,145.00	Paape Companies Inc - West Hills card access add - $14,930.00
		- Chamber remodel access add - $16,215.00
	149,181.84	Southeast Service Cooperative - Jan 2024 health ins premiums
	30,137.28	US Bank - Entire organization monthly credit card purchases Nov 20-Dec 20, 2023
	280,510.41	OTHER EXPENDITURES
$	837,455.81	TOTAL EXPENDITURES PRESENTED FOR APPROVAL

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

Cash Account: 999-19100-000-000-000000

Check Number	Check Date	Vendor Name	Net Check Amount	Check Status	Check Type
376503	01/20/24	FULLSTEAM	104.10	R	Wire Transfer
376504	01/20/24	GLOBAL PAYMENTS INTEGRATED	1,784.56	R	Wire Transfer
376505	01/20/24	MN DEPT OF LABOR AND INDUSTRY	1,166.48	R	Wire Transfer
376506	01/20/24	MN DEPT OF REVENUE	1,209.25	R	Wire Transfer
376507	01/20/24	PAYMENTECH	38.31	R	Wire Transfer
376508	01/20/24	SOUTHEAST SERVICE COOPERATIVE	149,181.84	R	Wire Transfer
376509	01/20/24	US BANK	30,137.28	R	Wire Transfer
376510	01/20/24	WEX BANK	1,086.24	R	Wire Transfer
376511	01/20/24	WEX HEALTH INC	357.50	R	Wire Transfer
376512	01/30/24	ADVANCED ENGINEERING & ENVIRON	592.00	O	Regular
376513	01/30/24	AFLAC	2,731.16	R	ACH
376514	01/30/24	AIRPORT LIGHTING COMPANY	97.00	O	Regular
376515	01/30/24	ALEXANDER LUMBER COMPANY	1,706.49	O	Regular
376516	01/30/24	AMERICAN LEGAL PUBLISHING	500.00	O	Regular
376517	01/30/24	APG MEDIA OF SO MINNESOTA LLC	160.41	O	Regular
376518	01/30/24	ARAMARK UNIFORM SERVICES INC	310.35	O	Regular
376519	01/30/24	ARROW ACE HARDWARE	37.56	R	ACH
376520	01/30/24	AUTOZONE INC	39.99	O	Regular
376521	01/30/24	AVFUEL CORPORATION	16,885.66	R	ACH
376522	01/30/24	BAKER & TAYLOR BOOKS	715.42	R	ACH
376523	01/30/24	BAKER TILLY US LLP	1,600.00	O	Regular
376524	01/30/24	BLACKSTONE PUBLISHING	817.97	R	ACH
376525	01/30/24	CABLECAST COMMUNITY MEDIA	2,400.00	O	Regular
376526	01/30/24	CARGILL INC	22,419.62	O	Regular
376527	01/30/24	CARQUEST	213.85	O	Regular
376528	01/30/24	CAVALIER COACHES INC	1,445.00	O	Regular
376529	01/30/24	CENGAGE LEARNING INC/GALE	62.38	R	ACH
376530	01/30/24	CHRISTAN PICKETT	1,970.00	O	Regular
376531	01/30/24	CINTAS	44.28	O	Regular
376532	01/30/24	CITY OF OWATONNA	20.00	O	Regular
376533	01/30/24	CIVICPLUS LLC	5,990.00	R	ACH
376534	01/30/24	CLIFTONLARSONALLEN LLP	12,022.50	O	Regular
376535	01/30/24	COLLAB SUMMER LIBRARY PROG	1,192.95	O	Regular
376536	01/30/24	COURT SPORTS AND MORE	1,359.00	R	ACH
376537	01/30/24	CROSSFIT INNERDRIVE	175.00	O	Regular
376538	01/30/24	CULLIGAN OF OWATONNA	33.83	R	ACH
376539	01/30/24	CURT'S TRUCK & DIESEL SERVICE	136.37	R	ACH
376540	01/30/24	CUSTOM COMMUNICATIONS INC	212.89	O	Regular
376541	01/30/24	DAGRY TOOLING INC	1,714.50	O	Regular
376542	01/30/24	DAVIS MECHANICAL SYSTEMS INC	1,728.10	R	ACH
376543	01/30/24	DEZURIK INC	121.86	O	Regular
376544	01/30/24	DIAMOND VOGEL	487.50	R	ACH
376545	01/30/24	DTN LLC	2,053.80	O	Regular
376546	01/30/24	EBERT COMPANIES	116,193.31	R	ACH

Check Number	Check Date	Vendor Name	Net Check Amount	Check Status	Check Type
376547	01/30/24	ETHAN CORDS	1,168.35	O	Regular
376548	01/30/24	EVERSTRONG CONSTRUCTION INC	41,483.75	O	Regular
376549	01/30/24	EYE MED VISION CARE	442.72	O	Regular
376550	01/30/24	FARM & HOME PUBLISHERS	610.50	O	Regular
376551	01/30/24	FARONICS TECHNOLOGIES USA INC	472.50	O	Regular
376552	01/30/24	FASTENAL COMPANY	22.23	R	ACH
376553	01/30/24	FIRST SUPPLY OWATONNA	56.08	R	ACH
376554	01/30/24	FLAHERTY & HOOD PA	4,475.00	R	ACH
376555	01/30/24	FLEXIBLE PIPE TOOLS & EQUIP	4,987.95	R	ACH
376556	01/30/24	FORCE AMERICA	481.48	R	ACH
376557	01/30/24	FOUR SEASONS ELECTRIC	11,170.11	R	ACH
376558	01/30/24	GRAINGER	1,595.69	R	ACH
376559	01/30/24	GS DIRECT INC	120.97	O	Regular
376560	01/30/24	HAWKINS INC	30.00	R	ACH
376561	01/30/24	HD SUPPLY INC	276.95	R	ACH
376562	01/30/24	HEALTHPARTNERS INC	4,645.68	O	Regular
376563	01/30/24	HILLYARD INC	238.90	O	Regular
376564	01/30/24	HORIZON COMMERCIAL POOL SUPPLY	205.55	R	ACH
376565	01/30/24	HUBER SUPPLY CO INC	76.00	O	Regular
376566	01/30/24	I U O E LOCAL 70	2,754.00	O	Regular
376567	01/30/24	IFACS	837.28	R	ACH
376568	01/30/24	INGERSOLL RAND INDUSTRIAL TECH	607.75	O	Regular
376569	01/30/24	INNOVATIVE OFFICE SOLUTIONS	332.44	O	Regular
376570	01/30/24	INSITUFORM TECHNOLOGIES USA LL	146,287.16	O	Regular
376571	01/30/24	JAVENS MECHANICAL CONTR CO	534.75	R	ACH
376572	01/30/24	JONES HAUGH & SMITH INC	3,453.28	O	Regular
376573	01/30/24	KARINA KUNZE	129.33	O	Regular
376574	01/30/24	LAWSON AUTOMOTIVE LLC	1,249.66	R	ACH
376575	01/30/24	LAWSON AUTOMOTIVE LLC	107.21	O	Regular
376576	01/30/24	LAWSON PRODUCTS	2,218.67	O	Regular
376577	01/30/24	LEADSONLINE LLC	4,495.00	O	Regular
376578	01/30/24	LEAGUE OF MN CITIES	3,690.00	O	Regular
376579	01/30/24	LEGACY SIGNS INC	45.00	R	ACH
376580	01/30/24	LITTLE FALLS MACHINE INC	3,922.97	R	ACH
376581	01/30/24	MACQUEEN EQUIPMENT CO	2,539.92	R	ACH
376582	01/30/24	MADISON NATL LIF INS CO INC	977.25	O	Regular
376583	01/30/24	MARCO TECHNOLOGIES LLC	492.15	R	ACH
376584	01/30/24	MATTHEW R HOKANSON	5,479.20	R	ACH
376585	01/30/24	METRO SALES INC	371.55	O	Regular
376586	01/30/24	METRONET SYSTEMS HOLDINGS LLC	1,331.37	R	ACH
376587	01/30/24	MICHAEL A. OLDENBURG	150.00	O	Regular
376588	01/30/24	MICHAEL BEACH COACHING & CONSU	400.00	R	ACH
376589	01/30/24	MID-STATES ORGANIZED CRIME	200.00	R	ACH
376590	01/30/24	MINNESOTA LIFE	3,094.40	O	Regular
376591	01/30/24	MINNESOTA PUMP WORKS	624.30	R	ACH

