CITY COUNCIL MEETING

MUNICIPAL CENTER COUNCIL CHAMBERS

1616 HUMBOLDT AVENUE, WEST ST. PAUL, MN 55118

VIRTUAL MEETING - Cable Channel 18 - www.townsquare.tv/webstreaming

MONDAY, MAY 11, 2020

6:30 P.M.

Due to the Spread of COVID-19, City of West St. Paul public meetings will be held virtually until further notice. Members of the public may monitor meetings by tuning in to Cable Channel 18 or online at www.townsquare.tv/webstreaming during the posted meeting times. Meetings can be viewed on-demand starting the day following the original airing at www.wspmn.gov/agendacenter. Items requesting public input will do so via telephone call-in during live broadcasts only. Please view meetings during their original posted times to participate.

1. **Call to Order**
2. **Roll Call**
3. **Pledge of Allegiance**
4. **Adopt the Agenda**
5. **OCWS Briefing**
6. **Citizen Comments**
   Individuals may address the City Council about any item not included on the regular agenda. Speakers are requested to come to the podium, state their name and address for the Clerk's record. Generally, the City Council will not take official action on items discussed at this time, but may typically refer the matter to staff for a future report or direct that the matter be scheduled on an upcoming agenda.
7. **Council Comments**
8. **Proclamations, Presentations and Recognitions**
9. **Consent Agenda**
   All items on the Consent Agenda are considered to be routine and have been made available to the City Council at least two days prior to the meeting; these items will be enacted by one motion. There will be no separate discussion of these items unless a Council member or citizen so requests, in which event the item will be removed from this agenda and considered under separate motion.

A. Minutes of April 27, 2020 - Regular Council

Documents:

04-27-20 COUNCIL MINUTES.PDF

B. List of Claims for May 11, 2020

Documents:

COUNCIL REPORT LIST OF CLAIMS 5.11.20.PDF

C. Rental Licensing

Documents:

COUNCIL REPORT - RENTAL LICENSING.PDF

D. Stipulated Settlement with Auto Zone, 1520 Robert Street

Documents:

COUNCIL REPORT - AUTO ZONE STIPULATION APPROVAL.PDF
ATTACHMENT - STIPULATION AND ORDER.PDF

E. Development Agreement between the City of West St. Paul and KTJ 339, LLC

Documents:

COUNCIL MEMO - THOMPSON OAKS DEV AGRMT 5-11-20.PDF
DEVELOPMENT AGREEMENT - OPPIDAN II - 4-27-20.PDF

F. Contract Extension with Rainbow Tree Care for EAB Treatments

Documents:

COUNCIL REPORT - EXTEND CONTRACT WITH RAINBOW TREE CARE.PDF
ATTACHMENT - EMERALD ASH BORER PROGRAM UPDATE.PDF
ATTACHMENT - RAINBOW TREE CARE 2017 CONTRACT.PDF

G. Materials Testing Contract for Dome Exit Stairs Project 20-5

Documents:

COUNCIL REPORT - MATERIALS TESTING CONTRACT CP 20-5.PDF
ATTACHMENT - WSB CP 20-5 MATERIALS TESTING PROPOSAL.PDF

H. Agreement with the Dakota Broad Band

Documents:

COUNCIL REPORT - AGREEMENT WITH DAKOTA BROAD BAND.PDF
DBB INDEFEASIBLE RIGHT OF USE FEBRUARY 2020.PDF

I. Lease Amendment with New Cingular Wireless PCS, LLC

Documents:

COUNCIL REPORT - LEASE AMENDMENT NEW CINGULAR WIRELESS.PDF
ATTACHMENT - LEASE AMENDMENT 3.PDF

J. Art Park Metropolitan Regional Arts Council Grant

Documents:

COUNCIL REPORT - ART PARK METROPOLITAN REGIONAL ARTS COUNCIL GRANT.PDF
ATTACHMENT - SAMPLE MOSAIC SCULPTURE.PDF

10. **Public Hearing**

11. **New Business**

    A. First Reading - Vacation of Unbuilt Right-of-Way South of Crusader and West of Stryker

        Documents:

        COUNCIL REPORT - UNBUILT ROW VACATION.PDF
        ATTACHMENT - UNBUILT ROW VACATION.PDF
        ORDINANCE - UNBUILT ROW VACATION.PDF

    B. First Reading of Amendment to the Food Truck Ordinance

        Documents:

        COUNCIL REPORT - FOOD TRUCK ORDINANCE AMENDMENT.PDF
        ORDINANCE - AMENDING SECT 111.01(B) RE FOOD VENDING AND ENACTING SECT 111.01(B) RE MOBILE FOOD UNITS.PDF

12. **Old Business**

13. **Adjourn**

If you need an accommodation to participate in the meeting, please contact the ADA Coordinator at 651-552-4108 or email ADA@wspmn.gov at least 5 business days prior to the meeting
www.wspmn.gov EOE/AA

City of West St. Paul
City Council Meeting Minutes
April 27, 2020

1. Call to Order

Mayor Napier called the meeting to order at 6:30 p.m.

2. Roll Call

Present:	Mayor Dave Napier Councilmembers Wendy Berry, Lisa Eng-Sarne, Anthony Fernandez, John Justen, Bob Pace and Dick Vitelli
Absent:	None
Others Present:	City Manager Ryan Schroeder City Attorney Kori Land Police Chief Brian Sturgeon Finance Director Char Stark Parks & Public Works Director/City Engineer Ross Beckwith Assistant Parks & Recreation Director Dave Schletty Community Development Director Jim Hartshorn Human Resources Director Debra Gieseke Marketing & Communications Manager Dan Nowicki City Clerk Shirley Buecksler

Mayor Napier stated that tonight's meeting will be conducted virtually and described the process for citizens to view the meeting and call in with questions and comments.

3. Pledge of Allegiance

4. Adopt the Agenda

Motion was made by Councilmember Vitelli and seconded by Councilmember Justen to adopt the agenda, as presented.

Vote: 6 ayes / 0 nays. Motion carried.

5. OCWS Briefing

An Open Council Work Session was not held.

6. Citizen Comments

Mayor Napier opened the access line (651-259-2674) for citizens to call in with comments, questions and concerns.

Marketing & Communications Manager Nowicki tested it from an outside line prior to the meeting to be sure it was working.

Calls and Comments Received:

- Julie Eastman, Ward 1, called with four questions:

    1) Will the State of the City be postponed or permanently cancelled?

       Mayor Napier responded and said the State of the City will be taped next week and broadcast on a date yet to be determined. Pay attention to the City's website and watch for notices through the City's Facebook page on when it will be broadcast to the community.

    2) The national organization for National Night Out posted a suggestion to move these events from Tuesday, August 4, 2020 to Tuesday, October 6, 2020. Will the City be moving it to the suggested date?

       City Manager Schroeder said the City has cancelled everything through June. We will continue to pay attention to the Governor's orders and move it if we need to.

       Mayor Napier said this is a great question and we look forward to this event every year. He added that the we will keep the community informed of any changes to this event.

    3) In regards to financial projections for the City, do you have an update on any impacts to funding for the lift station?

       Mayor Napier said the City Manager is laying our financial projections and impacts that we are dealing with right now with our current situation and this will play into that, especially at the State level with their funding. Our hope is something comes through for us because we cannot afford to wait longer with that project. We hope to put things together in a package that clearly indicates where we need support. The State budget projections are due to come out next week, he said. Governor Walz has done a fantastic job leading and getting information out to us as City leaders to try to keep things as relatively in our community and as positive as possible but, yet, taking it serious and focusing in things that are important to get us through this situation.

    4) The documents for the Thompson Oaks Town Home Development discuss developing 64 town homes but the exhibit only shows 60 town homes.

       Mayor Napier said we will talk about it during the discussion of this item on tonight's agenda.

After an extended waiting period and with no other calls received, Mayor Napier closed Citizen Comments and the access line was also closed.

7. Council Comments

Councilmember Berry thanked Staff for their behind the scenes work. She also thanked everyone in the community for stepping up to help raise money and bringing dinner for folks. It's great to see every day. If you're down about things, right now there are so many good things on social media showing what people are doing for each other that, sometimes, it feels really good to log on and see what kind of community we are a part of. She encouraged everyone to keep doing that.

Councilmember Eng-Sarne thanked everyone for tuning in tonight. Good job to everyone on social distancing, organizing fundraisers and spreading cheer throughout the community. Thank you to all of the citizens who are making masks. South Metro Fire Department at both Stations 1 and 2 collected a lot of those masks.

Councilmember Eng-Sarne said this Council and our talented City employees are thinking creatively about how we can continue to move forward and better the city, as plans and projections continue to shift. Thanks for tuning in and thanks for being adaptable with us.

Councilmember Vitelli expressed his gratitude for our Governor. We are very fortunate to live in a state that has a Governor who is expressive and can think on his feet. We are in good shape because of him.

Councilmember Justen said we are a week away from, optimistically, the re-opening of small local businesses. Please come out and support those businesses. Also, he asked everyone to understand that if there is a business staying closed and following the Governor's orders, they are doing it for both their safety and yours. We are doing our best to keep our businesses and our community safe.

Mayor Napier said the Planning Commission held their annual elections at their May 19th meeting. He acknowledged Morgan Kavanaugh as the outgoing Chair and thanked him for his leadership and service as Chair over the last three years. Thank you to all Planning Commissioners and welcome to Samantha Green as the new Chair to provide leadership to this Commission.

Mayor Napier said he and other Councilmembers were on a webinar with Governor Walz on Friday. The Governor provided updates to each City to discuss some of the things they're doing at the State level that will trickle down to support the City of West St. Paul and other Cities. The Governor is working hard to get Federal relief funds to support our City and has requested that we determine how those funds will be used for our city. City Manager Schroeder is putting together a package of projections and revenue deficiencies based on what is going on and, hopefully, we will be able to put this together in a package that is clear and understood of where we need support. Mayor Napier thanked City Manager Schroeder for doing this. The State's budget projections is due to come out next week, which will help them determine where they are at and how they need to allocate funds.

Mayor Napier said Governor Walz is pushing hard to make sure there is a bonding bill this year. It's important for the Governor and the Legislators to get together to pass a bonding bill. Mayor Napier echoed Councilmember Vitelli's comments and said Governor Walz has done a great job leading our state and has really helped get information out to us as City leaders to

try to keep things as relatively normal in our community and as positive as possible but, yet, taking it seriously and focusing on the things that are important to get through this situation.

Mayor Napier said Congresswoman Angie Craig and Senator Tina Smith are hosting a webinar on Small Business Administration (SBA) loans, personal protective equipment (PPE), the healthcare enhancement act, and the unemployment situation. It's important as City leaders to be on top of this and pay attention to it. We owe it to our community and our residents that we are on top of it and come out of this with as little damage as possible. City Manager Schroeder and Finance Director Stark have done an incredible job staying ahead of it and knowing where we are at. We don't want to dip into our reserves and leave ourselves short. Mayor Napier thanked them and said he appreciates what they are doing.

Mayor Napier said candidate filings for upcoming elections will be open on Tuesday, May 19. The deadline for candidates to file for election is Tuesday, June 2, at 5:00 p.m. Anyone interested in filling the open positions, please note those dates. Visit the City's website at www.wspmn.gov\Elections or contact City Clerk Shirley Buecksler at 651-552-4102 for more information.

8. Proclamations, Presentations and Recognitions

A. Donation to the City from South Robert Street Business Association

City Manager Schroeder said we are grateful that the South Robert Street Business Association has found an opportunity to donate to the volunteer program, and we thank them for their donation of $1,000.00.

Mayor Napier thanked South Robert Street Business Association for their generous donation.

Motion was made by Councilmember Eng-Sarne and seconded by Councilmember Berry to adopt Resolution No. 020-043 Accepting Donations to the City.

Vote: 6 ayes / 0 nays. Motion carried.

9. Consent Agenda

Motion was made by Councilmember Vitelli and seconded by Councilmember Berry to approve the following items on the Consent Agenda, as presented:

A. Minutes of April 13, 2020 for:
- Regular City Council Meeting

B. List of Claims in the Amount of $956,772.06

C. 2020-2021 General Services Pay Plan Amendment, Including:
- Resolution No. 20-044 Amending the General Service Hourly Employee Pay Plan
- Resolution No. 20-045 Amending the General Service Salaried Employee Pay Plan

D. Rental Licensing in the Amount of $637.50 for:
- 57/59 Logan Avenue West (Duplex – Renewal)
- 864/866 Dodd Road (Duplex – Renewal)
- 1266/1268 Kruse Street (Duplex – Renewal)

- 434/436 Arion Street East (Duplex – Renewal)
- 1812 Humboldt Avenue (Townhome – Renewal)
- 111 Imperial Drive West #302 (Condo – Renewal)
- 1243 Cherokee Avenue (Single Family – New)
- 186 Logan Avenue West (Single Family – Renewal)
- 1351 Cherokee Avenue (Single Family – Renewal)

E. Resolution No. 20-046 Memorializing the Findings of Fact and Reasons for Denial Relating to the Rental License Application for 224 Thompson Avenue East, West St. Paul

F. Purchase of Outlot B from Hy-Vee, Inc.

Vote: 6 ayes / 0 nays. Motion carried.

10. Public Hearings

A. Site Plan, Preliminary and Final Plat Review for the Construction of a Climate Controlled Storage Building at 1665 Oakdale Avenue – More Space, LLC

Community Development Director Hartshorn said that, based on site alteration recommendations from City Staff and the Dakota County Plat Commission, the Applicant has requested the review be continued to the May 19, 2020 Planning Commission meeting and the May 26, 2020 City Council meeting. This will allow the Applicant additional time to incorporate the requested changes to the site plan and preliminary and final plat.

Motion was made by Councilmember Vitelli and seconded by Councilmember Eng-Sarne to continue this item to the May 19, 2020 Planning Commission meeting and the May 26, 2020 City Council meeting, at which the Public Hearing will be held.

Vote: 6 ayes / 0 nays. Motion carried.

B. Final Plat Review for One Parcel Located at 110 Crusader Avenue West – Net Ministries

Community Development Director Hartshorn presented. On March 23rd, the City Council reviewed and voted to approve the site plan and preliminary plat for an expansion of an existing building at 110 Crusader Avenue West, Net Ministries. The final plat has since been submitted and Net Ministries is now requesting approval of the final plat application.

Mayor Napier opened the Public Hearing at 6:56 p.m.

Receiving no calls from anyone wishing to speak, Mayor Napier closed the Public Hearing at 6:58 p.m.

Motion was made by Councilmember Vitelli and seconded by Councilmember Pace to adopt Resolution No. 20-045 Approving the Final Plat for 110 Crusader Avenue, Net Ministries.