Check Number	Check Date	Vendor Name	Net Check Amount	Check Status	Check Type
376592	01/30/24	MN DEPT OF LABOR AND INDUSTRY	180.00	O	Regular
376593	01/30/24	MN DEPT OF LABOR AND INDUSTRY	20.00	O	Regular
376594	01/30/24	MN NCPERS GROUP LIFE INSURANCE	432.00	O	Regular
376595	01/30/24	MN POLLUTION CONTROL AGENCY	1,980.00	O	Regular
376596	01/30/24	MN PUBLIC EMPLOYEES ASSOC	3,168.00	R	ACH
376597	01/30/24	MN VALLEY TESTING LABS INC	420.00	R	ACH
376598	01/30/24	MONSIDO LLC	3,480.00	R	ACH
376599	01/30/24	MTI DISTRIBUTING INC	173.75	R	ACH
376600	01/30/24	MYPILOT STORE.COM	1,718.95	O	Regular
376601	01/30/24	NAPA AUTO PARTS	599.60	R	ACH
376602	01/30/24	NATL RECREATION & PARK ASSN	1,200.00	O	Regular
376603	01/30/24	NORTHFIELD NEWS	97.80	O	Regular
376604	01/30/24	NORTHLAND FARM SYSTEMS	755.32	O	Regular
376605	01/30/24	NUSS TRUCK & EQUIPMENT	8,140.00	O	Regular
376606	01/30/24	OFFICE OF MNIT SERVICES	383.25	O	Regular
376607	01/30/24	OWATONNA AREA CHAMBER OF COMM	20,097.44	O	Regular
376608	01/30/24	OWATONNA MOTOR COMPANY	38.46	O	Regular
376609	01/30/24	OWATONNA PUB SCHOOLS ISD 761	1,295.00	R	ACH
376610	01/30/24	OWATONNA VETERIMARY HOSPITAL	231.54	O	Regular
376611	01/30/24	PAAPE COMPANIES INC	31,145.00	R	ACH
376612	01/30/24	PDI	45.30	O	Regular
376613	01/30/24	PLUNKETT'S PEST CONTROL INC	136.50	R	ACH
376614	01/30/24	PROLINE DISTRIBUTING	356.40	O	Regular
376615	01/30/24	PVS TECHNOLOGIES INC	10,754.00	O	Regular
376616	01/30/24	RENT N SAVE PORTABLE SERVICES	1,115.00	R	ACH
376617	01/30/24	RIVER CITY ELECTRIC CO	7,945.95	O	Regular
376618	01/30/24	RIVERLAND COMMUNITY COLLEGE	1,500.00	O	Regular
376619	01/30/24	SANCO EQUIPMENT	195.63	R	ACH
376620	01/30/24	SEEMA G POTHINI	2,000.00	O	Regular
376621	01/30/24	SELCO	8,168.12	R	ACH
376622	01/30/24	SENIORPLACE INC	333.00	O	Regular
376623	01/30/24	SHERRI MANZ	16.50	O	Regular
376624	01/30/24	SHERWIN WILLIAMS COMPANY	734.53	O	Regular
376625	01/30/24	SHI INTERNATIONAL CORP	1,910.56	O	Regular
376626	01/30/24	SMRPA	195.00	O	Regular
376627	01/30/24	SPHERION STAFFING LLC	1,568.40	O	Regular
376628	01/30/24	STAR TRIBUNE	57.88	R	ACH
376629	01/30/24	STEELE CO ATTORNEY'S OFFICE	61.81	O	Regular
376630	01/30/24	STEELE COUNTY TREASURER	6,117.27	O	Regular
376631	01/30/24	STEWART DENISE	217.09	O	Regular
376632	01/30/24	STREICHER'S INC	114.00	O	Regular
376633	01/30/24	SYNCHRONY BANK	694.06	O	Regular
376634	01/30/24	SYNCHRONY BANK - LOWE'S	1,568.78	O	Regular
376635	01/30/24	SYSCO MINNESOTA INC	15,539.00	O	Regular
376636	01/30/24	T-MOBILE	1,999.18	O	Regular

Check Number	Check Date	Vendor Name	Net Check Amount	Check Status	Check Type
376637	01/30/24	TARGETSOLUTIONS	16,659.00	O	Regular
376638	01/30/24	TEMPLE ELECTRIC MOTOR SERV INC	55.00	R	ACH
376639	01/30/24	TOR SPERLING	148.93	R	ACH
376640	01/30/24	TOTAL GLASS-LOCK INC	34.58	O	Regular
376641	01/30/24	TOWMASTER	1,253.66	O	Regular
376642	01/30/24	TREASURY DIVISION, FINANCE	30.91	O	Regular
376643	01/30/24	TRI STATE BOBCAT	436.74	R	ACH
376644	01/30/24	TRUCK CENTER COMPANIES LLC	641.28	O	Regular
376645	01/30/24	UKG INC	15,351.80	R	ACH
376646	01/30/24	UNITED WAY	305.00	O	Regular
376647	01/30/24	UNIVERSITY OF VIRGINIA	1,860.00	O	Regular
376648	01/30/24	VALUE LINE PUBLISHING INC	4,195.00	O	Regular
376649	01/30/24	VAN METER INC	13.26	O	Regular
376650	01/30/24	VENTURE HYDRAULICS INC	423.54	R	ACH
376651	01/30/24	VERIZON WIRELESS	2,670.47	O	Regular
376652	01/30/24	WALBRAN & FURNESS CHARTERED	4,875.25	R	ACH
376653	01/30/24	WASECA COUNTY HWY DEPT	29.79	O	Regular
376654	01/30/24	WHKS & CO	3,253.00	R	ACH
376655	01/30/24	YOUTH 1ST INC	1,250.00	O	Regular
376656	01/30/24	ZACK'S INC	277.31	O	Regular
376657	01/30/24	ZACKARY SCHUMAKER	500.00	R	ACH
376658	01/30/24	ZARNOTH BRUSH WORKS	1,639.00	R	ACH
376659	01/30/24	ZEP MANUFACTURING CO	447.11	R	ACH
376660	01/30/24	RANDALL'S LICENSE BUREAU	63.75	O	Regular

apadatecr2 City of Owatonna sbera 01/31/2024 08:05 Page 4
A/P Check Register
Checks from to

92	Checks total:	387,169.50
57	ACH total:	265,220.75
0	EFTPS total:	
9	Wire transfer total:	185,065.56
0	Payment Manager total:	
158	GRAND TOTALS	837,455.81

CITY OF OWATONNA

Resolutions

DATE: February 6, 2024
TO: Mayor and City Council
FROM: Sean Murphy, Public Works Director
SUBJECT: Resolution 9-24: Approve Report & Set Public Hearing Date - 2024 Street & Utility Project

Purpose:
Requesting approval of Resolution 9-24 approving the 2024 Street & Utility Project Feasibility Report and setting a date for the Preliminary Assessment Public Hearing.

Background:
On January 16, 2024, City Council approved resolution 5-24: Ordering Preparation of the 2024 Street & Utility Project.

The project involves reconstruction of:

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

The existing street improvements have exceeded their useful life. A Preliminary Assessment Public Hearing date is requested for Wednesday, March 6, 2023.

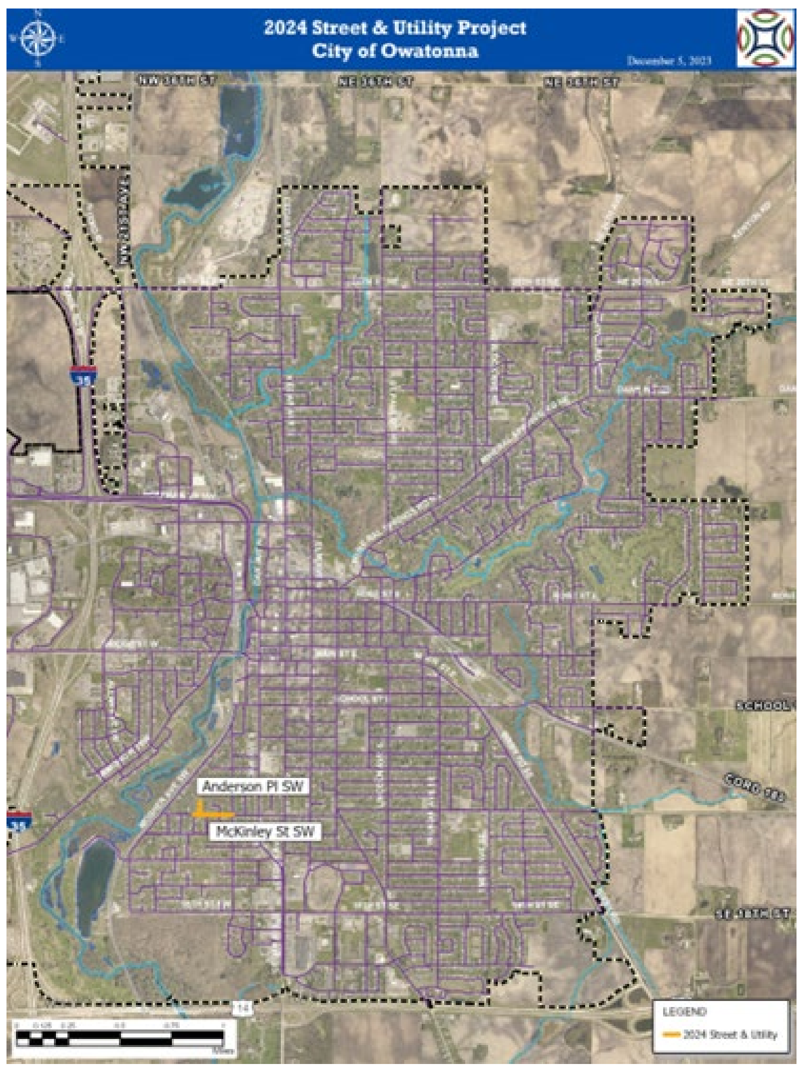
Budget Impact:
The 2024 Street & Utility Project will be financed through a combination of City Funds, OPU Funds, and Special Assessments. The total cost to be assessed is currently estimated at $90,516.40. Approximately 24 property owners will be affected.

Staff Recommendation:
Staff recommends approval.

Attachments:
1. Feasibility Report - 24001 Street Utility
2. Resolution 9-24 Approve Report and Public Hearing Date - 2024 Street & Utility Project

Feasibility Report
For the
2024 Street and Utility Improvement Project
January 31, 2024

Streets included in the 2024 Street and Utility Improvement Project:
· McKinley Street SW
· Anderson Place SW



OFFICE OF THE DIRECTOR OF PUBLIC WORKS & CITY ENGINEER
540 WEST HILLS CIRCLE | OWATONNA, MN 55060-4701 | OWATONNA.GOV | 507.444.4350

Feasibility Report

For the

2024 Street and Utility

Improvement Project

Bituminous Pavement Reconstruction

· McKinley Street SW

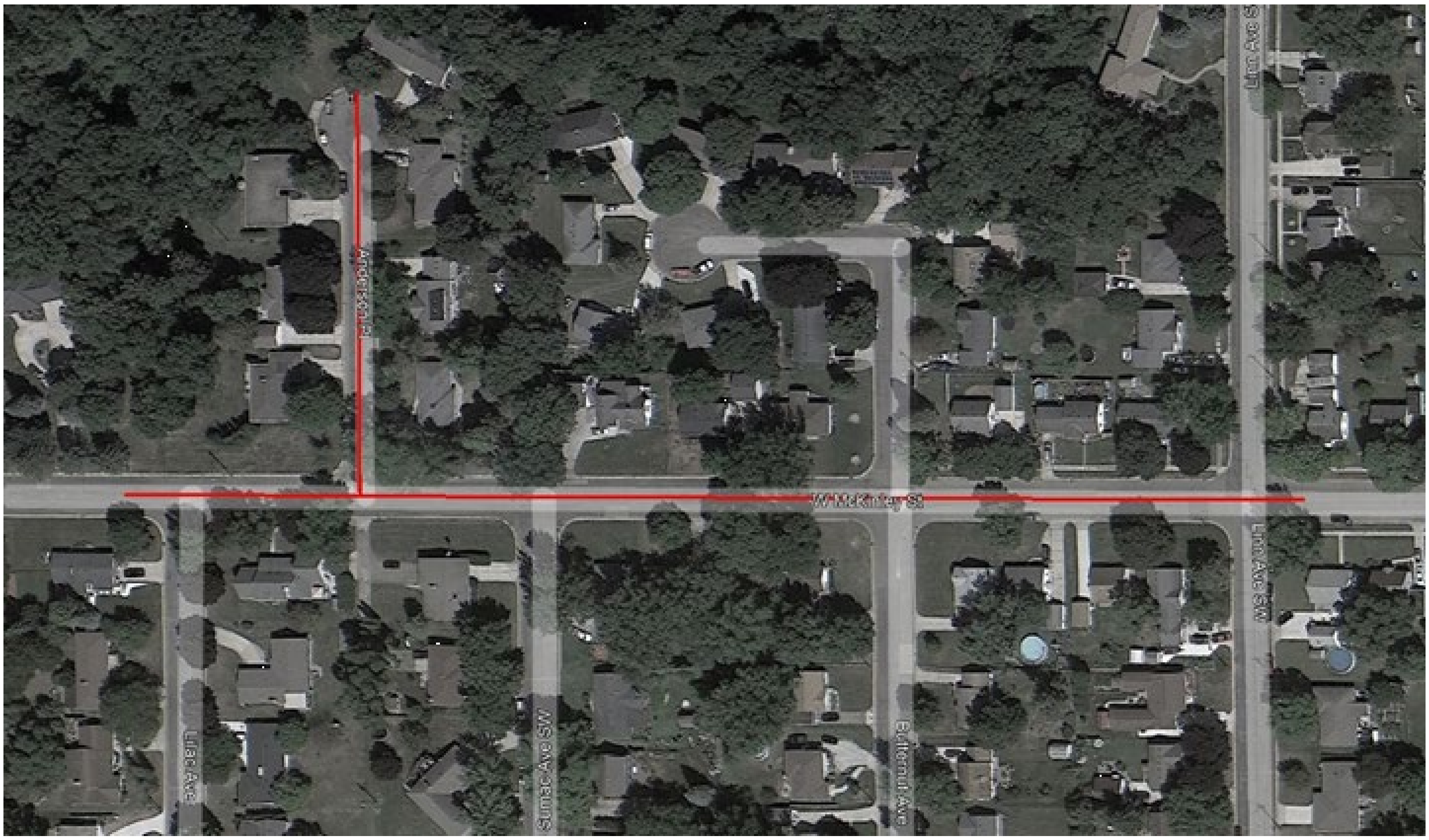
· Anderson Place SW

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

Sean Murphy, PE
License No. 56604
Date: 01/31/2024

Introduction Project No. 24001—2024 Street & Utility Improvement Project

The City Council has designated streets for reconstruction and bituminous rehabilitation to be completed under the 2024 Street and Utility Improvement Project. McKinley Street SW from Linn Ave to Lilac Ave, and Anderson Place SW from McKinley Street to the North cul-de-sac. The streets proposed for bituminous reconstruction in the 2024 Street and Utility Improvement Project have deteriorating bituminous pavements and their conditions are beyond an overlay.



- McKinley Avenue SW from Linn Ave SW to Lilac Ave SW
- Anderson Place SW from McKinley St SW to cul-de-sac (North)

Table of Contents

Appendices

Appendix A Letter Announcing February 27, 2024 Informational Meeting & March 5, 2024 Public Hearing
Appendix B Project Cost Summary
Appendix C Assessment Breakdown Examples

Purpose

The City Council has designated 2 streets for reconstruction in the 2024 Street and Utility Improvement Project. On January 16th, 2024, the City Council adopted Resolution No. 6-24 ordering preparation of this feasibility report.