Vote: 6 ayes / 0 nays. Motion carried.

11. New Business

A. Financial Update with Projections

Finance Director Stark provided an update for the Council on the current financial position of several of our key funds that have been impacted by the Statewide shut down due to the coronavirus.

A timeline of Governor Walz's executive orders include:

- March 13: Executive Order 20-01 Governor Waltz declared peacetime emergency.
- March 15: Executive Order 20-02 Ordering of the shutdown of schools to begin March 18 or sooner.
- March 16: Executive Order 20-04 Ordering the closing of restaurants and bars.
- March 18: City closed City hall and moved information to the lobby for citizens to request licenses, permits and conduct other City business with email, telephone or walk-in to the lobby and utilize the phone system set up in the lobby.
- March 25: Executive order 20-20 Directing Minnesotans to stay at Home. Non-essential business were closed per this order.
- March 30: City Staff began to work from home via WebEx and email.

The City followed this direction and shut down the Civic Arena, Dome and cancelled park and recreation events through May, as well as the City Open House, State of the City and other outreach programs for the months of April and May. Attached to this document is a summary of the General Fund, Civic Arena Fund and the Recreational Athletic Complex (RAC) Fund. These funds have had the most impact due to shutting down of programs that produce revenue to fund the various activities. While some programs have offsetting expense savings that cover some of the revenue losses, the RAC fund has substantial revenue losses that will affect the cash flow of that fund.
The projections are out until September. While, at this time, we do not anticipate the shutdown lasting that long, the impact of late starts to programming may end up affecting the City out until that time.

General Fund
There are several open positions that have been left unfilled due to the shutdown. These positions are providing a significant savings to the General Fund for the time being. These savings are offsetting the loss of park and recreation programming revenue.

Civic Arena
Upon closing of the arena, the two arena employees were transferred to the street department for the period of the ongoing shutdown. This will allow the loss of the revenues from summer programming to be absorbed by the transferring of the personnel costs to the General Fund and allowing for continued employment of these City employees, as well as providing additional staff support in the street department.

RAC (Recreational Athletic Complex)

The closing of the RAC has the largest impact to the City's finances, as the savings from not paying contracted services does not outweigh the income from the summer programs. A continued shutdown for this program will have even larger impacts as the fall/winter programs bring in the bulk of the revenues for this fund. Possible funding for this shortage is current cash balance of the fund, while not meeting the cash goal set for the fund is healthy enough to withstand some reduction on a short-term basis. Eliminate the $50,000 transfer to the General Fund in 2020 and in 2021. The other option is discussed below in the debt section of this memo.

Debt

As part of the financial plan, City management has a goal to lower the City's outstanding debt as expediently as possible but without harm to the City's cash flow. The plan was to call the 2013 bond in August. A decision on this piece will need to be made before the second Council meeting in May. If not called, the money that has accumulated can be utilized for other needs per Council directive. By not calling the bonds, this allows the City to have some flexibility in options to consider. The road construction program and the RAC fund are two likely candidates for reallocation of this money.

CIP-CEP (Capital Improvement Plan – Capital Equipment Plan)

The equipment and infrastructure needs of the City are largely funded by Local Government Aid (LGA), utility franchise fee, and sales tax. The two revenue sources that may be impacted by the shutdown is the LGA and the sales tax. Because of that possibility, an outline of potential changes to the CEP-CIP are as follows:

Road construction projects are being largely funded by the newly enacted city local sales tax. The collections began in January of this year. As anticipated, the January through February collections are being collected at a slower pace, as the business community gets the sales tax added to their collection systems. With the coronavirus pandemic, the slowdown may continue through September. This will result in a cash flow situation for the road construction project in 2021.

Equipment replacement is largely funded by the LGA. In the past, when the economy has slowed, the State has had to reduce the funding to the Cities, sometimes at the end of the calendar year. If that were to happen at the end of this calendar year, a list of possible reductions/deferment is provided in order for us to be proactive in a reduction to cash flow in the vehicle and equipment fund.

In the 2020 budget, possible un-allocating of LGA to the following would decrease the impact to current operations but would impact future plans or delay the financial goal of increasing cash flow:

- $180,000 in the debt reduction
- $ 80,000 warming house replacement

In the 2021 budget (in the order of preference):

- $100,000 in the City Hall replacement (partial reduction)
- $100,000 in the debt reduction fund
- $ 58,000 for the pool equipment/amenities. Delay in improvements/repairs.
- Warming house replacement: $90,000 and $100,000 in 2022.

Motion was made by Councilmember Vitelli and seconded by Councilmember Eng-Sarne to hold off on calling the bonds until 2021.

Vote: 6 ayes / 0 nays. Motion carried.

Motion was made by Councilmember Justen and seconded by Councilmember Pace to adjust the budget in the General Fund and the RAC Fund for the $50,000 transfer from the RAC to the General Fund.

Vote: 6 ayes / 0 nays. Motion carried.

B. Park and Recreation Modifications Due to COVID-19

Assistant Park and Recreation Director Schletty said the COVID-19 pandemic has caused us to modify and change the way we do our jobs and live our lives. As we continue to move forward and look ahead to summer, the Parks and Recreation Department is planning for what comes next. Our normal preparations and planning for summer programs and activities are on hold. Based on the information that is currently available about the spread of COVID-19, Staff believes that the City will need to cancel, or at least postpone City-sponsored events and recreational opportunities until July 6th. Therefore, Staff is recommending the following modifications and cancellations:

- The City's summer field trips, sports camps and playground programs through July 6th are cancelled.
- Movies in the Park in June are cancelled, with July and August events to be updated in June.
- The Ice Arena, Pool, Splashpad, Harmon Neighborhood Center and Thompson Park Activity Center will remain closed until further notice and restrictions from the Governor's orders are lifted.

There has also been great interest in the use of the City's play fields by youth and adult users groups. The City has received several requests from parents and members of organized sports to allow the use of fields, if the City-sponsored teams are not going to use them. In those regards, Staff is recommending the following:

- The City will abide by the Governor's orders regarding the spread of COVID-19. Most of the current restrictions, which have been imposed by Governor Walz, are valid through May 4th. At that time, they may be extended, removed, or otherwise modified. When those orders do allow for team play, it will then take the City approximately two weeks to make the facilities usable by sports groups.

- Require organized user groups to provide the City with documentation that acknowledges the requirement to follow the Governor's orders and CDC distancing guidelines, and a process that demonstrates the leadership of the organization has communicated that expectation to all players, coaches, officials, administration, employees, volunteers, fans, or other representatives of the organization.
- Fields will remain closed to organized groups until both of the above recommendations are met.

These recommendations fall in line with many other Cities in the metro area. The COVID-19 situation has been fluid, and any changes to the current pandemic situation in Minnesota and West St. Paul could affect these recommendations either way, Schletty said.

Motion was made by Councilmember Berry and seconded by Councilmember Vitelli to accept the recommendations, as presented.

Vote: 6 ayes / 0 nays. Motion carried.

C. Authorization to Apply for Cleanup Grants at Thompson Oaks

Over the past four years, City Manager Schroeder said the City has been focused on reconfiguration of the former Thompson Oaks Golf Course into an environmental resource enhanced by development opportunities on its periphery. Prior to development in the area, a stream existed on this property. That stream was filled in with organics and construction debris over the decades, with a portion of that fill being identified as contaminants. In collaboration with Dakota County, the City has the opportunity to remove buried debris, which allows for the return of the streambed to create an environmental resource that meets several local, county and regional goals. Included would be provision of storm water quality enhancement for a 540-acre sub watershed that drains through the property. Also included would be an extension of the River-to-River Trailway between Livingston and Robert Streets to the intersection of Thompson and Oakdale. Also included is facilitation of an approved 153-unit apartment building and a proposed 64-unit townhome development. Outside of these two developments, the property would be returned to its pre-1960 condition as a wetland/waterway with the addition of creation of pollinator spaces.

However, to accomplish these goals identified as highly desired by the City Council, County Board, and the surrounding community (through public hearing testimony), the project needs to cover funding gaps. In order to cover the anticipated costs of the cleanup, Staff is requesting authorization, again, for a grant from Minnesota Department of Employment and Economic Development (DEED). Council approved a similar request during 2019, which did not receive funding approval. The project has improved since the 2019 request.

Improvements in this project since the 2019 request include:

1. Receipt of Minnesota Board of Water & Soil Resources (BWSR) grant funding by the County to conduct the storm water work once the debris and contamination is removed. Daylighting of creek and wetland restoration includes removal of fill, which includes waste and contaminated soil so it is necessary to gain the DEED grant in order to make use of the BWSR funding. This coordination of funders with matches provided by the City and County has been contemplated throughout project finance scenarios. The contamination clean-up allows for the storm water treatment and wetland restoration to occur, creek to be delighted, the trail to be built, prairie/pollinator habitat restored, groundwater recharged, and townhomes developed. The environmental and economic benefits to the clean-up are significant.

   Of note is that the BWSR grant requires a local match. Under the County/City Joint Powers Agreement (JPA) that match is shared with Dakota County and the City of West St. Paul both providing $98,000. The City match is included within the 2020 Capital Improvement Plan (CIP).

2. December 9, 2019 City Council approval of amendments to the County/City JPA regarding the $6.1 million River-to-River Trailway project which provides for construction of the tunnel under Robert Street and trailway from Livingston to Oakdale. The tunnel portion of the project, located at Crawford Drive and Robert Street, is essentially the final element of the 2014-2017 $46 million Robert Street (State Highway 3) reconstruction toward which the City of West St. Paul has contributed $26 million. Included in the tunnel is $2.2 million in State bond funding. The County will bid the tunnel project in June.

3. The December 9, 2019 zoning text amendment, that allows Auto Zone to relocate from the River-to-River Trailway site to a new location at 1422 Robert Street.

4. Receipt of a Minnesota Statewide Health Improvement Partnership (SHIP) grant, which allows for preliminary analysis and engineering for pedestrian trailways on Thompson Avenue (CR6) between Robert and Oakdale (extending ultimately into South St. Paul), and on Oakdale Avenue (CSAH 73) from there up to Butler (CR4) and, ultimately, Annapolis which borders St. Paul. Council received the feasibility report on these projects on March 23, 2020. On that same date, Council authorized request of a Federal Transportation Alternatives Program (TAP) grant for funding of the trailway construction.

5. The $375,000 acquisition by the City of West St. Paul of the remnant Wentworth Townhome property which allows for County acquisition of a $120,000 trail right-of-way acquisition from this parcel and use of the remainder of the parcel for construction staging for the tunnel project.

6. The March 23, 2020 replat of the Hy-Vee parcel, which also contributes positively toward the tunnel project construction, which eliminates uncertainty in development grades between the tunnel project and the Hy-Vee construction project allowing the Hy-Vee project to also proceed.

7. Completion of the Wentworth Avenue (CSAH 8) reconstruction project in late 2019, including trailway construction from Delaware Avenue (CSAH 63) to Humboldt Avenue, which allows for connection to the River-to-River Trailway. This spring, the 174 unit Winslow affordable senior housing project opens at Marthaler Lane and Wentworth. The County, also this spring, will be constructing a harbor island at that location which also connects to trailway on Wentworth.

On November 13, 2017 in a workshop, the City Council discussed the future of the then Thompson Oaks Golf Course and directed Staff to seek environmental review of the property. On November 27, 2017, Council awarded a contract to Braun to conduct that review. Upon receipt of the Braun report and resulting from operating results, the City Council officially closed the golf course on February 26, 2018. In anticipation of this action, Staff began seeking developer interest in the property from the November 2017 Council deliberation. Staff began review of concepts for a range of development proposals from 6.5 to 11 units per acre up to 180 units over a significant portion of the property.

While the City had previously been aware of soils challenges within the property, it became increasingly apparent that initial development goals and patterns would not be successful due to the extent of soils incompatibility. After proposing several development concepts between November 2017 and early 2018, a preferred national homebuilder (among other interested parties) backed away from the project due to soil remediation risks. A second national builder entertained a development with a caveat of avoidance of the central portion of the site where soils were known to be most incompatible. That developer withdrew a purchase offer in mid-2018 due to soils remediation concerns.

In October 2018, the City and Dakota County entered a Joint Powers Agreement toward development of a regional trailway, storm water and wetland reclamation improvements. A third developer, Oppidan, presented their qualifications to the Council on November 28, 2018. Council affirmed the development vision Oppidan had for the property, which was concept reviewed on February 8, 2019. Included was a multi-family product on the western portion of the property with townhomes on the balance. On April 17, 2019, Oppidan received Geotechnical reporting that informed that the northern portion of the property slated for senior villas could not proceed due to the expense of soil incompatibility.

In May 2019, the County contracted with Wenck Engineering to provide concept design for storm water improvements and wetland restoration within the property. Wenck provided concept designs in June/July 2019.

On July 8, 2019, the Economic Development Authority (EDA) approved a development agreement with Oppidan on phase one of the development parcel, which was the multi-family product on the western 5 acres of the parcel. On August 12, 2019, the City Council received a presentation on the status of the wetland restoration project and on September 9, 2019, the City Council accepted the Metropolitan Council approval of the Comprehensive Plan and approved implementation of the plan. On October 15, 2019, the Planning Commission recommended approval of a rezoning, conditional use, site plan and plat for the Oppidan multi-family development approved by Council on November 25, 2019.

On October 14, 2019, the EDA approved a preliminary development agreement for phase 2 of the Thompson Oaks development. This phase consisted of between 20 and 40 townhome units on the eastern portion of the development parcel. As part of this agreement, the parties agreed to collaborate toward completion of the water restoration project within the parcel. On October 28, 2019, the Council approved a submittal for funding toward the restoration project. This submittal did not receive funding.

Since the 2019 application, the City granted final development entitlements for the 153 unit multi-family project, which occurred on November 25, 2019. That project is currently scheduled to close on the development parcel on or before September 1, 2020. It will have a taxable value of at least $18,480,000. A development agreement following the October 14, 2019 preliminary agreement is scheduled for April 27, 2020 approval. With additional site evaluation, that development has now changed to 64 townhome units with an estimated taxable value, in total, of $21, 400,000.

Supporting this grant request is the following:

1. Potential increase in the property tax base:
   - Currently the former golf course property does not pay property tax. After completion of the multi-family project and the townhomes, there should be a taxable market value created of almost $40 million with a taxable tax capacity of almost $500,000.
   - The adjacent former YMCA property, which is intimately tied to this project, also has not contributed to the property tax base in the past and will instead have a taxable value of about $7 million (tax capacity value of about $140,000) and will be home to over 200 new jobs.