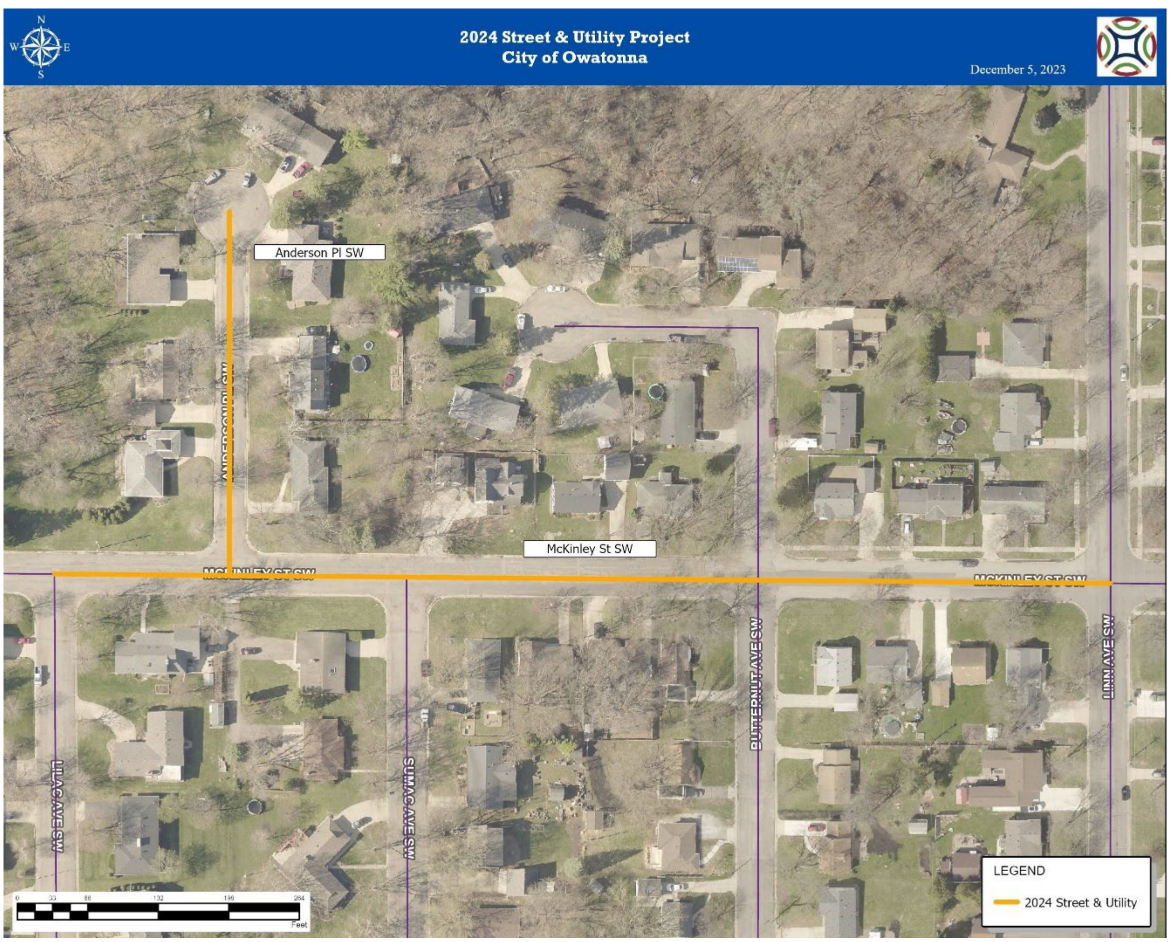
The streets proposed for bituminous reconstruction included in the 2024 Street and Utility Improvement Project as shown in Exhibit 1 are:

- McKinley Avenue SW—Linn Avenue SW to Lilac Avenue SW
- Anderson Place SW—McKinley Avenue SW to Cul-de-sac

Project Scope

The scope of this report is to analyze the proposed streets indicated above and to determine the engineering and fiscal feasibility of providing the necessary improvements. In addition, existing sanitary sewer, watermain, and storm sewer systems are evaluated, and necessary improvements proposed. The study will discuss the existing conditions, proposed improvements, estimated construction costs, and overhead costs (i.e. administration, engineering, fiscal, and legal expenses). Current public improvement policies adopted by the Owatonna City Council will be used as a guideline to discuss financing methods for the proposed improvements.

The proposed project will potentially affect approximately 24 property owners.



Existing Conditions and Proposed Improvements

The streets included in the proposed 2024 Street and Utility Improvement Project are deteriorating and in need of both pavement rehabilitation as well as utility (water, sanitary sewer and storm sewer) upgrades.
The current condition of the infrastructure and proposed improvements are outlined as follows:

Watermain

- McKinley Street SW—The watermain was installed in 1952 and has a history of breaks. The watermain is proposed for replacement between Linn Ave & Lilac Ave SW.
- Anderson Place SW—Records show that it was installed in 1955 and OPU is ready to remove and replace it.

Sanitary Sewer

The sanitary sewer mains in the proposed project area have been televised to determine the condition.

- McKinley Street SW—Sections of this clay pipe sanitary sewer were placed between 1948 and 1952. One section, between Butternut and Sumac Avenues, has been lined. Conditions were found to be poor to fair with segments of lateral cracking, broken pipe, and several sags. The worst segments were on either side of Linn Avenue where pipe separations and significant joint offsets were discovered.
- Anderson Place SW—This is also a clay pipe sanitary sewer placed around 1955 and is nearing the end of its useful life.

Storm Sewer

The storm sewer system has been evaluated for deficiency.

- McKinley Street SW—The storm system is generally in fair to poor condition with known structures and pipe sections in need of replacement. The entire storm sewer system will need to be re-evaluated for sufficient capacity.
- Anderson Place SW—There are no storm sewer mains or structures located on this street. However, there is a sump main running along the East curb.

The presence of sump pump service lines will be verified in areas being improved.

Street Pavements and Concrete Curb – Bituminous Pavement Reconstruction

The bituminous pavements planned for replacement were constructed in the following years:

- McKinley Street SW: Construction: 1948, 1950, 1952; Overlay: 1993, 1998, 2000
- Anderson Place SW: Construction: 1955; Overlay: 1992

The pavements are now near the end of their useful life. The proposed project includes the following pavement repairs to each street:

- McKinley Street SW: Full reconstruction of street. With the replacement of the sanitary sewer, storm structures & some sewer, and water main & services. The curb will be replaced as needed throughout the project.
- Anderson Place SW: Full reconstruction of street. Full replacement of water main, sanitary sewer, sump main and their respective services. The curb will be completely replaced.

Sidewalk & Trail Improvements

The existing sidewalk on the north side of McKinley St SW will be replaced and new sidewalk will be added on along the North side of McKinley St SW from Butternut Ave to Lilac Ave. All pedestrian ramps encountered by the project will be evaluated for ADA compliance and will be upgraded as necessary.

Private Driveways
If the concrete curb is removed next to the driveway and the driveway needs repair, it will be replaced to the existing width. This may include any or all driveways along McKinley St SW and Anderson Pl SW. Should driveway aprons require replacement, property owners will have the option to widen their respective apron to the maximum width allowed in zoning code. Any increase in driveway apron width from existing shall be paid by the property owner at as bid unit cost rates.

Private Utility Improvements
Private Utilities are not affected by this construction. A utility coordination meeting will be held in conjunction with Steele County where the proposed improvements will be discussed.

Public Utility Improvements
Owatonna Public Utilities has been shown the location of the proposed improvements and has indicated areas of concern.

Permits
A NPDES permit through the MPCA will be necessary for this project. The Engineering Department will ensure all necessary permits are obtained.

Public Informational Meeting
A public informational meeting will be held prior to the improvement hearing at the City Council.
A copy of the proposed letter sent to residents and the presentation to be made is included in Appendix A.

Estimated Project Costs
The estimated costs for the proposed improvements are summarized in Table 1. The estimated total project improvement cost is $1,855,931. Based on past experiences with similar projects in the City, the overhead costs have been estimated at 25% of the total construction cost. The overhead costs include engineering, project administration, fiscal and legal costs, and contingencies. Normal inflation has been accounted for, however, the current construction market and costs are volatile and we will not know current prices until the projects bid. The project will be financed through a combination of City funds and special assessments to the benefited properties.

Financing and Assessments
The improvements discussed in this report for the 2024 Street and Utility Improvement Project are proposed to be financed through a combination of special assessments to benefited properties (according to the City's Assessment Policy), City utility funds and street reconstruction funds. A summary of the total project cost is provided in Appendix C with a spreadsheet indicating how the total costs could be allocated through both city funds and special assessments. The proposed cost allocation by item is as follows:

- The improvements to the existing watermains will be funded by Owatonna Public Utilities.
- The improvements to the sanitary sewer mains will be funded by the City Sewer Fund
- The street reconstruction improvements and storm sewer facilities will be funded by a combination of the City General Fund and special assessment to property owners. Preliminary opinion of probable cost for the proposed assessments per assessable foot (plus applicable cost of sanitary sewer and water services) are as follows:

Project Costs by Street	Street	Sanitary	Storm	Watermain	Total	Assessable
McKinley Street SW	$682,546.49	$228,968.38	$365,679.13	$242,288.25	$1,519,482.24	$726,293.62
Anderson Place SW	$166,702.98	$75,304.25	$30,291.38	$64,150.13	$336,448.73	$179,952.23
Total	$849,249.47	$304,272.63	$395,970.51	$306,438.38	$1,855,930.97	$906,245.85

Assessment Costs by Street	Actual	Proposed
McKinley Street SW	$645.83/ft	$52.00/ft
Anderson Place SW	$171.17/ft	$52.00/ft

Property owners receiving benefits from the proposed improvements and who would be assessed for all, or a portion of the improvements are listed on the Proposed Assessment Roll on file with the Office of the City Clerk. The assessment spreadsheets indicate the parcel identification number (PIN), owner, the address of the property, the assessable footage of the property and the amount of the proposed assessment.

The City's assessment policy for public improvements allows for the distribution of the proposed assessment for residential properties over a 10-year period. A sample breakdown of the annual payments on assessment for several assessment amounts based on an interest rate of **6 percent is included** in Appendix C.

The City's assessment policy also allows for deferred payment of special assessments for qualified property owners. A copy of the deferment policy is available at the City's website www.owatonna.gov and on file with the Office of the City Clerk.

Project Schedule

The proposed project schedule is as follows:

City Council Orders Feasibility Report	January 16, 2024
City Council receives Feasibility Report City Council Sets date for Public Hearing on Improvement	February 6, 2024
Neighborhood Meeting held to discuss project plans and answer questions	February 27, 2024
City Council holds Public Hearing on Improvement City Council orders Plans and Specifications	March 5, 2024
City Council Approves Plans and Specifications City Council authorizes Advertisement for Bids	March 19, 2024
Bids Opened	April 10, 2024
City Council awards bids	April 16, 2024
Begin Construction	May 2024
Construction Substantially Complete	October 2024
City Council Sets date for Assessment Hearing	November 2024
City Council holds Assessment Hearing	December 2024
Final Completion	December 2024

Feasibility, Necessity and Cost-Effectiveness
The proposed improvements included in the 2024 Street and Utility Improvement Project consisting of watermain, sanitary sewer, storm sewer, street and sidewalk reconstruction are feasible from an engineering standpoint, necessary, and cost effective if constructed under a single project as proposed. These improvements would greatly improve the level of public service to the residents of the areas, enhance the safety and appearance of the neighborhoods. The improvements can most effectively and economically be constructed if undertaken through a coordinated contract that would cause the improvements to be installed in the proper sequence.

Recommendation
Our recommendation to the City Council is to accept the feasibility report and order improvements to be constructed to all streets and that the watermain, sanitary sewer, storm sewer, streets and sidewalks be installed as proposed in this feasibility report. The estimated cost of these improvements, including the proposed assessments, is reasonable and comparable with similar improvements being constructed in other cities.

Next Steps
1. If the City Council approves the project, then staff will complete the design of the project, including the preparation of construction plans and specifications.
2. The City Council will be asked to authorize the project for bids, receive and review bids and award a contract to the lowest responsive and responsible bidder.

Appendix A

Letter Announcing February 27, 2024, Neighborhood Meeting and March 5, 2024, Improvement Hearing

CITY OF OWATONNA

Date

Owner
Address
City State Zip

Dear Property Owner:

Your property located at Property Address in Owatonna, MN is included in the 2024 Street & Utility Project. The 2024 Street & Utility Project limits are shown in the attached map. This improvement will be subject to assessments.

A Neighborhood Meeting is planned for February 27, 2024, beginning at 5:00 pm. This informal meeting will be held in Council Chambers at the Charles S. Crandall Center at 540 West Hills Circle. Staff will present project plans and answer questions.

A Public Hearing for this improvement project will be held on March 5, 2023, during the City Council Meeting beginning at 7:00 p.m. Council Meetings are held in the Council Chambers at the Charles S. Crandall Center at 540 West Hills Circle. Any person who has a desire to be heard concerning the proposed improvement will be heard at this meeting. Public Hearing Notice will be given, and a copy is enclosed for you. The estimated cost of this improvement is $1,855,930.97. The preliminary assessment total is $90,516.40.

A reasonable estimate of the impact of an assessment for Parcel ID# XX-XXX-XXXX located at Property Address for this project will be:

Assessable Footage Length: Footage Length
Rate: $52/foot
Preliminary Assessment Amount: $X,XXX

If this repair is approved by Council, another public hearing will be held when the project is completed. At that time, Council will consider the Proposed Assessment amount to charge to your property. The Proposed Assessment amount could be lower than the Preliminary Assessment Amount shown above if project costs are less than currently estimated. The Proposed Assessment cannot be more than this Preliminary Assessment Amount without prior agreement by the property owner. Terms of payment will be set following the public hearing after project completion.

Sincerely,

Sean Murphy, PE
City Engineer
City of Owatonna
O: (507) 774-7306

SPM/amn

Appendix B

Project Cost Summary

	STREET	SANITARY	STORM	WATERMAIN	TOTAL	ASSESSABLE	ASSESSABLE FOOTAGE	TOTAL ASSESSMENTS	COST PER FOOT
McKINLEY ST SW	$682,546.49	$228,968.38	$365,679.13	$242,288.25	$1,519,482.24	$726,293.62	899.67	$46,782.84	$645.83
ANDERSON PL SW	$166,702.98	$75,304.25	$30,291.38	$64,150.13	$336,448.73	$179,952.23	841.03	$43,733.56	$171.17
	$849,249.47	**$304,272.63**	**$395,970.51**	**$306,438.38**	**$1,855,930.97**	**$906,245.85**	**1,740.70**	**$90,516.40**	

Appendix C

Sample Assessment Breakdown

Interest	**6.00%**					
Year	**Principal**	**Payment**		**Year**	**Principal**	**Payment**
1	$2,500.00	$400.00		1	$5,000.00	$800.00
2	$2,250.00	$385.00		2	$4,500.00	$770.00
3	$2,000.00	$370.00		3	$4,000.00	$740.00
4	$1,750.00	$355.00		4	$3,500.00	$710.00
5	$1,500.00	$340.00		5	$3,000.00	$680.00
6	$1,250.00	$325.00		6	$2,500.00	$650.00
7	$1,000.00	$310.00		7	$2,000.00	$620.00
8	$750.00	$295.00		8	$1,500.00	$590.00
9	$500.00	$280.00		9	$1,000.00	$560.00
10	$250.00	$265.00		10	$500.00	$530.00
Year	**Principal**	**Payment**		**Year**	**Principal**	**Payment**
1	$7,500.00	$1,200.00		1	$10,000.00	$1,600.00
2	$6,750.00	$1,155.00		2	$9,000.00	$1,540.00
3	$6,000.00	$1,110.00		3	$8,000.00	$1,480.00
4	$5,250.00	$1,065.00		4	$7,000.00	$1,420.00
5	$4,500.00	$1,020.00		5	$6,000.00	$1,360.00
6	$3,750.00	$975.00		6	$5,000.00	$1,300.00
7	$3,000.00	$930.00		7	$4,000.00	$1,240.00
8	$2,250.00	$885.00		8	$3,000.00	$1,180.00
9	$1,500.00	$840.00		9	$2,000.00	$1,120.00
10	$750.00	$795.00		10	$1,000.00	$1,060.00

RESOLUTION NO. 9-24
A RESOLUTION RECEIVING FEASIBILITY REPORT AND SETTING
DATE FOR IMPROVEMENT HEARING

WHEREAS, pursuant to Resolution 6-24, adopted by the council on January 16th, 2024, a feasibility report has been prepared by Sean Murphy, City Engineer, with reference to proposed improvement for the 2024 Street and Utility Project and this report was received by the council on February 6th, 2024. The following areas are affected:

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

WHEREAS, the report provides information regarding 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.

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

1. The council will consider the improvement of such street in accordance with the report and the assessment of abutting property for all or a portion of the cost of the improvement pursuant to Minnesota Statutes, Chapter 429 at an estimated total cost of the improvement of $1,855,930.97.

2. A public hearing shall be held on such proposed improvement on the 6th day of March 2024 in the council chambers of the city hall at 7:00 p.m. The clerk shall give mailed and published notice of such hearing and improvement as required by law.

Passed and adopted this 6th day of February, 2024, with the following vote:

Aye 7 ; No 0 ; Absent 0 .

Approved and signed this 6th day of February, 2024.