2. Social value to the community:
   - The project is not only shovel ready, as the engineering is substantially complete, but it will leverage past and current investments in the area and ongoing collaboration between the County and City to complete the River-to-River Trailway, to address storm water needs provided by the BWSR grant already in hand, and removal of debris that for decades has kept this property from contributing an economic return to the community.
   - The 153 unit apartment project approved for 2020 construction included both the River-to-River Trailway and this storm water reclamation debris/contamination removal within development planning.
   - The 64 unit townhome development would not occur but for reclamation of this property and debris and contamination removal
   - These two housing projects are expected to create a significant number of construction jobs and the adjacent Hy-Vee project will contribute over 200 permanent jobs that currently do not exist on site.
   - A large advantage of the contamination removal is that it provides the opportunity to leverage the BWSR funding to reclaim the area as an environmental and water resource. For the past 70 years and probably longer, the general public has not had access to the ponding and landscape on this property. With completion of this project, including contaminant removal,

storm ponding reclamation and the River-to-River Trailway, the public access will be made available for the first time.

- Contributors to date for improvements to this area include the County and City making significant investments in roadway, trail, and development sites, BWSR as the funder for the storm water improvements with funding participation from the City and County, both the Federal and State governments on River-to-River Trailway funding, and the private sector with project funding of both retail and housing developments on this site and adjacent sites.

3. Reduction of potential threat to human health and the environment:
   - The DEED funding allows for the BWSR funded project to proceed. That project provides for the singular water quality facility for a sub watershed of 540 acres that is 40% impervious. An enclosed exhibit denotes that a significant portion of storm water from roadways and developed property within West St. Paul traverses through this contaminated site on its way to the Mississippi River. A significant consideration of the storm water project design relates to elimination of contaminants from this storm water flow.
   - Contaminants identified within this site as identified in multiple environmental reviews over many years will be removed as a result of this project.

4. The "but for" test:
   - The City has worked with multiple national and local developers to create an economic development project for this property over the past four years. Ultimately, each of these developers have rejected the site due to uncertainty created by soil contamination and debris. The current development scenario is only possible due to the coordination of the City and County, the BWSR funded project and the proposed DEED funding that removes that development uncertainty.
   - Without the DEED funding, the site does not have an economic value for development. With the DEED contribution, on top of the myriad investments already made and scheduled to be made by the City and County, the site will be an economic contributor to the various local taxing jurisdictions. With the DEED contribution, the City will be able to realize a market sale of the property proceeds from which will be returned to the community to complete roadway and trailway infrastructure improvements in the area.

5. Cleanup costs for the site:
   - The cleanup costs of approximately $1.76 million are requested to be funded by DEED at about $1.32 million with the balance being funded locally. The DEED grant allows the City and County to make use of the BWSR grant for which both the City and County are contributing the required match. The DEED investment leverages at least $40,000,000 in private investment, in addition to the BWSR and local investments.

6. Commitment of the City and County:
   - The City and County are contributing about $200,000 to match the BWSR grant that can only be put to use with removal of the on-site contaminants first.

- The City, as part of the funding authorization, is committing to the DEED grant required 25% match through creation of an tax abatement district supplemented by use of land sale proceeds to the extent necessary.
- The City has already contributed $26 million toward improvements of State Highway 3 (Robert Street) which is adjacent to this site.
- The City and County in 2019 completed a $2.3 million trail improvement project on Marie and Oakdale Avenues, a portion of which is adjacent to this site.
- The City and County are jointly developing the $6 million River-to-River tunnel and trail project, a significant portion of which is locally funded and which will be constructed on the former Thompson Oaks Golf Course property after completion of the contamination removal proposed by this grant request.
- The City Council has authorized a TAP grant request to complete trails on the adjacent Thompson Avenue and Oakdale Avenue from this site to the north, with a local match requirement, which will further provide a public benefit and further leverage the requested DEED investment.

Proceeds from the sale of the property will be used to pay off deferred debt from the former golf course, to provide the local match for a TAP grant request for trailway on Oakdale and Thompson, and to cover costs of the Town Center redevelopment site as the third phase of this development. The City has allocated storm water funds as the match for the BWSR grant that will complete storm water infrastructure, should the DEED funding be received.

Included in both the development agreement for this site and the DEED grant application is the creation of an abatement district to provide the funding source for the wetland reclamation match requirement in the same manner as was created for the multi-family development project on the west side of Thompson Oaks. With the development as proposed with a build out by 2024, a 9-year abatement district is projected to create about $644,000 in abatement capacity with a present value of about $490,000.

The grant request is for $1,322,027.25 with a match of $440,675.25. Staff recommends that the City Council approve the resolution authorizing the City to apply for a DEED cleanup grant at Thompson Oaks. In approving the grant request, the Council would also be committing to ensuring the local match as outlined above.

Motion was made by Councilmember Justen and seconded by Councilmember Pace to adopt Resolution No. 20-048 Approving Application to Minnesota Department of Employment and Economic Development (DEED) for Contamination and Clean Up Funding and Committing Local Match and Authorizing Contract Signature.

Vote: 6 ayes / 0 nays. Motion carried.

12. Old Business

There was no old business to discuss.

13. Adjourn

In closing, Mayor Napier thanked South Metro Fire and West St. Paul Police Departments, our Building Officials, Office Staff, everyone that is working so hard to go through this, our Parks and Recreation Staff, and Public Works, who are still out patching streets and doing street sweeping. So many great things are happening in our city that we have to look for the positive things. We are able to do so much and it is all with the dedicated team we have. We have a dedicated Council that are out there answering tough questions, social distancing, and seeing people on their walks. Thank you to everyone for keeping upbeat and positive. We will get through this, and we need to support the community in this effort. Thank you.

Councilmember Eng-Sarne said if you're having any trouble finding any services you need right now, contact one of your Councilmembers and we can put you in contact with the right person to get whatever it is you need. We are still waiting on a lot from the State, the early Federal things that have been passed haven't really helped the City, so we are hoping that will change and that the State will help, as well. She said she has really been thinking about our community and anyone who may be struggling to make rent or buy food. Contact your Councilmember and we will find the right person to get you what you need, as best we can.

Mayor Napier said he will attend the webinar hosted by Congresswoman Angie Craig and Senator Tina Smith. They are committed to helping the communities they represent and are on our side at the Capitol, as well as in Washington, DC, trying to get Federal monies. Reach out to them if you have any questions, concerns or ideas because they are here for us.

Mayor Napier thanked everyone for being here tonight and thanked Dan Nowicki, our technical advisor this evening, and all that he does.

Motion was made by Councilmember Vitelli and seconded by Councilmember Fernandez to adjourn the meeting at 7:41 p.m.

Vote: 6 ayes / 0 nays. Meeting adjourned.

David J. Napier
Mayor
City of West St. Paul

CITY OF WEST ST. PAUL

City Council Report

To: **Mayor and City Council**

Through: **Ryan Schroeder, City Manager**

From: **Char Stark, Finance Director**

Date: May 11, 2020

List of Claims

BACKGROUND INFORMATION:

Invoices to be paid

FISCAL IMPACT:

$955,080.49

STAFF RECOMMENDATION:

Approve payment of the attached

CITY OF WEST ST PAUL

Summary of List of Claims

Council Meeting of May 11, 2020

PAYROLL CHECK REGISTER:

Payroll Period	4/20/20 - 5/3/20	
Date Paid	5/8/2020	
Direct Deposit		$153,698.09
Payroll Period		
Date Paid		
Direct Deposit		
TOTAL NET PAYROLL		$153,698.09

DISBURSEMENT CHECK REGISTER:

Checks	132265 - 132356	$497,644.98
EFTS	831 - 857	$303,737.42
TOTAL DISBURSEMENT CHECKS		$801,382.40
TOTAL PAYROLL, DISBURSEMENTS, ACH AND WIRE TRANSFERS		$955,080.49

CITY OF W.S.P

Payment Register

From Payment Date: 4/29/2020 - To Payment Date: 5/11/2020

Number	Date	Payee Name	Transaction Amount
AP-1 - Accounts Payable			
Check			
132265	04/29/2020	KIRCHER, AMY	$1,446.20
132266	05/11/2020	ABLE FENCE	$490.00
132267	05/11/2020	AMAZON BUSINESS	$537.05
132268	05/11/2020	BELAIR, HEIDI, FIRE	$42.00
132269	05/11/2020	BIRD ULTIMATE	$581.18
132270	05/11/2020	BLUE OX HEATING & AIR LLC	$132.00
132271	05/11/2020	BOND TRUST SERVICES	$5,325.00
132272	05/11/2020	BOYER FORD TRUCKS INC	$238.14
132273	05/11/2020	BROOKER, ERIC & JEN	$626.85
132274	05/11/2020	CAPRA'S UTILITIES	$11,627.81
132275	05/11/2020	CENTURYLINK	$631.25
132276	05/11/2020	CHLIC-BLOOMFIELD EASC	$3,005.10
132277	05/11/2020	CINTAS CORPORATION	$154.07
132278	05/11/2020	CLAPPING, KRONGTHONG	$95.00
132279	05/11/2020	CORPORATE MARK INC	$1,730.00
132280	05/11/2020	DAKOTA COMMUNICATIONS CENTER	$52,283.00
132281	05/11/2020	DAKOTA COUNTY FINANCIAL SERV	$1,518.69
132282	05/11/2020	DAKOTA COUNTY PROPERTY RECORDS	$6,170.00
132283	05/11/2020	DAKOTA COUNTY WARRANTS	$105.00
132284	05/11/2020	DECRANS, LUKE	$27.00
132285	05/11/2020	DELL MARKETING	$9,035.15
132286	05/11/2020	FIDELITY SECURITY LIFE	$214.98
132287	05/11/2020	FLEXIBLE PIPE TOOL COMPANY	$450.00
132288	05/11/2020	FURTHER	$314.50
132289	05/11/2020	GARY CARLSON EQUIPMENT CO	$465.00
132290	05/11/2020	GOLDCOM VOICE & DATA SUPPLY	$443.53
132291	05/11/2020	GOODIN COMPANY	$20.38
132292	05/11/2020	GOPHER STATE ONE-CALL	$363.15
132293	05/11/2020	GOVE, MICHAEL	$42.00
132294	05/11/2020	HARRIS ST PAUL, INC	$960.00
132295	05/11/2020	HAVIR, BRIANNA	$100.00
132296	05/11/2020	HOLIDAY STATION STORES	$115.50
132297	05/11/2020	HORIZON COMMERCIAL POOL SUPPLY	$1,495.00
132298	05/11/2020	HUEBSCH	$343.36
132299	05/11/2020	INVER GROVE FORD	$392.26
132300	05/11/2020	KAT CONSTRUCTION	$101.00
132301	05/11/2020	KENNEDY & GRAVEN	$2,503.38
132302	05/11/2020	KIMLEY-HORN & ASSOCIATES, INC	$6,879.39
132303	05/11/2020	KINZEL, LUCAS	$84.00
132304	05/11/2020	KRAFT CONTRACTING & MECHANICAL	$2,638.94
132305	05/11/2020	KREMER SERVICES, LLC	$435.15
132306	05/11/2020	LANGUAGE LINE SERVICES	$178.09

132307	05/11/2020	LAROCQUE, JESSICA	$92.00
132308	05/11/2020	LAW ENFORCEMENT LABOR SERVICES	$1,798.00
132309	05/11/2020	LAWSON PRODUCTS INC	$350.50
132310	05/11/2020	LOPEZ, MEGHAN	$92.00
132311	05/11/2020	MACQUEEN EQUIPMENT INC	$645.10
132312	05/11/2020	MAGUIRE AGENCY	$4,000.00
132313	05/11/2020	MANSFIELD OIL COMPANY OF GAINESVILLE, INC	$8,924.05
132314	05/11/2020	MCMULLEN INSPECTIONS, INC	$6,640.80
132315	05/11/2020	MENARDS	$1,479.31
132316	05/11/2020	MID-NORTHERN SERVICES	$6,993.90
132317	05/11/2020	MIDWAY FORD	$36,971.28
132318	05/11/2020	MIDWEST FENCE & MANUFACTURING	$35.00
132319	05/11/2020	MINNESOTA POLLUTION CONTROL	$437.50
132320	05/11/2020	MINNESOTA/WISCONSIN PLAYGROUND	$14,270.00
132321	05/11/2020	MN BENEFIT ASSOCIATION	$1,014.74
132322	05/11/2020	MN GLOVE	$1,112.05
132323	05/11/2020	MN GOV'T FINANCE OFFICERS ASSN	$70.00
132324	05/11/2020	MN LOCKS	$2,186.50
132325	05/11/2020	MN NCPERS LIFE INSURANCE	$208.00
132326	05/11/2020	MN TEAMSTERS LOCAL #320	$1,266.00
132327	05/11/2020	MN UNEMPLOYMENT INSURANCE FUND	$593.70
132328	05/11/2020	NAPA AUTO PARTS	$250.80
132329	05/11/2020	NDC4 CABLE COMMISSION	$7,607.50
132330	05/11/2020	O'REILLY AUTOMOTIVE, INC	$13.04
132331	05/11/2020	OFFICE DEPOT	$17.29
132332	05/11/2020	OPG-3 INC	$7,566.00
132333	05/11/2020	PARKOS CONSTRUCTION CO INC	$143,435.35
132334	05/11/2020	PIONEER SECURESHRED	$58.00
132335	05/11/2020	SAM'S CLUB DIRECT	$315.32
132336	05/11/2020	SCHELITZCHE, LISA	$42.00
132337	05/11/2020	SFDMG, LLC	$2,000.00
132338	05/11/2020	SHARROW LIFTING PRODUCTS	$115.65
132339	05/11/2020	SKB ENVIRONMENTAL	$2,919.63
132340	05/11/2020	ST PAUL REGIONAL WATER SERVICE	$37,211.68
132341	05/11/2020	STANEK, CATHY	$55.00
132342	05/11/2020	STAPLES ADVANTAGE	$132.00
132343	05/11/2020	STREICHER'S	$548.84
132344	05/11/2020	SUMMIT FIRE PROTECTION	$375.00
132345	05/11/2020	T - MOBILE	$1,836.53
132346	05/11/2020	TRANSUNION RISK & ALTERNATIVE	$50.00
132347	05/11/2020	TWIN CITY JANITOR SUPPLY	$442.90
132348	05/11/2020	TWIST OFFICE PRODUCTS	$301.33
132349	05/11/2020	VANGUARD CLEANING SYSTEMS	$2,599.30
132350	05/11/2020	VEZINA, CATHERINE	$72.00
132351	05/11/2020	VOYANT COMMUNICATIONS, LLC	$2,070.18
132352	05/11/2020	W L HALL CO	$77,600.00