Thomas A. Kuntz, Mayor

ATTEST

Kris M. Busse, City Administrator/City Clerk

DATE: February 6, 2024
TO: Mayor and City Council
FROM: Jeanette Clawson, Administrative Coordinator
SUBJECT: Resolution 10-24: Appoint Election Judges - Presidential Nomination Primary Election - March 5, 2024

Purpose:
Council to approve Resolution 10-24 appointing Election Judges for the Presidential Primary Election planned for Tuesday, March 5, 2024.

Background:
The Secretary of State requires the appointment of election judges before Election Day. As recommended by the Secretary of State, the resolution appoints judges and also authorizes assignment of Election Judge substitutes if needed.

This election is the sixth Presidential Nomination Primary Election held in the history of the State of Minnesota. In 2016 Legislation was passed establishing a Presidential Nomination Primary during 2020 and 2024 to supplement the party caucus model that has been used in Minnesota for many years.

Budget Impact:
None. Costs incurred for this PNP Election will be reimbursed by the State of Minnesota. Polls will be open from 7:00 a.m. to 8:00 p.m., Election Judges will work from 6:00 a.m. until after the polls are closed. Election Judges are paid $13 per hour and Head Judges earn $14 per hour. Election Judges are also paid to attend training and, when serving as Health Care Facility Judges to take requested ballots to residents in the healthcare facilities.

Staff Recommendation:
Staff recommends adoption of Resolution10-24.

Attachments:
1. Res 10-24 Appoint Election Judges - 2024 PNP Election
2. List - 2024 PNP Election Judges

RESOLUTION NO. 10-24

A RESOLUTION APPOINTING ELECTION JUDGES FOR THE 2024 PNP ELECTION

BE IT RESOLVED by the City Council of the City of Owatonna, Minnesota, that the persons listed on the attached are hereby appointed judges for the 2024 Presidential Nominating Primary (PNP) Election to be held on Tuesday, March 5, 2024. Judges appointed to serve at the Polling Sites have completed training and certified to serve as Election Judge.

BE IT FURTHER RESOLVED by the City Council of the City of Owatonna, Minnesota, that City Administration staff may assign additional or substitute election judges as necessary for this Special PNP Election.

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

Aye ____; No ____; Absent ____.

Approved and signed this ___ day of ____, 2024.

ATTEST:

____
Thomas A. Kuntz, Mayor

____
Kris M. Busse, City Administrator/City Clerk

2024 PNP Election Judges - March 5, 2024

Allison Ritter	Jane Parr	Naomi Jirele
April St Martin	Janet Erickson	Naomi Uber
Barb Granowski	Jean Westberg	Pam Wild
Beatrice Oberg	Joann Widen	Patrick Montplaisir
Beth Youngquist	John Thompson	Peter Cook
Bonnie Johnston	Kate Sisler	Randy Byam
Candi Schafer	Kathleen Schumacher	Richard Strom
Carol Kirchner	Kay Oberle	Roger Noble
Carol Rypka	Kelli Hallquist	Sandra McCann Halla
Cathy Torrey	Ken Torrey	Sandy Hardy Hagen
Charles Newgard	Kent Frette	Shannon Iacovino
Cheryl Couture	Kirk Oswald	Sharon Gaulrapp
Cheryl Hancock	LaDona Flowers	Sharon Klein
Christine Runner	Laura Jensen	Sheila DePenning
Clark Gustafson	LeAnn Masche	Shelly Chicos
Corinne Talley	LeAnn Masche	Sherry Segal
Dan Axmark	Lilly Christianson	Sheryl Keith
Dan Gorman	Linda Boorman	Stephen Kaffine
Dawn Axmark	Linda Hoffman	Sue Calcamuggio
Deloris Slack	Marcia Dahle	Susan Robbins
Diane Spellmeyer	Marie Larson	Tamra Arnold
Diane Wilson	Mark Erickson	Teresa Sanders
Dwight DePenning	Mary Gaul	Tim Schmidt
Eileen Wohlenhaus	Mary Groff	Timothy Pelton
Glenda Ganowski	Michelle Noble	Tom Bonacci
Francy Hall	Mike Brown	Wayne Bomar
James Taylor	Nancy Voigt	Weise, Barb
		Wendell Engelstad

Miscellaneous

CITY OF OWATONNA

DATE: February 6, 2024
TO: Mayor and City Council
FROM: Sean Murphy, Public Works Director
SUBJECT: Change Order #10 - Wastewater Treatment Facility Expansion - Rice Lake Construction

Purpose:

Requesting City Council approval of Change Order #10 for the Wastewater Treatment Facility Expansion Project.

Background:

Work Change Directives (WCDs) are created as a means to address construction issues, design clarifications, interdisciplinary coordination, or errors and/or omissions. Change Order 10 consists of WCDs 61-64 & 66-69 and are as follows:

61 - Casework Material Change in the Admin Building
62 - Roof Drain Routing Insulation
63 - Private Hydrant Replacement
64 - MBR Lab Vacuum Pump
66 - MBR Masonry at Mech Room
67 - STB Roof Insulation DDepth Change
68 - Exterior Door Changes
69 - Additional Light Switched in MBR Cassette Room

For additional information regarding any of the work change directives, please contact the Engineering Department.

Budget Impact:

The price increase is $191,149.45. The adjusted contract total due to change orders 1 through 10 is $56,686,268.09.

Staff Recommendation:

Staff recommends approval.

Attachments:

1. Owatonna WWTF - Change Order No. 10

CHANGE ORDER NO. 10

Owner:	City of Owatonna	Owner's Project No.:	17017
Engineer:	Nero Engineering	Engineer's Project No.:	10044
Contractor:	Rice Lake Construction Group	Contractor's Project No.:	2214
Project:	Owatonna WWTF Upgrade and Expansion		
Contract Name:	Owatonna WWTF Upgrade and Expansion		
Date Issued:		Effective Date of Change Order:	1/31/2024

The Contract is modified as follows upon execution of this Change Order:

Description:

Work Change Directives No. 61, 62, 63, 64, 66, 67, 68, 69.

Attachments:

Work Change Directive Log – 1-31-2024. Change Order Log – 1-31-2024.

Change in Contract Price	**Change in Contract Times**
Original Contract Price: $ 55,720,600.00	Original Contract Times: Substantial Completion: 03/31/2025 Ready for final payment: 06/30/2025
[Increase] ~~**[Decrease]**~~ from previously approved Change Orders No. 0 to No. **9:** $ 774,518.64	~~**[Increase]**~~ ~~**[Decrease]**~~ from previously approved Change Orders No.0 to No. **8**: Substantial Completion: Ready for final payment:
Contract Price prior to this Change Order: $ 56,495,118.64	Contract Times prior to this Change Order: Substantial Completion: 03/31/2025 Ready for final payment: 06/30/2025
[Increase] ~~**[Decrease]**~~ this Change Order: $ $191,149.45	~~**[Increase]**~~ ~~**[Decrease]**~~ this Change Order: Substantial Completion: Ready for final payment:
Contract Price incorporating this Change Order: $ 56,686,268.09	Contract Times with all approved Change Orders: Substantial Completion: 03/31/2025 Ready for final payment: 06/30/2025

Recommended by Engineer (if required)

By: Jennifer Svennes, PE Jennifer R Svennes

Title: Lead Process Engineer, Nero Engineering

Date: 1/31/2024

	Authorized by Owner	Approved by Funding Agency (if applicable)
By:		
Title:		
Date:		

Owatonna WWTF Upgrade and Expansion
Change Order Log
Printed: 1/31/2024 Original Contract Cost $55,720,600.00