Payment Register

From Payment Date: 4/29/2020 - To Payment Date: 5/11/2020

132353	05/11/2020	WASTE MANAGEMENT	$2,113.49
132354	05/11/2020	WOLD ARCHITECTS & ENGINEERS	$1,127.50
132355	05/11/2020	WSB & ASSOCIATES	$2,287.50
132356	05/11/2020	XCEL ENERGY	$960.62
Type Check Totals:			$497,644.98
EFT			
831	04/30/2020	US BANK CARDMEMBER SERVICES	$15,825.15
832	04/30/2020	FURTHER	$208.34
833	04/30/2020	FURTHER	$5,500.00
834	04/30/2020	I C M A	$250.00
835	04/30/2020	I C M A RETIREMENT TRUST - ROTH	$375.00
836	04/30/2020	I C M A RETIREMENT TRUST-457	$8,318.34
837	04/30/2020	MII LIFE --- VEBA	$3,479.02
838	04/30/2020	MN DEPT OF REVENUE - PR TAXES	$10,555.46
839	04/30/2020	MSRS - 457	$3,207.97
840	04/30/2020	MSRS HCSP	$4,068.58
841	04/30/2020	PUBLIC EMPLOYEES RETIRMNT ASSN	$55,873.17
842	04/30/2020	PUBLIC EMPLOYEES RETIRMNT ASSN	$203.08
843	04/30/2020	IRS - PR TAXES	$52,828.09
844	04/30/2020	OLD NATIONAL BANK	$253.06
845	05/11/2020	AUTHNET GATEWAY	$32.80
846	05/11/2020	CLOVER	$15.18
847	05/11/2020	FURTHER	$1,528.90
848	05/11/2020	FURTHER	$5,450.00
849	05/11/2020	I C M A	$250.00
850	05/11/2020	I C M A RETIREMENT TRUST - ROTH	$375.00
851	05/11/2020	I C M A RETIREMENT TRUST-457	$8,308.34
852	05/11/2020	IRS - PR TAXES	$50,612.19
853	05/11/2020	MII LIFE --- VEBA	$3,464.02
854	05/11/2020	MN DEPT OF REVENUE - PR TAXES	$10,209.73
855	05/11/2020	MSRS - 457	$3,211.47
856	05/11/2020	MSRS HCSP	$3,735.78
857	05/11/2020	PUBLIC EMPLOYEES RETIRMNT ASSN	$55,598.75
Type EFT Totals:			$303,737.42

TOTAL CHECKS & EFTS $801,382.40

CITY OF WEST ST. PAUL

City Council Report

To: **Mayor and City Council**

Through: **Ryan Schroeder, City Manager**

From: **Melissa Sonnek, City Planner**

Date: **May 11, 2020**

Rental Licensing

BACKGROUND INFORMATION:

2020 rental licenses – background required

According to the rental dwelling ordinance, the city requires a background investigation for each new rental property owner/applicant. In addition, the Police Department and Code Enforcement reviews calls for service to the properties to help identify potential problem properties.

The Community Development Department reviewed the application, inspection report, rental density, and code compliance requirements.

The background investigation, inspection report, and code compliance review on the properties listed below did not identify any incidents that would result in a denial of the rental license.

APPLICATIONS FOR APPROVAL:

1635 Marthaler Lane (Apartment – New)

1266/1268 Winslow Avenue (Duplex – Renewal)
76/78 Logan Avenue West (Duplex – Renewal)

966 Robert Street South (Condominium – Renewal) - Units #101 - #308
976 Robert Street South (Condominium – Renewal) - Units #102 - #308

298 Hurley Street East (Single Family – New)
435 Bernard Street East (Single Family – New)
1370 Charlton Street (Single Family – Renewal)
935 Oakdale Avenue (Single Family – Renewal)
275 Bernard Street East (Single Family – Renewal)
1471 Oakdale Avenue (Single Family – Renewal)
173 Kathleen Drive (Single Family – Renewal)

FISCAL IMPACT:

		Amount
Fund:	**101**	
Department:	**30000**	
Account:	**32170**	**$ 4,280**

STAFF RECOMMENDATION:

Staff recommends City Council approve the rental license applications.

CITY OF WEST ST. PAUL

City Council Report

To: **Mayor and City Council**

From: **Ryan Schroeder, City Manager**

Date: **May 11, 2020**

Approval of Stipulated Settlement with Auto Zone, 1520 Robert Street

BACKGROUND INFORMATION:

Enclosed, please find a proposed Stipulation of Settlement between the City of West St. Paul and Auto Zone in order for the Court to make a final award for the value of the real estate the City has purchased from Auto Zone, which is located at 1520 Robert Street. The settlement is for $1,800,000. Staff and the City Attorneys are recommending approval of this settlement as enclosed, which authorized representatives of Auto Zone have signed.

As part of the agreement, Auto Zone has the opportunity to a leaseback of the property from April 10, 2019 (date of acquisition by the City) through October 31, 2020. By that date, Auto Zone will move to their new location at 1422 Robert Street.

This acquisition is in accordance with the Joint Powers Agreement (JPA) between Dakota County and the City regarding construction of the River-to-River Greenway and Tunnel project. In order to construct that project, Crawford Drive will be moved north of its present location into the Auto Zone parcel, such that acquisition of the entire parcel was deemed required. Under the JPA, the County has taken on 75% of the acquisition costs of this parcel.

On April 10, 2019, the City deposited $1,550,000 with the Court, which awarded title to the City on April 14, 2019. This deposit included a contribution from the County for $1,162,500, in accordance with the JPA (balance from the City). The enclosed stipulation increases the cost of this acquisition by a stated amount of $250,000.

Auto Zone is entitled to relocation and moving expense in addition to the award for the real estate. The actual cost of this relocation will not be known until after their move. Under the JPA, that is also a shared expense. On November 19, 2019, the City received a Dakota County CDA RIG grant, which the City will use to reimburse its expenses of this acquisition.

As noted above, the purpose of this acquisition is to provide property required for construction of the River-to-River Greenway tunnel. The impetus for this project appears to have begun in 2008 with adoption of the Park System Plan. This plan created a vision of an interconnected system of regional greenways within the urban areas of the County. What is now known as the River-to-River (R2R) Greenway was part of that plan.

On December 12, 2011, the West St. Paul City Council approved the Pedestrian and Bicycle Plan. This plan included the R2R and a grade separated crossing of Robert Street as part of the Greenway. In 2014, the City received a Legislative authorization of $2 million of State Bond Funds for the Robert Street

crossing project. In 2017, the Legislature increased that authorization to $2.2 million. On November 13, 2017 the City Council approved Resolution 17-99 accepting the State Bond Fund authorization for the grade separated crossing which set the acquisition of 1520 Robert Street in motion. Related actions since this date have included:

- February 22, 2018 appraisal report received in amount of $1,550,000
- May 14, 2018 Council approved Resolution 18-68 approving use of Eminent Domain in the case the a negotiated sale of property for the Greenway was not possible
- May 15, 2018 the City Attorney made a final written offer on behalf of the City for the Auto Zone parcel as an integral component of the Right-of-Way necessary for the greenway project
- October 8, 2018 Council entered the JPA with Dakota County to construct the River-to-River tunnel and trailway. On this same date Council adopted Resolution 18-117 authorizing a quick take action against the owner of the Auto Zone property
- November 13, 2018 the City Council approved a State required Met Council grant agreement without which the City could not access the State Bond funds. The deadline for use of State Bond funds is December 31, 2021
- December 9, 2019 Council approved amendments to the County JPA, approved an amendment to the zoning code chapters 153.170-153.187 to allow for auto accessory stores in a B3 zone (allowing Auto Zone to relocate) and authorized an easement agreement for use by Auto Zone for access during tunnel construction

The current project schedule is for the Dakota County Board to bid the tunnel project in June 2020 with a projected construction start date in July. Should bids come in beyond County projections, the County could rebid the project in the fall and still achieve project completion by December 31, 2021.

FISCAL IMPACT:

$62,500 as 25% of the award.

STAFF RECOMMENDATION:

By motion, authorize the Mayor and City Manager to sign the Stipulated of Settlement agreement for 1520 Robert Street.

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DocuSign Envelope ID: EF712268-80E5-4C31-ADA9-18D969D8082D

STATE OF MINNESOTA

COUNTY OF DAKOTA

DISTRICT COURT

FIRST JUDICIAL DISTRICT

COURT FILE No. 19HA-CV-18-4656

City of West St. Paul,
a Minnesota municipal corporation,

Petitioner,

v.

Autozone Texas, L.P., a Delaware limited partnership; et al.,

Respondents.

STIPULATION OF SETTLEMENT

Case Type: Condemnation

THIS STIPULATION is made by and between Petitioner City of West St. Paul ("City") and AutoZone Texas LLC, a Nevada limited liability company ("Owner").

RECITALS

A. The following recitals are a part of the parties' stipulation.

B. The Owner is the fee owner of the real property located in the City of West St. Paul, PID 42-11560-01-020, and legally described as follows: Lot 2, Block 1, Andler and Olson's Addition to West St. Paul, County of Dakota, State of Minnesota ("Property").

C. The City commenced this condemnation action to acquire the Property in fee for the purposes of constructing trail and related improvements for the River to River Greenway Project ("Project").

D. The Court granted the City's petition to condemn the property ("Taking") and filed its Findings of Fact, Conclusions of Law, and Order Granting Petition, Authorizing

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Payment or Deposit, and Awarding Title and Right of Possession, and Order Appointing Commissioners on February 14, 2019 ("Condemnation Order").

E. The Condemnation Order identifies Autozone Texas, L.P., as the fee owner of the Property. Autozone Texas, L.P., has been converted to AutoZone Texas LLC, a Nevada limited liability company.

F. The Condemnation Order identifies Bank of America as having had a possible interest in the action by virtue of a mortgage.

G. The Condemnation Order identifies Dakota County as having a possible interest in the action for the payment of taxes.

H. On April 10, 2019, pursuant to the Condemnation Order, the City deposited the sum of $1,550,000.00 with the Dakota County District Court, in payment of its approved appraisal of value for the Taking of the Property (the "Deposit").

I. The City and the Owner have reached a full and final settlement and compromise of the matters in dispute.

AGREEMENT

NOW, THEREFORE, in consideration of their mutual promises and other good and valuable consideration, it is hereby stipulated and agreed between the parties as follows:

1. Stipulation to Commissioners' Award. The City and the Owner agree to an award of condemnation damages for the Property by the court-appointed commissioners in the total amount of $1,800,000.00 ("Settlement Amount") in substantially the form attached hereto as *Exhibit 1* ("Proposed Award"). The City and the Owner jointly request the Proposed Award and will not appeal the Proposed Award. This settlement agreement is contingent upon the filing of the Proposed Award, and upon the expiration of the statutory appeal period without any appeal. All

DocuSign Envelope ID: EF712268-80E5-4C31-ADA9-18D969D8082D

known respondents who may claim an interest in the Property will be given due notice of the commissioners hearing and the award that is filed by the commissioners.

In the event the court-appointed commissioners fail to issue the Proposed Award, or in the event any other party appeals, this Stipulation of Settlement shall be null and void except as follows: The Lease Agreement attached hereto as ***Exhibit 2*** ("Lease") shall remain valid and enforceable.

2. Payment of Settlement Amount. The City shall pay the Settlement Amount as follows:

a. The Deposit shall be credited against the Settlement Amount.

b. Within 10 business days after the expiration of the statutory period to appeal from the Stipulated Award, without an appeal having been filed, the City shall deposit with the Dakota County Court Administrator the balance of the Settlement Amount, $250,000.00 ("Supplemental Deposit").

3. Deposit. The Owner may apply for disbursement of the Deposit or Supplemental Deposit at any time by filing a motion with the Court that: (a) advises the Court of the Bank of America mortgage interest; and (b) is timely served on Bank of America. Provided that the Owner complies with this paragraph, the City will take no position on the Owner's disbursement application.

4. Other Considerations. The parties agree to the following additional terms:

a. The City shall lease the Property back to the Owner through October 31, 2020, pursuant to the terms of the Lease attached hereto as ***Exhibit 2.*** The parties' rights under the Lease shall survive the termination or voiding of this Stipulation of Settlement.

DocuSign Envelope ID: EF712268-80E5-4C31-ADA9-18D969D8082D

b. The Owner's claims for relocation benefits (if any) under the Minnesota Uniform Relocation Assistance Act are expressly reserved.

c. After the Project is completed, the Taking will result in a remnant parcel that will no longer be needed for public use ("Remnant"). The City agrees that the Remnant shall be subject to the following use restriction for a period of 20 years ("Restrictive Covenant"):

> The Remnant shall not be primarily used for the sale or advertisement of automobile parts, supplies and/or accessories. The intent of this restriction is to prevent Owner's competitors, including but not limited to O'Reilly Auto Parts, NAPA Auto Parts, and other similar auto parts retailers from operating or advertising on the Remnant. This restriction does not prohibit the incidental sale of hand tools, ice scrapers, air fresheners, mobile phone accessories, or other auto-related items by businesses primarily engaged in other uses including but not limited to hardware stores, car washes, gas stations, cellular phone stores, convenience stores, grocery stores, and dollar stores.

Any conveyance of the Remnant shall be made subject to the Restrictive Covenant.

d. In consideration of the Settlement Amount, pursuant to Minn. Stat. § 117.226, the Owner hereby declines to repurchase the Remnant, and knowingly and voluntarily waives the right to repurchase the Remnant. The Owner agrees that, upon payment in full of the Settlement Amount, the attorney for the City may prepare and record a certificate to evidence the termination of the Minn. Stat. § 117.226 right of first refusal.

e. The Owners acknowledge that the County has satisfied its statutory obligation to reimburse them for appraisal fees incurred (if any) under Minn. Stat. § 117.036.

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5. Full and Final Compromise. Except as expressly reserved in Paragraph 4(b), this Agreement constitutes a full and final settlement of all claims arising out the Taking. In consideration of the Settlement Amount, except as expressly reserved in Paragraph 4(b), the Owner waives and releases any and all claims against the City, its agents, employees, contractors, or consultants, including without limitation claims for just compensation, statutory remedies, interest, appraisal and other expert fees, attorney fees, costs and disbursements, and all other damages arising from the Taking. The Owner waives any and all rights to further notices, viewings, or hearings regarding this action.

6. Concluding Condemnation Action. After issuance of the Award of Commissioners and expiration of the statutory appeal period, the City will file a Final Certificate in this action and record a discharge of notice of lis pendens with the Office of the Dakota County Recorder. Each of the parties will bear its own costs in connection with this action.

7. Entire Agreement. The undersigned confirm that each has read this Stipulation of Settlement, and that each knows and understands its consequences and legal effect. This Stipulation of Settlement contains the entire agreement of the parties in the above-referenced action.

8. Execution. The parties agree that this Stipulation of Settlement may be executed in separate counterparts which, taken together, shall be and comprise one agreement. The parties further agree that the Stipulation of Settlement may be executed with electronic signatures pursuant to the Uniform Electronic Transactions Act, Minnesota Statutes Chapter 325L.

9. Authority. Any person signing this Stipulation of Settlement in a representative capacity represents and warrants by signing this Agreement that it is the signer's intent to bind the principal being represented to the terms and conditions of this Agreement, that the signer has been

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authorized to bind the principal to the terms and conditions, and that it is the intent of the principal to be so bound.

OWNER – AUTOZONE TEXAS LLC,
a Nevada limited liability company

By: AutoZone Investment Corporation, a Nevada corporation

Its: Sole Member

Dated: April 29, 2020.

DocuSigned by:
By: Timothy Goddard
10CD02393396439...
Its: Vice President, Store Development

Dated: April 29, 2020.

DocuSigned by:
By: Maria Leggett
EC9FD6C238CE409...
Its: Vice President, Assistant General Counsel and Assistant Secre

DS JY DS RAB

Dated: April 31, 2020

MALKERSON GUNN MARTIN LLP

Bradley J. Gunn

Bradley J. Gunn (#132238)
1900 U.S. Bank Plaza South
220 South Sixth Street
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jyoung@ralaw.com

Attorneys for AutoZone Texas LLC

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PETITIONER -- CITY OF WEST ST. PAUL

Dated: _____, 2020.

By: _____
David J. Napier, Mayor

By: _____
Ryan Schroeder, City Manager

LEVANDER, GILLEN & MILLER, P.A.

Dated: _____, 2020

_____
Peter G. Mikhail (# 249907)
Korine L. Land (#262432)
633 South Concord Street, Suite 400
South St. Paul, MN 55075
651-451-1831
pmikhail@levander.com
kland@levander.com

Attorneys for City of West St. Paul

CITY OF WEST ST. PAUL

City Council Report

To: **Mayor and City Council**

Through: **Ryan Schroeder, City Manager**

From: **Jim Hartshorn, Community/Economic Development Director**

Date: **May 11, 2020**

Thompson Oaks Redevelopment Phase II – Development Agreement

BACKGROUND INFORMATION:

As you know, the EDA approved of the attached Development Agreement on April 27. The developer (KTJ 339, LLC) intends to purchase approximately 10 acres for redevelopment of Thompson Oaks Golf Course (phase II) for $1,268,000. The project includes construction of 60+ town homes. The Development Agreement also needs approval by the City Council. See attached Development Agreement.

FISCAL IMPACT:

		Amount
Fund:		
Department:		
Account:		

STAFF RECOMMENDATION:

Staff recommends approval of the attached Development Agreement

CONTRACT FOR PRIVATE REDEVELOPMENT

THIS AGREEMENT, made on or as of the _____ day of _____, 2020, by and between the West St. Paul Economic Development Authority, a Minnesota public body corporate and politic ("EDA"), the City of West St. Paul, a Minnesota municipal corporation ("City") and KTJ 339, LLC, a Minnesota limited liability company ("Developer").

WITNESSETH:

WHEREAS, the EDA was created pursuant to Minnesota Statutes, Sections 469.090 to 469.108, and was authorized to transact business and exercise its powers by a resolution of the City Council of the City of West St. Paul ("City"); and

WHEREAS, in furtherance of the objectives of the EDA Act, the EDA has undertaken various projects to promote the creation of housing, economic and job opportunities within the City, known as a "Redevelopment Project"; and

WHEREAS, among the powers possessed by the EDA is the power to carry out within a Redevelopment Project undertakings and activities for the elimination or prevention of the development or spread of slums or blighted, deteriorating areas and for economic development; and

WHEREAS, there is located within the City real property, more particularly described in Exhibit A (the "Development Property"), that is in need of redevelopment in order to help maximize housing opportunities, economic and job opportunities for the community; and

WHEREAS, in order to achieve the objectives of the EDA, the EDA is prepared to sell the Development Property to Developer; and

WHEREAS, the EDA believes that the redevelopment of the Development Property pursuant to this Agreement, and fulfillment generally of this Agreement, are in the best interests of the City and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of the applicable State and local laws and requirements under which the Project has been undertaken.

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

ARTICLE I
Definitions

Section 1.1. Definitions. In this Agreement, unless a different meaning clearly appears from the context:

"Agreement" means this Agreement, as the same may be modified, amended, or supplemented, in writing, by mutual agreement of both parties.

"Certificate of Completion" means the certificate, in the form contained in Exhibit C attached hereto, which will be provided to the Developer pursuant to Article IV of this Agreement.

"City" means the City of West St. Paul, Minnesota.

"Closing" or "Closing Date" means on or before April 1, 2021, unless otherwise agreed to by the parties.

"Condemnation Award" means the amount remaining from an award to the Developer for the acquisition of title to and possession of the Minimum Improvements or any material part thereof, after deducting all expenses (including fees and disbursements of counsel) incurred in the collection of such award.

"Construction Plans" means the final plans for construction of the Minimum Improvements to be submitted by the Developer and approved by the City.

"Contingency Date" means February 28, 2021, unless otherwise agreed to by the parties.

"County" means Dakota County.

"Developer" means KTJ 339, LLC, a Minnesota limited liability company, or its successors and assigns.

"Development Property" or "Property" means the real property described in Exhibit A of this Agreement.

"Development Property Deed" means the quit claim deed in the form attached hereto as Exhibit D, by which the EDA will convey the Development Property to the Developer.

"Earnest Money" means the earnest money deposit of Twenty Thousand Dollars and 00/100s ($20,000.00) to be deposited with the EDA upon execution of this Agreement by Developer.

"EDA" means the West St. Paul Economic Development Authority, a public body corporate and politic organized under the laws of the State of Minnesota, or its successor or assign.

"EDA Act" or "Economic Development Authority Act" means Minnesota Statutes sections 469.090 through 469.1082 as amended.

"Effective Date" means June 24, 2020.

"Estimated Project Costs" are the project costs as indicated by the Developer's Pro forma, which is $2,560,000.

"Event of Default" means an action by the Developer or the EDA listed in Article VIII of this Agreement.

"Holder" means the owner of a Promissory Note or Notes and Mortgage Deed.

"Maturity Date" means the date when the Developer has satisfied its obligations under the Agreement and the EDA has issued the Certificate of Completion.

"Minimum Improvements" means the acquisition of land and construction of a 64-unit market rate residential apartment building and related improvements. The Minimum Improvements are more fully depicted in Exhibit B, which is attached hereto and incorporated herein.

"Mortgage Deed" means any Mortgage Deed made by the Developer, which is secured in whole or in part, by the Development Property and which is a Permitted Encumbrance pursuant to the provisions of this Agreement.

"Net Proceeds" means any proceeds paid by an insurer to the Developer or the EDA under a policy or policies of insurance required to be provided and maintained by the Developer pursuant to Article VI of this Agreement and remaining after deducting all expenses incurred in the collection of such proceeds.

"Permitted Encumbrance" means any matter shown on such Title Commitment and not objected to by the Developer (other than such consensual liens).

"Preliminary Plans" means, collectively, the plans, drawings and specifications for the construction of the Minimum Improvements which are depicted on Exhibit B and attached hereto.

"Project" or "Redevelopment Project" means the redevelopment of the Development Property into residential apartment building.

"Purchase Price" means $1,268,000.00, unless adjusted pursuant to Section 3.1.

"Sale" means any sale, conveyance, lease, exchange, forfeiture other transfer of the Developer's interest in the Minimum Improvements or the Development Property, whether voluntary or involuntary.

"State" means the state of Minnesota.

"Title Company" means First American Title Insurance Company, National Commercial Services, 121 South 8th Street, Suite 1250, Minneapolis, Minnesota 55402.

"Unavoidable Delays" means delays beyond the reasonable control of the party seeking to be excused, which are the direct result of strikes, other labor troubles, weather, fire, or other casualty to the Minimum Improvements or Site Improvements, litigation commenced by third parties which, by injunction or other similar judicial action, results in delays, or acts of any federal, state or local governmental unit (other than the EDA in exercising its rights under this Agreement) that result in delays.

Section 1.2. Rules of Interpretation.

(a) This Agreement shall be interpreted in accordance with and governed by the laws of Minnesota.

(b) The words "herein" and "hereof" and words of similar import, without reference to any particular section or subdivision, refer to this Agreement as a whole rather than any particular section or subdivision hereof.

(c) References herein to any particular section or subdivision hereof are to the section or subdivision of this Agreement as originally executed.

(d) Any titles of the several parts, articles and sections of this Agreement are inserted for convenience and reference only and shall be disregarded in construing or interpreting any of its provisions.

ARTICLE II
Representations and Warranties

Section 2.1. Representations by the EDA. The EDA makes the following representations:

(a) The EDA is a public body corporate and politic under the laws of Minnesota. Under the provisions of the EDA Act, the EDA has the power to enter into this Agreement and carry out its obligations hereunder. The persons executing this Agreement and related agreements and documents on behalf of the EDA have the authority to do so and to bind the EDA by their actions.

(b) The execution, delivery and performance by EDA of this Agreement will not violate any provision of any law, statute, rule or regulation or any order, writ,

judgment, injunction, decree, determination or award of any court, governmental agency or arbitrator presently in effect having applicability to EDA, or result in a breach of or constitute a default under any indenture, loan or credit agreement or any other agreement, lease or instrument to which EDA is a party or by which it or any of its properties may be bound.

(c) To EDA's knowledge, there are no actions, suits or proceedings pending or threatened against or affecting EDA or any of its properties, before any court or arbitrator, or any governmental department, board, agency or other instrumentality which in any of the foregoing challenges the legality, validity or enforceability of this Agreement, or if determined adversely to EDA, would have a material adverse effect on the ability of EDA to perform its obligations under this Agreement.

(d) EDA has not received written notice, and has no knowledge, of (i) any pending or contemplated annexation or condemnation proceedings, or purchase in lieu of the same, affecting or which may affect all or any part of the Property, (ii) any proposed or pending proceeding to change or redefine the zoning classification of all or any part of the Property, (iii) any proposed changes in any road patterns or grades which would adversely and materially affect access to the roads providing a means of ingress or egress to or from all or any part of the Property, or (iv) any uncured violation of any legal requirement, restriction, condition, covenant or agreement affecting all or any part of the Property or the use, operation, maintenance or management of all or any part of the Property.

(e) To EDA's knowledge, there are no wells or sewage treatment systems located on any portion of the Property. To EDA's knowledge, there has been no methamphetamine production on or about any portion of the Property. To EDA's knowledge, the sewage generated by the Property, if any, goes to a facility permitted by the Minnesota Pollution Control Agency and there is no "individual sewage treatment system" (as defined in Minnesota Statutes § 115.55, subd. 1(g)) located on the Property.

(f) The EDA is not a "foreign person," "foreign corporation," "foreign trust," "foreign estate" or "disregarded entity" as those terms are defined in Section 1445 of the Internal Revenue Code and the regulations promulgated thereunder.

(g) The EDA has received no notice or communication from any local, State or federal official that the activities of the Developer or the EDA in the Development Property may be or will be in violation of any environmental law or regulation. The EDA is aware of no facts the existence of which would cause it to be in violation of any local, State or federal environmental law, regulation or review procedure.

(h) There are no leases or tenancies with respect to the Property. There are no unrecorded agreements or other contracts of any nature or type relating to, affecting or serving the Property.

(i) There will be no indebtedness attributable to the Property which will remain unpaid after the Closing Date.

(j) The activities of the EDA are undertaken for the purpose of removing, preventing, or reducing blight, blighting factors, or the causes of blight, and for the purposes of increasing the tax base and housing opportunities within the City.

(k) EDA will warrant the Development Property has or will have street access to infrastructure sufficient to ensure the property is buildable for the Minimum Improvements.

(l) The EDA and the City have approved this Agreement.

The representations, warranties and other provisions of this Section 2.1 shall survive Closing; provided, however, EDA shall have no liability with respect to any breach of a particular representation or warranty if Developer shall fail to notify EDA in writing of such breach within two (2) years after the Closing Date, and provided further that EDA shall have no liability with respect to a breach of the representations and warranties set forth in this Agreement if Developer has actual knowledge of EDA's breach thereof prior to Closing and Developer consummates the acquisition of the Property as provided herein.

Developer acknowledges and agrees that, except as expressly specified in this Article II of this Agreement, EDA has not made, and EDA hereby specifically disclaims, any representation, warranty or covenant of any kind, oral or written, expressed or implied, or rising by operation of law, with respect to the Property, including but not limited to, any warranties or representations as to the habitability, merchantability, fitness for a particular purpose, title, zoning, tax consequences, physical or environmental condition, utilities, valuation, governmental approvals, the compliance of the Property with governmental laws, the truth, accuracy or completeness of any information provided by or on behalf of EDA to Developer, or any other matter or item regarding the Property. Developer agrees to accept the Property and acknowledges that the sale of the Property as provided for herein is made by EDA on an "AS IS," "WHERE IS," and "WITH ALL FAULTS" basis. Developer is an experienced purchaser of property such as the Property and Developer has made or will make its own independent investigation of the Property. The limitations set forth in this paragraph shall survive the Closing and shall not merge in the Development Property Deed.

Section 2.2. Representations and Warranties by the Developer. The Developer represents and warrants that:

(a) The Developer is a Minnesota limited liability company, duly organized and in good standing under the laws of Minnesota and is not in violation of any provisions of its company documents or its operating agreement. The Developer has the power to enter into this Agreement and carry out its obligations hereunder. The persons executing this Agreement and related agreements and documents on behalf of the Developer have the authority to do so and to bind the Developer by their actions.

(b) The execution, delivery and performance by Developer of this Agreement will not (i) violate any provision of any law, statute, rule or regulation or any order, writ, judgment, injunction, decree, determination or award of any court, governmental agency or arbitrator presently in effect having applicability to Developer, (ii) violate or contravene any provision of the articles of incorporation or bylaws of Developer, or (iii) result in a breach of or constitute a default under any indenture, loan or credit agreement or any other agreement, lease or instrument to which Developer is a party or by which it or any of its properties may be bound.

(c) Developer will deposit the Earnest Money with the EDA within five (5) business days after the Effective Date.