CO #	WCD No.	Date	Description	WCD Cost	Approved	CO Cost	Revised Contract Cost
1	15	5/30/2022	SUEZ Price Escalation	$252,500.00	**Yes**	$252,500.00	$55,973,100.00
2	2	8/19/2022	Field Order No.1	$581.15	**Yes**	-$89,899.14	$55,883,200.86
	3	8/22/2022	Field Order No.3	-$12,511.72			
	4	8/19/2022	Field Order No.4	$53,409.75			
	5	8/25/2022	Field Order No.2	$3,329.18			
	7	8/25/2022	RFI #29	-$11,092.99			
	8	9/30/2022	MBR Tank Drain Valves	$16,853.62			
	9	9/30/2022	Field Order No.9	$9,613.92			
	10	9/30/2022	Grating Width Changes and Perm Wall Pipe	-$6,944.33			
	12	10/25/2022	Backwash Tank and Chemical Storage Building - Opt. 1&2	$75,579.50			
	13	10/25/2022	RFI #25	$13,737.58			
	14	10/16/2022	Additional Window in Admin Building	$21,862.56			
	16	11/28/2022	Directionally Drill 10" MBR Drain Line	-$17,903.83			
	17	11/28/2022	Increase Size of Tunnel Opening at RWC	$3,835.98			
	19	12/22/2022	RFI No. 45 - Hardware Material Change	-$240,249.52			
3		6/22/2023	Wage Rate Update	$0.00	**Yes**	$0.00	$55,883,200.86
4	1	6/23/2023	Contaminated Soil Removal	$193,738.62	**Yes**	$265,957.79	$56,149,158.65
	6	6/23/2023	Additional Granular Fill	$72,219.17			
5	32	6/23/2023	Vaughan Price Escalation	$3,535.00	**Yes**	$3,535.00	$56,152,693.65
6	18	4/3/2023	Field Order No. 8	$60,677.57	**Yes**	$116,244.44	$56,268,938.09
	21	12/22/2022	Additional Pipe Support for Increased Size of Tunnel Opening at RV	$3,786.97			
	22	2/17/2023	FO #12 - Omit Ductwork in Tunnel between RWC and DTC	-$12,442.85			
	24	2/17/2023	Add MBR Blower Inlet Dampers	$2,042.52			
	26	3/7/2023	AB Blower Piping Expansion Joints	$34,243.47			
	27	4/3/2023	MLS Bonnetless Knife Gate Valves	-$49,439.50			
	29	4/12/2023	FSB Roof Drain Piping	$7,125.53			
	33	6/23/2023	RFI #117 - Weirs and Anchors	$13,435.27			
	34	6/23/2023	Field Order Directive #14	$3,659.69			
	35	6/23/2023	Field Order Directive #13	$33,902.50			
	36	6/23/2023	MBR Influent Channel additional grout	$16,029.48			
	37	6/23/2023	FSB Flexible Chutes	$3,223.79			
7	41	9/14/2023	Coating System Changes	$115,116.46	**Yes**	$115,116.46	$56,384,054.55
8	48	9/20/2023	Ductile Iron Pipe Price Escalation	$25,919.20	**Yes**	$25,919.20	$56,409,973.75

CO #	WCD No.	Date	Description	WCD Cost	Approved	CO Cost	Revised Contract Cost
9	23	7/31/2023	AB Blower Piping Change	$22,330.34	**Yes**	$85,144.89	$56,495,118.64
	38	6/29/2023	Hydronic System RFI #128 and #135	$10,786.50			
	39	9/11/2023	Field Order # 17- Tunnel Parapet and Lockers	$47,508.35			
	40	8/15/2023	Hydronic System Water Treatment	-$3,317.46			
	42	9/13/2023	FSB Chutes	$1,645.22			
	43	9/13/2023	RFI #154 - Fan Starters	$5,410.46			
	44	9/13/2023	Removal of Select Granual Fills	-$42,916.93			
	45	9/20/2023	MBR RAS Pump Discharge Reducers	$42,690.51			
	49	9/21/2023	Field Order # 19 - Plumbing Revisions	-$7,478.34			
	50	9/21/2023	Field Order # 20 - Admin Water Softener	$11,056.65			
	52	9/29/2023	Remove Handrail at AB basin	-$93,600.24			
	53	10/6/2023	Field Order 21 - AB Structural Changes	$17,335.49			
	54	9/29/2023	Field Order # 22 - Admin Hydronic System Piping	$20,874.24			
	56	10/13/2023	Asbestos Removal	$15,557.54			
	57	10/27/2023	Clean Aeration Basins	$29,931.27			
	60	10/31/2023	Replace Solenoid Valves for Existing MLS Screen	$7,331.29			
10	61	12/8/2023	Casework Material Change	$24,162.43	**No**	$191,149.45	$56,686,268.09
	62	12/8/2023	Field Order 23- Roof Drain Routing Insulation	$6,907.35			
	63	11/20/2023	OPU Water Hydrant	$4,757.48			
	64	12/8/2023	MBR Lab Vacuum Pump	$2,651.59			
	66	12/26/2023	MBR Masonry to Full Height Around Mechanical Room	$7,028.25			
	67	12/26/2023	STB Roof Insulation Depth Change	$56,756.00			
	68	1/2/2024	Door Changes	$83,704.09			
	69	1/4/2024	Additional Light Switches in MBR Cassette Room	$5,182.25			

WORK CHANGE DIRECTIVE NO.: 61

Owner:	City of Owatonna	Owner's Project No.:	17017
Engineer:	Nero Engineering	Engineer's Project No.:	10044
Contractor:	Rice Lake Construction Group	Contractor's Project No.:	2214
Project:	Owatonna WWTF Upgrade and Expansion		
Contract Name:	Owatonna WWTF Upgrade and Expansion		
Date Issued:		Effective Date of Work Change Directive:	1/30/2024

Contractor is directed to proceed promptly with the following change(s):

Description:

Change casework materials in the MBR lab and Administration Building kitchen, locker room, and bathrooms.

Attachments:

WCD #061 Proposal from Rice Lake.

Purpose for the Work Change Directive:

Upgrading the lab casework from wood to metal and the Admin building casework from P-lam to wood has a long-term benefit to the City as the proposed changes are more durable materials.

☐ Non-agreement on pricing of proposed change. ☒ Necessity to proceed for schedule or other reasons.

Estimated Change in Contract Price and Contract Times (non-binding, preliminary):

Contract Price:	$24,162.43	**[increase] ~~[decrease]~~ ~~[not yet estimated]~~.**
Contract Time:	0 days	**~~[increase]~~ ~~[decrease]~~ ~~[not yet estimated]~~.**

Basis of estimated change in Contract Price:

☒ Lump Sum ☐ Unit Price ☐ Cost of the Work ☐ Other

	Recommended by Engineer	Authorized by Owner
By:	Jennifer R Stevens	
Title:	Lead Process Engineer	
Date:	1/30/2024	

WORK CHANGE DIRECTIVE NO.: 62

Owner:	City of Owatonna	Owner's Project No.:	17017
Engineer:	Nero Engineering	Engineer's Project No.:	10044
Contractor:	Rice Lake Construction Group	Contractor's Project No.:	2214
Project:	Owatonna WWTF Upgrade and Expansion		
Contract Name:	Owatonna WWTF Upgrade and Expansion		
Date Issued:		Effective Date of Work Change Directive:	1/15/2024

Contractor is directed to proceed promptly with the following change(s):

Description:

Insulation for roof drain rerouting in FSB and MBR.

Attachments:

WCD #062 Proposal from Rice Lake.

Purpose for the Work Change Directive:

Field Order No. 23 detailed changes to the routing of roof drain piping in FSB and MBR. The cost changes for the piping were accounted for in WCD No. 29; however, the additional cost for insulation was not included. This WCD is for the cost of additional insulation.

☐ Non-agreement on pricing of proposed change. ☒ Necessity to proceed for schedule or other reasons.

Estimated Change in Contract Price and Contract Times (non-binding, preliminary):

Contract Price: $6,907.35 **[increase]** ~~**[decrease] [not yet estimated]**~~.

Contract Time: 0 days ~~**[increase] [decrease] [not yet estimated]**~~.

Basis of estimated change in Contract Price:

☒ Lump Sum ☐ Unit Price ☐ Cost of the Work ☐ Other

	Recommended by Engineer	Authorized by Owner
By:	Jennifer R Svennes	
Title:	Lead Process Engineer	
Date:	1/15/2024	

WORK CHANGE DIRECTIVE NO.: 63

Owner:	City of Owatonna	Owner's Project No.:	17017
Engineer:	Nero Engineering	Engineer's Project No.:	10044
Contractor:	Rice Lake Construction Group	Contractor's Project No.:	2214
Project:	Owatonna WWTF Upgrade and Expansion		
Contract Name:	Owatonna WWTF Upgrade and Expansion		
Date Issued:		Effective Date of Work Change Directive:	1/15/2024

Contractor is directed to proceed promptly with the following change(s):

Description:

OPU fee for new water hydrant.

Attachments:

WCD #063 Proposal from Rice Lake.

Purpose for the Work Change Directive:

The existing water hydrant on the east side of the WWTF site was intended to be reused, but during construction it was found to be defective. This WCD is for the replacement of that hydrant provided by OPU.

☐ Non-agreement on pricing of proposed change. ☒ Necessity to proceed for schedule or other reasons.