(d) The Developer has received no notice or communication from any local, state or federal official that the activities of the Developer or the EDA on the Development Property may be or will be in violation of any environmental law or regulation. The Developer is aware of no facts, the existence of which would cause it to be in violation of any local, state, or federal environmental law, regulation or review procedure or which give any person a valid claim under any of the foregoing.

(e) Upon its acquisition of the Development Property at Closing, the Developer will complete the Minimum Improvements in accordance with all local, state, federal laws or regulations.

(f) The Developer will use reasonable efforts to obtain, in a timely manner, all required permits, licenses, insurance, and approvals, and will meet, in a timely manner, all requirements of all applicable local, state, and federal laws and regulations which must be obtained or met before the Minimum Improvements may be lawfully constructed or acquired.

(g) Upon its acquisition of the Development Property at Closing, the Developer will be prepared to immediately commence construction of the Minimum Improvements and will have the financial capacity to meet the obligations specified in this Agreement.

(h) The Developer will have satisfied the terms and conditions contained in this Agreement prior to the Maturity Date or posted surety bonds for future fulfillment of all requirements contained in the Agreement.

(i) The Developer shall cooperate with the EDA with respect to any litigation, other than litigation in which the EDA and the Developer are adverse parties, commenced with respect to the Project or Minimum Improvements.

(j) In the event that this Agreement is terminated by the EDA as a result of an Event of Default, the Developer agrees that they will, within ten (10) days of written demand by the EDA, reimburse the EDA for all of its costs and expenses, including

reasonable fees for attorneys and consultants, incurred in connection with the negotiation, preparation and implementation of this Agreement.

(k) Whenever any Event of Default occurs and the EDA employs attorneys or incurs other expenses for the collection of payments due or to become due or for the enforcement of performance or observance of any obligation or agreement on the part of the Developer under this Agreement, the Developer agrees that it shall, within ten (10) days of written demand by the EDA, pay to the EDA the reasonable fees for attorneys and other expenses so incurred by the EDA.

The representations, warranties and other provisions of this Section 2.2 shall survive Closing.

Section 2.3. Environmental Conditions

(a) As Is. As of the Closing Date, Developer shall take the Property in an "as is" condition and shall assume the risk of any and all adverse environmental conditions, except for any ongoing soil mitigation efforts undertaken by the EDA. The EDA represents and warrants that during its ownership, to its knowledge, it has taken no actions that would negatively impact the environmental condition of the Development Property.

(b) Copies of Information. Upon the execution of this Agreement, the EDA shall provide Developer with true and correct copies of all studies, correspondence and other data in the EDA's possession with respect to the environmental condition of the Development Property.

ARTICLE III
Conveyance of Property

Section 3.1. Sale of Development Property. Subject to compliance with the terms of this Agreement, the EDA agrees to sell to Developer, and Developer agrees to buy from the EDA, the Development Property, subject only to Permitted Encumbrances, for the Purchase Price.

Section 3.2. Available Surveys, Tests, and Reports. Within ten (10) days of the Effective Date, EDA shall cause to be delivered to Developer, (a) copies of any surveys, soil tests and environmental reports previously conducted on the Property and (b) copies of existing title work for the Property ("Due Diligence Materials") which may be in the possession of the EDA.

Section 3.3. Developer's Investigations. For a period up to and including the Contingency Date, EDA shall allow Developer and Developer's agents access to the Property without charge and at all times for the purpose of Developer's investigation and testing of the Property, including surveying and testing of soil and groundwater ("Developer's Investigations"); provided, however, Developer shall not perform any invasive testing unless (a) EDA gives its prior approval of Developer's consultant that will perform the testing, which approval shall not be unreasonably withheld, conditioned or delayed, and (b) Developer gives EDA reasonable prior notice of such testing. EDA shall have the right to accompany Developer during any of Developer's Investigations of the Property. Developer shall provide to EDA copies of all third-

party, non-confidential written test results and reports conducted as part of Developer's Investigations. Developer agrees to pay all of the costs and expenses associated with Developer's Investigations, to cause to be released any lien on the Property arising as a result of Developer's Investigations and to repair and restore, at Developer's expense, any damage to the Property caused by Developer's Investigations. Developer shall indemnify and hold EDA harmless from all costs and liabilities, including, but not limited to, reasonable attorneys' fees, arising from Developer's Investigations. The indemnification obligations provided herein shall survive the termination or cancellation of this Agreement.

Section 3.4. Developer's Contingencies. Developer's obligation to proceed to Closing shall be subject to the satisfaction of each of the following conditions:

(a) Inspection. On or before the Contingency Date, Developer shall have determined, in its sole discretion, that it is satisfied with the results of and matters disclosed by Developer's Investigations, surveys, soil tests, engineering inspections, hazardous substance and environmental reviews of the Property and all other inspections and due diligence regarding the Property, including any Due Diligence Materials.

(b) Soil Mitigation. On or before the Contingency Date, Developer shall have determined, in its sole discretion, that it is satisfied with the results of and any and all completed, current or ongoing soil mitigation efforts undertaken by the EDA so that the Developer can construct the Minimum Improvements.

(c) Intended Use. On or before the Contingency Date, Developer shall have determined the acceptability of the Property for its intended use and incidental uses thereto (collectively, the "Proposed Use"). All costs and expenses related to applying for and obtaining any governmental permits and approvals for the Property for the Proposed Use shall be the responsibility of the Developer.

(d) Govenmental Approvals. On or before the Contingency Date, Developer shall have obtained all appropriate approvals and permits necessary for the Proposed Use on the Property, which approvals may include, without limitation, platting or replatting, zoning approvals and/or rezoning of the Property, conditional use permits, access permits, signage permits, building permits, required licenses, site plan approvals and architectural approvals. All costs and expenses related to the preparation of any documentation necessary to create any plans, specifications or the like shall be the responsibility of the Developer.

(e) Access. On or before the Contingency Date, Developer shall have satisfied itself, in Developer's sole discretion, that access to and from roads and the Property is adequate for Developer's Proposed Use of the property.

(f) Utilities. On or before the Contingency Date, Developer shall have satisfied itself, in Developer's sole discretion, that water and gas mains, electric power lines, sanitary and storm sewers, and other utilities are available to the Property.

(g) Title Insurance. On or before the Closing Date, Developer shall have received from Title an irrevocable commitment to issue a title insurance policy for the Property in a form and substance satisfactory to Developer in Developer's sole discretion, not disclosing any encumbrance not acceptable to Developer in Developer's sole discretion.

(h) Financing. On or before the Closing Date, Developer shall secure grants, funding and financing that is satisfactory to Developer in Developer's sole discretion for the purpose of acquiring and constructing the Minimum Improvements, which may include, but is not limited to entering into a Tax Abatement Agreement with the EDA.

The foregoing contingencies are for Developer's sole and exclusive benefit and one or more may be waived in writing by Developer in its sole discretion. EDA shall reasonably cooperate with Developer's efforts to satisfy such contingencies, at no out of pocket cost to EDA or assumption of any obligation or liability by Developer. Developer shall bear all cost and expense of satisfying Developer's contingencies. If any of the foregoing contingencies have not been satisfied on or before the applicable date, then this Agreement may be terminated, at Developer's option, by written notice from Developer to EDA. Such written notice must be given on or before the applicable date, or Developer's right to terminate this Agreement pursuant to this Section shall be waived. If Developer terminates this Agreement pursuant to this Section, then any amount previously paid by Developer to EDA, including the Earnest Money, shall immediately be refunded to Developer. Upon termination, neither party shall have any further rights nor obligations against the other regarding this Agreement or the Property, except for such obligations as survive termination of this Agreement.

If Developer elects not to exercise any of the contingencies set out herein, such election may not be construed as limiting any representations or obligations of EDA set out in this Agreement, including without limitation any indemnity or representations with respect to environmental matters.

Section 3.5. EDA's Contingencies. EDA's obligation to proceed to Closing shall be subject to the satisfaction, on or prior to the Contingency Date, of each of the following conditions:

(a) Developer Performance. Developer shall have performed and satisfied all agreements, covenants and conditions required pursuant to this Agreement to be performed and satisfied by or prior to the Closing Date.

(b) Developer's Representations. All representations and warranties of Developer contained in this Agreement shall be accurate as of the Closing Date.

(c) No Default. There shall be no uncured default by Developer of any of its obligations under this Agreement as of the Closing Date, unless waived by EDA.

(d) Financing. On or before the Closing Date, EDA shall secure grants, funding and financing that is satisfactory to EDA for the purpose of mitigating any

environmental issues.

(e) Tax Abatement Agreement. On or before the Closing Date, if deemed to be required by the EDA, Developer shall enter into a Tax Abatement Agreement with the EDA or the City.

(f) River to River Trail Section. On or before the Closing Date Developer shall provide an easement for the River to River Trail in a location that is approved by the City and Developer either as part of a plat approval or in a separate easement agreement.

If any contingency has not been satisfied on or before the date described therein, and if no date is specified, then the Closing Date, then this Agreement may be terminated by written notice from EDA to Developer and neither party shall have any further rights or obligations with respect to this Agreement or the Property. If termination occurs, EDA shall return the Earnest Money to Developer. All the contingencies are for the benefit of EDA, and EDA shall have the right to waive any contingency in this Section 3.6 by written notice to Developer.

Section 3.6. Closing. The closing of the purchase and sale contemplated by this Agreement (the "Closing") shall occur on or before the Closing Date. The EDA agrees to deliver legal and actual possession of the Property to Developer on the Closing Date. Closing shall occur at Title Company.

(a) EDA's Closing Documents and Deliveries. On the Closing Date, EDA shall execute and/or deliver, as applicable, to Developer the following:

1. Quit Claim Deed. A quit claim deed conveying title to the Development Property to Developer, free and clear of all encumbrances, except the Permitted Encumbrances. Such Development Property Deed shall include as a covenant running with the land the conditions of Minnesota Statutes, Sections 469.090 to 469.1082 relating to the use of the land. If the covenant is violated the authority may declare a breach of the covenant and seek a judicial decree from the district court declaring a forfeiture and a cancellation of the deed.

2. Title Policy. A Proforma Title Policy or a suitably marked up Commitment for Title Insurance initialed by Title Company, in the form required by this Agreement, including usual and customary endorsements required by Developer.

3. FIRPTA Affidavit. A non-foreign affidavit as required by applicable law.

4. EDA's Affidavit. A standard owner's affidavit (ALTA form) from EDA which may be reasonably required by Title to issue an owner's policy of title insurance with respect to the Property with the so called "standard exceptions" deleted.

5. Settlement Statement. A settlement statement with respect to this transaction.

6. General Deliveries. All other documents reasonably determined by Title Company to be necessary to evidence that Developer has duly authorized the transactions contemplated hereby and evidence the authority of Developer to enter into and perform this Agreement and the documents and instruments required to be executed and delivered by Developer pursuant to this Agreement or may be required of Developer under applicable law.

(b) Developer Closing Documents and Deliveries. On the Closing Date, Developer shall execute and/or deliver, as applicable, to EDA the following:

1. Payment of Purchase Price. The Purchase Price, less Earnest Money, shall be payable on the Closing Date, subject to those adjustments, pro-rations and credits described in this Agreement, in certified funds or by wire transfer pursuant to instructions from EDA.

2. Settlement Statement. A settlement statement with respect to this transaction.

3. Developer's Affidavit. A standard owner's affidavit (ALTA form) from Developer which may be reasonable required by Title to issue an owner's policy of title insurance with respect to the Property with the so-called "standard exceptions" deleted.

4. Bring Down Certificate. A certificate dated as of the Closing Date, signed by an authorized officer of Developer, certifying that the representations and warranties of Developer contained in this Agreement are true as of the Closing Date.

5. General Deliveries. All other documents reasonably determined by Title to be necessary to evidence that Developer has duly authorized the transactions contemplated hereby and evidence the authority of Developer to enter into and perform this Agreement and the documents and instruments required to be executed and delivered by Developer pursuant to this Agreement, or may be required of Developer under applicable law, including any Developer's affidavits or revenue or tax certificates or statements.

(c) Costs and Prorations. EDA and Developer agree to the following prorations and allocation of costs regarding this Agreement:

1. General real estate taxes applicable to any of the Property due and payable in the year of Closing shall be prorated between Developer and EDA on a daily basis as of 12:00 a.m. CT on the Closing Date based upon a calendar

fiscal year, with EDA paying those allocable to the period prior to the Closing Date and Developer being responsible for those allocable to the Closing Date and subsequent thereto. EDA shall pay in full all special assessments (and charges in the nature of or in lieu of such assessments) levied, pending, postponed or deferred with respect to any of the Property as of the Closing Date. Developer shall be responsible for any special assessments that are levied or become pending against the Property after the Closing Date, including, without limitation, those related to Developer's development of the Property.

2. The Developer will obtain and pay for an ALTA Survey.

3. The EDA shall pay all title charges for the issuance of the Title Commitment.

4. Developer shall pay all premiums for any title insurance policy it desires with respect to the Development Property.

5. Developer shall pay all costs of recording the Development Property Deed and this Agreement.

6. The EDA shall pay for the cost of recording any other documents necessary to convey the Development Property as required by this Agreement.

7. EDA shall pay all state deed tax regarding the Development Property Deed.

8. Developer and EDA shall each pay one half (1/2) of any reasonable closing fee or charge imposed by Title Company.

9. There are no brokerage or real estate fees or commissions due and payable by the EDA as part of this transaction.

10. EDA and Developer shall each pay their own attorneys' fees incurred in connection with this transaction.

11. The obligations set forth in this Section 3.7(c) survive the Closing.

Section 3.7. Title Examination. Developer shall obtain a commitment for an owner's title insurance policy issued by Title for the Development Property (the "Title Evidence").

(a) Developer Objections. Within ten (10) days after Developer's receipt of the last of the Title Evidence, Developer may make written objections ("Objections") to the form or content of the Title Evidence. The Objections may include without limitation, any easements, restrictions or other matters which may interfere with the proposed use of the Property or matters which may be revealed by any survey. Any matters reflected on the Title Evidence which are not objected to by Developer within such time period or waived by Developer in accordance with Section

3.7(b)(2) shall be deemed to be permitted encumbrances ("Permitted Encumbrances"). Notwithstanding the foregoing, the following items shall be deemed Permitted Encumbrances:

1. Covenants, conditions, restrictions (without effective forfeiture provisions) and declarations of record, if any;

2. Reservation of minerals or mineral rights by the State of Minnesota, if any;

3. Utility and drainage easements which do not interfere with the Proposed Use; and

4. Applicable laws, ordinances, and regulations.

Developer shall have the renewed right to object to the Title Evidence as the same may be revised or endorsed from time to time.

(b) EDA's Cure. EDA shall be allowed twenty (20) days after the receipt of Developer's Objections to cure the same but shall have no obligation to do so. If such cure is not completed within said period, or if EDA elects not to cure such Objections, Developer shall have the options to do any of the following:

1. Terminate this Agreement with respect to all of the Property.

2. Waive one or more of its objections and proceed to Closing.

Section 3.8. If Developer so terminates this Agreement, neither EDA nor Developer shall be liable to the other for any further obligations under this Agreement, except for such obligations as survive termination of this Agreement, and any amount previously paid by Developer to EDA, including the Earnest Money, shall be refunded to Developer.

ARTICLE IV
Construction of Minimum Improvements

Section 4.1. Construction of Developer and Minimum Improvements. By March 1, 2021, unless otherwise agreed to by the parties in writing, the Developer shall submit Construction Plans to the City. The Construction Plans shall provide for the construction of Minimum Improvements and shall be in substantial conformity with the Preliminary Plans depicted on Exhibit B, attached hereto. All Minimum Improvements constructed on the Development Property shall be constructed, operated and maintained in accordance with the terms of the Construction Plans, this Agreement, the Comprehensive Plan, and all local, Minnesota and federal laws and regulations (including, but not limited to, Environmental Controls and Land Use Regulations). Developer will use commercially reasonable efforts to obtain, or cause to be obtained, in a timely manner, all required permits, licenses and approvals, and will use commercially reasonable efforts to meet, in a timely manner, the requirements of applicable Environmental Controls and Land Use

Regulations which must be met before Developer's Minimum Improvements may be lawfully constructed.

Section 4.2. Ground Material. The Developer shall ensure that adequate and suitable ground material shall exist in the areas of utility improvements and shall guarantee the removal, replacement or repair of substandard or unstable material through the warranty period. The cost of said removal, replacement or repair is the responsibility of the Developer.

Section 4.3. Grading/Drainage Plan and Easements**.** The Developer shall construct drainage facilities adequate to serve the Project in accordance with the Development Plans. The Developer agrees to grant to the City all necessary outlots, easements or stormwater maintenance agreements for the preservation and maintenance of the drainage system, for drainage basins and for utility service and for utility looping. The Developer shall enter into any easement agreements and stormwater management agreements with the City that are deemed necessary to fulfill the obligations of this section. The grading and drainage plan shall include lot and building elevations, drainage swales to be sodded, storm sewer, catch basins, erosion control structures and ponding areas necessary to conform to the overall City storm sewer plan. The grading of the site shall be completed in conformance with the Development Plans, subject only to such design criteria and engineering design and construction specifications as are used in the Development Plans notwithstanding any amendment or change to City standards for development subsequent to approval of the Final Plat.

Developer shall dedicate drainage and utility easements as shown on the Final Plat. Additional utility and drainage easements that may be required by the City may be granted by an acceptable document as approved by the City.

Section 4.4. Grading of Private Streets. The Developer must grade, in accordance with the grading plan provided to and approved by the City, all private streets, boulevards, driveways and other public lands, if any, and other lands shown in the approved grading plan and as required in Exhibit F. If the Developer does not perform the work required by this paragraph, the City will complete all work required of the Developer. The Developer will be financially responsible for payments for this work, which will be assessed as provided in Section 10.1.

Section 4.5. Street Sweeping. The Developer is responsible for the removal of all construction debris and earth materials within the public right-of-way during construction. The City will inspect the roadways to ensure the Developer is keeping all public roadway surfaces clean. If any portion of a public roadway surface is found in an unacceptable condition, the City will have appropriate equipment dispatched to the site an all costs associated with the clean-up effort will be billed to the Developer.

Section 4.6. Street Signs. The Developer shall be financially responsible for the installation of street identification signs and non-mechanical and non-electrical traffic control signs. Street signs will be approved pursuant to City standards. The actual number and location of signs to be installed shall be determined by the City and actual installation shall be performed by City authorized personnel.

Section 4.7. Erosion Control. The Developer shall provide and follow a plan for erosion control and pond maintenance in accord with the Best Management Practices (BMP) as delineated by the Minnesota Pollution Control Agency. Such plan shall be detailed on the Construction Plans and shall be subject to approval of the City. The Developer shall install and maintain such erosion control structures as appear necessary under the Construction Plans or become necessary subsequent thereto. The Developer shall be responsible for all damage caused as the result of grading and excavation within the Minimum Improvements including, but not limited to, restoration of existing control structures and clean-up of public right-of-way. As a portion of the erosion control plan, the Developer shall re-seed or sod any disturbed areas in accordance with the Construction Plans. The City reserves the right to perform any necessary erosion control or restoration as required, if these requirements are not complied with after Formal Notice by the City. The Developer shall be financially responsible for payment for this extra work.

Section 4.8. Private Streets. Certain streets constructed within the development, will be private streets owned and maintained by the Developer. The City and Developer shall enter into a Construction, Repair and Maintenance Agreement for Private Roads to govern the conditions related to the private street, including but not limited to maintenance and reconstruction requirements, snowplowing, and damage to City owned utilities that are located within the streets' corridor.

Section 4.9. Trail. The Developer shall construct a bituminous trail that will connect to the River to River Trail as shown in the Development Plans.

Section 4.10. Zoning; Other Approvals. The EDA agrees to exercise its reasonable efforts to grant or obtain such land use planning review and approvals as may be required in connection with the development of the Minimum Improvements by applicable Land Use Regulations. The parties agree that the development of the Minimum Improvements is in the public interest, will provide significant and important benefits to the City and its residents, and is a desirable and appropriate use of the Development Property. Developer acknowledges and agrees that the EDA cannot and does not undertake in this Development Agreement to bind itself to grant or obtain any approvals, permits, variances, zoning or rezoning applications or other matters within the legislative or quasi-judicial discretion of the EDA or the governing body of any other political subdivision or public agency. The EDA nevertheless agrees that upon request of Developer, it will cooperate with Developer to seek and secure approvals, permits, variances, and other matters as may be required prior to the acquisition by Developer of all portions of the Development Property affected thereby, to cause such matters to be timely considered by the EDA, City and Planning Commission or the governing body of other political subdivisions or public agencies with jurisdiction, and to otherwise cooperate with Developer to facilitate implementation of the Minimum Improvements.

Section 4.11. Commencement and Completion of Construction. Subject to Unavoidable Delays, the Developer shall commence construction of the Minimum Improvements no later than May 1, 2021. Subject to Unavoidable Delays, the Developer shall have substantially completed the construction of the Minimum Improvements no later than November 30, 2023. All work with respect to the Minimum Improvements to be constructed or provided by the Developer on the Development Property shall be in substantial conformity with the Construction Plans and

Developer will not modify the size or exterior appearance of the Minimum Improvements without the consent of the EDA and the City, which consent shall not be unreasonably withheld. The Developer shall make such reports to the EDA regarding construction of the Minimum Improvements as the EDA deems necessary or helpful in order to monitor progress on construction of the Minimum Improvements.

Section 4.12. Certificate of Completion.

(a) After substantial completion of the Minimum Improvements in accordance with the Construction Plans and all terms of this Agreement, the EDA will furnish the Developer with a Certificate of Completion in the form of Exhibit C hereto. Such certification by the EDA shall be a conclusive determination of satisfaction and termination of the agreements and covenants in this Agreement and in the Development Property Deed with respect to the obligations of the Developer to construct the Minimum Improvements and the dates for the beginning and completion thereof. The Certificate of Completion shall only be issued after issuance of a certificate of occupancy by the City.

(b) The Certificate of Completion provided for in this Section 4.7 shall be in such form as will enable it to be recorded in the proper County office for the recordation of deeds and other instruments pertaining to the Development Property. If the EDA shall refuse or fail to provide such certification in accordance with the provisions of this Section 4.7, the EDA shall, within thirty (30) days after written request by the Developer, provide the Developer with a written statement, indicating in adequate detail in what respects the Developer has failed to complete the Minimum Improvements in accordance with the provisions of the Agreement, or is otherwise in default of a material term of this Agreement, and what measures or acts will be necessary, in the opinion of the EDA, for the Developer to take or perform in order to obtain such certification.

Section 4.13. Reconstruction of Minimum Improvements. If the Minimum Improvements are damaged or destroyed before completion thereof and issuance of a Certificate of Completion, the Developer agrees, for itself and its successors and assigns, to reconstruct the Minimum Improvements within one year of the date of the damage or destruction. The Minimum Improvements shall be reconstructed in accordance with the approved Construction Plans, or such modifications thereto as may be requested by the Developer and approved by the EDA in accordance with Section 4.1 of this Agreement, which approval will not be unreasonably withheld. The Developer's obligation to reconstruct the Minimum Improvements pursuant to this Section 4.8 shall end when the Certificate of Completion is issued.

ARTICLE V
Other Obligations of Developer

Section 5.1. Building Permit Fees. Developer acknowledges that building permit fees will be payable by Developer or Successor Developer for Minimum Improvements.

Section 5.2. Administrative Costs. The EDA has incurred and will continue to incur administrative costs in reviewing, analyzing, negotiating and studying the Minimum Improvements and this Development Agreement. In consideration of the time, effort and expenses to be incurred in pursuing the undertakings set forth herein, on or before execution of this Agreement, Developer agrees to pay a $5,000 deposit for the costs of certain consulting fees, including planning, financial, attorneys, engineering, testing and any special meetings. If the obligations of Developer under this Agreement result in a reduction of the $5,000 cash deposit to a level of $1,000 or less, then at such point, Developer shall make an additional cash deposit with the EDA to raise the total cash on deposit with the EDA to $5,000. This process of redeposit shall be continued until all of the monetary obligations of Developer pursuant to this Section are paid in full. The obligations set forth in this shall remain in full force and effect and shall survive any termination until all monetary obligations of Developer are paid in full. If, after completion of the tasks contemplated by this Agreement and if, after appropriate payment to the EDA, there remains on deposit any sum, then such sum shall be paid over to Developer by the EDA within 30 days after such completion and payment. If Developer terminates this Agreement because of the EDA's default, Developer shall be entitled to payment of any remaining balance. If the EDA terminates this Agreement because of Developer's default, the deposit shall be retained by the EDA. Notwithstanding anything to the contrary contained herein, Developer's total obligation for all costs contemplated by this Section 5.3 shall be capped at $50,000.

Section 5.3. Minimum Improvement Costs. The Developer shall pay for the Minimum Improvements; that is, all costs of persons doing work or furnishing skills, tools, machinery or materials, or insurance premiums or equipment or supplies and all just claims for the same; and the City shall be under no obligation to pay the contractor or any subcontractor any sum whatsoever on account thereof, whether or not the City shall have approved the contract or subcontract.

The Developer is responsible for contracting and paying for the street and utility testing costs. The City's designated inspector on the Project will coordinate the street and utility testing activities. All testing reports shall be sent to the City with a copy to the Developer.

Section 5.4. Miscellaneous and Area Charges. The Developer shall reimburse the City for all miscellaneous costs and Area Charges incurred or to be incurred by the City in connection with this Development Agreement. Such costs shall be paid in cash prior to building permit approval and are identified on Exhibit G.

Section 5.5. Enforcement Costs. The Developer shall pay the City for costs incurred in the enforcement of this Development Agreement, including engineering costs and reasonable attorneys' fees.

Section 5.6. Time of Payment. Developer shall pay all bills from the City within thirty (30) days after billing. Bills not paid within thirty (30) days shall bear interest at the rate of eight percent (8%) per year.

Section 5.7. Miscellaneous Requirements. Any additional requirements as specified by

the EDA are incorporated herein.

ARTICLE VI
Insurance and Condemnation

Section 6.1. Insurance.

(a) The Developer shall provide and maintain insurance in the following types and amounts at all times during the process of construction the Minimum Improvements, and shall provide to the EDA upon it request proof of payment of the requisite premiums and proof of current insured status:

1. Builder's risk insurance, written on the so-called "Builder's Risk – Completed Value Basis" in an amount equal to one hundred percent (100%) of the insurable value of the Minimum Improvements at the date of completion, and with coverage available in non-reporting form on the so-called "all risk" form of policy. The interest of the EDA shall be protected in accordance with a clause in form and content satisfactory to the EDA;

2. Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with an Owner's Contractor's Policy with limits against bodily injury and property damage of not less than $1,000,000.00 for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used); and

3. Workers' compensation insurance, with statutory coverage.

The policies of insurance required pursuant to clauses (1) and (2) above shall be in a form and content satisfactory to the EDA and shall be placed with financially sound and reputable insurers licensed to transact business in the State. The policy of insurance delivered pursuant to clause (1) above shall contain an agreement of the insurer to give not less than thirty (30) days advance written notice to the EDA in the event of cancellation of such policy or change affecting the coverage thereunder.

(b) Upon completion of construction of the Minimum Improvements and prior to the Maturity Date, the Developer shall maintain or cause to be maintained, at their sole cost and expense, and from time to time at the request of the EDA shall furnish proof of the payment of premiums on, insurance as follows:

1. Insurance against loss and/or damage to the Minimum Improvements under a policy or policies covering such risks as are ordinarily insured against by similar businesses, including (without limiting the generality of the foregoing) fire, extended coverage, vandalism and malicious mischief, boiler explosion, water damage, demolition cost, debris removal and

collapse in an amount not less than the full insurable replacement value of the Minimum Improvements.

2. Comprehensive general public liability insurance, including personal injury liability (with employee exclusion deleted), and automobile insurance, including owned, non-owned and hired automobiles, against liability for injuries to persons and/or property in the minimum amount for each occurrence and for each year of One Million Five Hundred Thousand Dollars ($1,500,000.00), which shall be endorsed to show the EDA as additional insured.

3. Such other insurance, including workers' compensation insurance respecting all employees of the Developer, in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure; provided that the Developer may be self-insured with respect to all or any part of his liability for worker's compensation.

(c) All insurance required in Article VI of this Agreement shall be taken out and maintained with responsible insurance companies selected by the Developer which are authorized under the laws of the State to assume the risks covered thereby. The Developer shall deposit annually with the EDA policies evidencing all such insurance coverages, or a certificate or certificates or binders of the respective insurers stating that such insurance is in full force and effect. Unless otherwise provided in Article VI of this Agreement, each policy shall contain a provision that the insurer shall not cancel nor modify it without giving written notice to the Developer and the EDA at least thirty (30) days before the cancellation or modification becomes effective. Not less than fifteen (15) days prior to the expiration of any policy, the Developer shall furnish the EDA evidence satisfactory to the EDA that the policy has been renewed or replaced by another policy conforming to the terms of this Agreement. In lieu of separate policies, the Developer shall deposit with the EDA a certificate or certificates of the respective insurers as to the amount of coverage in force.