Estimated Change in Contract Price and Contract Times (non-binding, preliminary):

Contract Price: $4,757.48 **[increase] ~~[decrease] [not yet estimated]~~.**

Contract Time: 0 days **~~[increase] [decrease] [not yet estimated]~~.**

Basis of estimated change in Contract Price:

☒ Lump Sum ☐ Unit Price ☐ Cost of the Work ☐ Other

	Recommended by Engineer	Authorized by Owner
By:	Jennifer R Svennes	
Title:	Lead Process Engineer	
Date:	1/15/2024	

WORK CHANGE DIRECTIVE NO.: 64

Owner:	City of Owatonna	Owner's Project No.:	17017
Engineer:	Nero Engineering	Engineer's Project No.:	10044
Contractor:	Rice Lake Construction Group	Contractor's Project No.:	2214
Project:	Owatonna WWTF Upgrade and Expansion		
Contract Name:	Owatonna WWTF Upgrade and Expansion		
Date Issued:		Effective Date of Work Change Directive:	1/15/2024

Contractor is directed to proceed promptly with the following change(s):

Description:

Vacuum pump for lab.

Attachments:

WCD #064 Proposal from Rice Lake. RFI #156.

Purpose for the Work Change Directive:

The vacuum pump for the lab was shown on the plans but a specific model was not called out. This WCD is for the cost of the pump. The labor for installation was included in the original bid.

☐ Non-agreement on pricing of proposed change. ☒ Necessity to proceed for schedule or other reasons.

Estimated Change in Contract Price and Contract Times (non-binding, preliminary):

Contract Price: $2,651.59 **[increase]** ~~**[decrease] [not yet estimated]**~~.

Contract Time: 0 days ~~**[increase] [decrease] [not yet estimated]**~~.

Basis of estimated change in Contract Price:

☒ Lump Sum ☐ Unit Price ☐ Cost of the Work ☐ Other

	Recommended by Engineer	Authorized by Owner
By:	Jennifer R Svennes	
Title:	Lead Process Engineer	
Date:	1/15/2024	

WORK CHANGE DIRECTIVE NO.: 66

Owner:	City of Owatonna	Owner's Project No.:	17017
Engineer:	Nero Engineering	Engineer's Project No.:	10044
Contractor:	Rice Lake Construction Group	Contractor's Project No.:	2214
Project:	Owatonna WWTF Upgrade and Expansion		
Contract Name:	Owatonna WWTF Upgrade and Expansion		
Date Issued:		Effective Date of Work Change Directive:	1/15/2024

Contractor is directed to proceed promptly with the following change(s):

Description:

Masonry wall in MBR.

Attachments:

WCD #066 Proposal from Rice Lake. RFI #158.

Purpose for the Work Change Directive:

The height of a masonry wall between the lab and mechanical room was shown as 10 ft tall, but it needs to be 22 ft tall to extend to the roof and meet the fire rating requirements.

☐ Non-agreement on pricing of proposed change. ☒ Necessity to proceed for schedule or other reasons.

Estimated Change in Contract Price and Contract Times (non-binding, preliminary):

Contract Price:	$7,028.25	**[increase] ~~[decrease] [not yet estimated]~~.**
Contract Time:	0 days	**~~[increase] [decrease] [not yet estimated]~~.**

Basis of estimated change in Contract Price:

☒ Lump Sum ☐ Unit Price ☐ Cost of the Work ☐ Other

	Recommended by Engineer	Authorized by Owner
By:	Jennifer R Svennes	
Title:	Lead Process Engineer	
Date:	1/15/2024	

WORK CHANGE DIRECTIVE NO.: 67

Owner:	City of Owatonna	Owner's Project No.:	17017
Engineer:	Nero Engineering	Engineer's Project No.:	10044
Contractor:	Rice Lake Construction Group	Contractor's Project No.:	2214
Project:	Owatonna WWTF Upgrade and Expansion		
Contract Name:	Owatonna WWTF Upgrade and Expansion		
Date Issued:		Effective Date of Work Change Directive:	1/15/2024

Contractor is directed to proceed promptly with the following change(s):

Description:

STB roof insulation depth.

Attachments:

WCD #067 Proposal from Rice Lake. RFI #160.

Purpose for the Work Change Directive:

The STB roof was incorrectly shown as sloped on the architectural plans with 6" of insulation across its entirety. The roof is flat which requires the insulation to be sloped for proper drainage. To maintain the required R-30 insulation value for meeting building code requirements, additional insulation is required.

☐ Non-agreement on pricing of proposed change. ☒ Necessity to proceed for schedule or other reasons.

Estimated Change in Contract Price and Contract Times (non-binding, preliminary):

Contract Price:	$56,756.00	**[increase] ~~[decrease] [not yet estimated]~~.**
Contract Time:	0 days	**~~[increase] [decrease] [not yet estimated]~~.**

Basis of estimated change in Contract Price:

☒ Lump Sum ☐ Unit Price ☐ Cost of the Work ☐ Other

	Recommended by Engineer	Authorized by Owner
By:	Jennifer R Svennes	
Title:	Lead Process Engineer	
Date:	1/15/2024	

WORK CHANGE DIRECTIVE NO.: 68

Owner:	City of Owatonna	Owner's Project No.:	17017
Engineer:	Nero Engineering	Engineer's Project No.:	10044
Contractor:	Rice Lake Construction Group	Contractor's Project No.:	2214
Project:	Owatonna WWTF Upgrade and Expansion		
Contract Name:	Owatonna WWTF Upgrade and Expansion		
Date Issued:		Effective Date of Work Change Directive:	1/30/2024

Contractor is directed to proceed promptly with the following change(s):

Description:

Additional exterior doors and/or frames replacement. Additional electrical work for installing wires at doors and conduits to centralized locations in all buildings except the Main Lift Station and Dewatering Building at the WWTF.

Attachments:

WCD #068 Proposal from Rice Lake. RFI #147. Field Order #24.

Purpose for the Work Change Directive:

Part of these changes are for existing doors and or frames that were noticed to need replacement but weren't included in the design. There were also doors intended to have electrical wired at the doors for card readers now or future card readers that should have been included in the design. Option 2 includes electrical conduit to centralized locations in all buildings except MLS and the Dewatering Building. These buildings will be set up for Paape to add security easily.

☐ Non-agreement on pricing of proposed change. ☒ Necessity to proceed for schedule or other reasons.

Estimated Change in Contract Price and Contract Times (non-binding, preliminary):

Contract Price:	$83,704.09	**[increase]** ~~**[decrease] [not yet estimated]**~~.
Contract Time:	0 days	~~**[increase] [decrease] [not yet estimated]**~~.

Basis of estimated change in Contract Price:

☒ Lump Sum ☐ Unit Price ☐ Cost of the Work ☐ Other

	Recommended by Engineer	Authorized by Owner
By:	Jennifer R Svennes	
Title:	Lead Process Engineer	
Date:	1/30/2024	

WORK CHANGE DIRECTIVE NO.: 69

Owner:	City of Owatonna	Owner's Project No.:	17017
Engineer:	Nero Engineering	Engineer's Project No.:	10044
Contractor:	Rice Lake Construction Group	Contractor's Project No.:	2214
Project:	Owatonna WWTF Upgrade and Expansion		
Contract Name:	Owatonna WWTF Upgrade and Expansion		
Date Issued:		Effective Date of Work Change Directive:	1/15/2024

Contractor is directed to proceed promptly with the following change(s):

Description:

Additional light switches in the MBR cassette room.

Attachments:

WCD #069 Proposal from Rice Lake.

Purpose for the Work Change Directive:

The MBR cassette room is very large and two additional light switch locations (4 switches total) would be beneficial. Because the room is so large, the lights are on two different circuits which require more conduit and wire in addition to the already long runs.

☐ Non-agreement on pricing of proposed change. ☒ Necessity to proceed for schedule or other reasons.

Estimated Change in Contract Price and Contract Times (non-binding, preliminary):

Contract Price:	$5,182.25	[increase] ~~[decrease] [not yet estimated]~~.
Contract Time:	0 days	~~[increase] [decrease] [not yet estimated]~~.

Basis of estimated change in Contract Price:

☒ Lump Sum ☐ Unit Price ☐ Cost of the Work ☐ Other

	Recommended by Engineer	Authorized by Owner
By:	Jennifer R Svennes	
Title:	Lead Process Engineer	
Date:	1/15/2024	