(d) The Developer agrees to notify the EDA immediately in the case of damage exceeding five thousand dollars ($5,000.00) in amount to, or destruction of, the Minimum Improvements or any portion thereof resulting from fire or other casualty. In the event that any such efforts to repair, reconstruct and restore the Minimum Improvements to substantially the same or an improved condition or the extent necessary to accomplish such repair, reconstruction and restoration, the Developer shall apply the Net Proceeds of any insurance settlement or payment relating to such damage received by the Developer to the payment or reimbursement of the costs. Net Proceeds of any insurance settlement or payment relating to such damage up to five thousand dollars ($5,000.00) shall be paid directly to the Developer.

In the event the Minimum Improvements or any portion thereof are destroyed in fire or other casualty and the damage or destruction is estimated to equal or exceed five thousand dollars ($5,000.00), then the Developer shall, unless otherwise mutually agreed, within one hundred and eighty (180) days after such damage or destruction, use their best efforts to proceed to repair, reconstruct and restore the damaged Minimum Improvements to substantially the same condition or utility value as existed prior to the event causing such damage or destruction and, to the extent necessary to accomplish such repair, reconstruction and restoration, the Developer shall apply the Net Proceeds of any insurance settlement or payment relating to such damage or destruction received by the Developer from the EDA to the payment or reimbursement of the costs thereof. Any Net Proceeds remaining after completion of construction shall be disbursed to the Developer.

(e) If the Developer is in compliance with the terms and conditions of this Agreement, then any Net Proceeds of insurance relating to such damage or destruction received by the EDA shall be released on a schedule as determined by the EDA to the Developer upon the receipt of:

1. A certificate of an authorized representative of the Developer specifying the expenditures made or to be made or the indebtedness incurred in connection with such repair, reconstruction and restoration and stating that such Net Proceeds, together with any other monies legally available for such purposes, will be sufficient to complete such repair, construction and restoration; and

2. If Net Proceeds equal or exceed five thousand dollars ($5,000.00) in amount, the written approval of such certificate by an independent architect or engineer.

The Developer shall complete the repair, reconstruction and restoration of the Minimum Improvements, whether or not the Net Proceeds of insurance settlement or payment received by the Developer for such purposes are sufficient to pay for the same. Any Net Proceeds remaining after completion of such repairs, construction and restoration shall be remitted to the Developer.

Section 6.2. Condemnation. In the event that title to and possession of the Minimum Improvements or any material part thereof shall be taken in condemnation or by the exercise of eminent domain authority by any governmental body or other person (except the EDA) prior to the Maturity Date, the Developer shall, with reasonable promptness after such taking, notify the EDA as to the nature and extent of such taking. Upon receipt of any Condemnation Award and subject to the rights of the first Mortgagee, the Developer shall use the entire Condemnation Award to reconstruct the Minimum Improvements (or, in the event only a part of the Minimum Improvements have been taken, then to reconstruct such part) within the Project.

ARTICLE VII
Prohibitions Against Assignment and Transfer; Indemnification

Section 7.1. Representation as to Redevelopment. The Developer represents and agrees that its purchase of the Development Property, and other undertakings pursuant to this Agreement, are, and will be used, for the purpose of redevelopment of the Development Property and not for speculation. The Developer further recognizes that, in view of (a) the importance of the redevelopment of the Development Property to the general welfare of the community; and (b) the substantial financing and other public aids that have been made available by the EDA for the purpose of making such redevelopment possible, the identity of the Developer is of particular concern to the community and the EDA. The Developer further recognizes that it is because of Developer's qualifications and identity that the EDA is entering into this Agreement with the Developer, and in so doing, is further willing to accept and rely on the obligations of the Developer for the faithful performance of all undertakings and covenants hereby to be performed.

Section 7.2. Assignment of Agreement. This Agreement may be assigned by mutual written agreement of the parties, which shall not be unreasonably withheld. The parties agree to cooperate and execute all documents necessary to effectuate such assignment or transfer of development rights.

Section 7.3. Release and Indemnification Covenants.

(a) The Developer covenants and agrees that the EDA, the City and the City Council, and its officers, agents, servants and employees are not liable for and agrees to release, indemnify and, hold harmless the EDA, the City and the City Council, officers, agents, servants and employees against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Minimum Improvements, except for loss or damage resulting in willful misconduct or willful negligence of the EDA, the City or the City Council, officers, agents, servants or employees.

(b) Except for any willful misrepresentations or any willful or wanton misconduct or negligence of the following named parties, the Developer agrees to protect and defend the EDA, the City and the City Council, and its officers, agents, servants and employees, now and forever, and further agrees to hold the EDA harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Minimum Improvements.

(c) Except as otherwise specifically provided in this Agreement, the EDA, the City and the City Council, officers, agents, servants and employees shall not be liable for any damage or injury to the persons or property of Developer, their officers, agents, servants or employees or any other person who may be about the Development Property or Minimum Improvements due to any act of negligence of any person

other than the EDA, the City or the City Council members, officers, agents, servants or employees.

(d) All covenants, stipulations, promises, agreements and obligations of the EDA contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the EDA and not of any City Council member, officer, agent, servant or employee of the City or the EDA in his or her individual capacity.

(e) Developer shall indemnify, release, and hold harmless the EDA, its officers, agents, servants and employees, as well as the City, the City Council, and its officers, agents, servants and employees, against all costs, damages or expenses the EDA may incur in enforcing any obligation, agreement or covenant that runs with the Development Property, including attorneys' fees.

ARTICLE VIII
Events of Default

Section 8.1. Events of Default Defined. The term "Event of Default" shall mean any one or more of the following events:

(a) Failure by the Developer to pay when due any payments required to be paid under this Agreement.

(b) Failure by the EDA or the Developer to proceed to Closing on the Development Property after compliance with or the occurrence of all conditions precedent to Closing.

(c) Failure by the Developer to commence and complete construction of the Minimum Improvements pursuant to the terms, conditions and limitations of Article IV of this Agreement, including the timing thereof, unless such failure is caused by an Unavoidable Delay.

(d) Failure by the Developer to pay real estate taxes or special assessments on the Development Property and Minimum Improvements as they become due.

(e) Failure by Developer to comply with the terms and conditions of the Tax Abatement Agreement.

(f) Failure by the Developer to observe or perform any other covenant, condition, obligation or agreement on his part to be observed or performed hereunder.

(g) If the Developer:

1. Files any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act or under any similar federal or state law; or

2. Makes an assignment for the benefit of its creditors; or

3. Admits in writing its inability to pay its debts generally as they become due; or

4. Is in default under any mortgage and fails to cure such default within thirty (30) days of a written demand from the EDA to do so; or

5. Is adjudicated bankrupt or insolvent, or if a petition or answer proposing the adjudication of the Developer, as a bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof; or a receiver, trustee or liquidator of the Developer and shall not be discharged without ninety (90) days after such appointed, or if the Developer shall consent to or acquiesce in such appointment.

Section 8.2. Remedies on Default. Whenever any Event of Default referred to in Section 8.1 of this Agreement occurs, the EDA may exercise its right under Section 8.2(a) below without notice to Developer and may take any one or more of the actions described in Section 8.2(b)-(f) after providing thirty (30) days written notice, but only if the Event of Default has not been cured within said thirty (30) days or, if the Event of Default cannot be cured within thirty (30) days, the Developer does not provide assurance to the EDA reasonably satisfactory to the EDA that the Event of Default will be cured as soon as reasonably possible:

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

(b) The EDA may cancel and rescind or terminate this Agreement.

(c) The EDA may withhold the Certificate of Completion.

(d) The EDA may withhold the Net Proceeds from the insurance policies provided to the EDA pursuant to Section 6.1 of this Agreement and in accordance with the terms of the policies.

(e) The EDA may require the Developer to re-convey all remaining undeveloped properties and properties with incomplete projects within the Development Property to the EDA, free and clear of all liens and encumbrances.

(f) The EDA may take whatever action, including legal, equitable or administrative action, which may appear necessary or desirable to the EDA to collect any payments due under this Agreement, or to enforce performance and observance of any obligation, agreement, or covenant of the Developer under this Agreement. Developer shall indemnify the EDA, EDA's officers, employees and agents against all costs, damages or expenses the EDA may incur in enforcing any obligation, agreement or covenant, including attorneys' fees.

Section 8.3. No Remedy Exclusive. No remedy conferred upon or reserved to the EDA is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative.

Section 8.4. No Additional Waiver Implied by One Waiver. In the event any condition contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

ARTICLE IX
FINANCIAL OBLIGATIONS

Section 9.1. Developer's Letter of Credit Amount. Prior to release of the Final Plat for recording, the Developer shall deposit with the City an irrevocable LOC for the amounts required in Exhibits E and F. In lieu of an irrevocable LOC, Developer may deposit cash or other security acceptable to City.

All cost estimates shall be acceptable to the City Engineer. The bank and form of the irrevocable LOC shall be subject to approval by the City Finance Director and shall continue to be in full force and effect until released by the City. The irrevocable LOC shall be for a term ending two (2) years after acceptance by the City. In the alternative, the letter of credit may be for a one-year term provided it is automatically renewable for successive one-year periods from the present or any future expiration dates, and further provided that the irrevocable LOC states that at least sixty (60) days prior to the expiration date the bank will notify the City if the bank elects not to renew for an additional period. The irrevocable LOC shall secure compliance by the Developer with the terms of this Development Agreement. The City may draw down on the irrevocable LOC or cash deposit, without any further notice than that provided in Section 14.1 relating to a Developer Default, for any of the following reasons:

(a) a Developer Default; or

(b) upon the City receiving notice that the irrevocable LOC will be allowed to lapse prior to two (2) years after acceptance by the City.

The City shall use the LOC proceeds to reimburse the City for its costs and to cause the Minimum Improvements to be constructed to the extent practicable; if the City Engineer determines that such Minimum Improvements have been constructed and after retaining 10% of

the proceeds for later distribution pursuant to Section 9.2, the remaining proceeds shall be distributed to the Developer.

With City approval, the irrevocable LOC may be reduced pursuant to Section 9.2 from time to time as financial obligations are paid.

Section 9.2. Escrow Release and Escrow Increase; Minimum Improvements. The Developer may request that the LOC or cash deposits required by the Development Agreement be reduced at the time of substantial completion of certain elements of the Project. Within thirty (30) days after receipt of any such request, the City shall reduce the LOC or cash deposits to 150% of the value of only the outstanding incomplete improvements, as determined by the City Engineer.

If it is determined by the City that the Construction Plans were not strictly adhered to, or that work was done without City inspection, the City may require, as a condition of acceptance, that the Developer post an irrevocable LOC, or cash deposit equal to 125% of the estimated amount necessary to correct the deficiency or to protect against deficiencies arising therefrom. In the event that work, which is concealed, was done without permitting City inspection, then the City may, in the alternative, require the concealed condition to be exposed for inspection purposes.

Section 9.3. Developer's Cash Fees and Cash Escrow Requirements. At the time of (and as a condition to) the issuance of building permits, Developer shall deposit the Engineering Escrow (as identified on Exhibit G) with the City for those items and in the amounts required in Exhibit G. The City shall use the Engineering Escrow to reimburse the City for its costs of Plan Review and Inspections of and with respect to the Site Improvements identified on Exhibit E. If such escrow amounts are insufficient to fully reimburse the City for such costs, the City shall submit an invoice to Developer for any deficiencies, which shall be paid within 30 days by Developer.

ARTICLE X
Additional Provisions

Section 10.1. Failure to Construct Minimum Improvements. If the Developer fails to construct the Minimum Improvements, the City at its option, may install and construct the Minimum Improvements. In such case, the City, at its option, may specially assess the cost wholly or in part therefore under Minnesota Statutes Chapter 429, or may draw on the irrevocable LOC or cash deposit. If the City specially assesses the cost of any portion thereof, then the Developer hereby waives any and all procedural and substantive objections to the installation of the improvements and the special assessments, including, but not limited to, notice and hearing requirements and any claim that the special assessments exceed the benefit to the Development Property. The Developer waives any appeal rights otherwise available pursuant to Minnesota Statute § 429.081. The Developer acknowledges that the benefit from the improvements equal or exceed the amount of the special assessments.

Section 10.2. Conflict of Interests; EDA Representatives Not Individually Liable. No member, official, or employee of the EDA shall have any personal interest, direct or indirect in this Agreement, nor shall any such member, official, or employee participate in any decision relating to the Agreement which affects personal interests or the interests of any corporation,

partnership or association in which the person is directly or indirectly interested. No member, official, or employee of the EDA shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the EDA or for any amount which may become due to the Developer or successor or on any obligations under the terms of the Agreement.

Section 10.3. Equal Employment Opportunity. The Developer, for itself and its successors and assigns, agrees that during the construction of the Minimum Improvements provided for in this Agreement, it will comply with all applicable equal employment and nondiscrimination laws and regulations.

Section 10.4. Restriction on Use. The Developer, for itself and its successors and assigns, agrees to devote the Property and Minimum Improvements only to such land use or uses as may be permissible under the City's land use regulations.

Section 10.5. Provisions Not Merged With Development Property Deed. None of the provisions of this Agreement is intended to or shall be merged by reason of delivery of the Development Property Deed and the Development Property Deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

Section 10.6. Titles of Articles and Sections. Any titles of the several parts, Articles and Sections of the Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 10.7. Notices and Demands. Except as otherwise provided in this Agreement, a notice, demand or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally to:

(a)	Developer:	KTJ 339, LLC c/o Oppidan Investment Company 400 Water Street, Suite 200 Excelsior, MN 55331
(b)	EDA:	West St. Paul Economic Development Authority Attn: Jim Hartshorn, EDA Executive Director 1616 Humboldt Ave. West St. Paul, Minnesota 55118
(c)	City:	City of West St. Paul Attn: City Manager 1616 Humboldt Ave. West St. Paul, MN 55118

Section 10.8. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 10.9. Disclaimer of Relationships. The Developer acknowledges that nothing contained in this Agreement nor any act by the EDA or the Developer shall be deemed or construed by the Developer or by any third person to create any relationship of third-party beneficiary, principal and agent, limited or general partner, or joint venture between the EDA and the Developer.

Section 10.10. Approvals. Approvals by the EDA shall not be unreasonably withheld, conditioned or delayed.

Section 10.11. Survival of Provisions. The provisions of this Agreement and the representations, warranties and indemnities contained herein shall survive the execution and delivery of the Development Property Deed and the conveyance thereunder, shall not be merged therein, and shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

Section 10.12. Recording. The parties agree that this document shall be recorded against the Development Property at the Dakota County Recorder's Office.

Section 10.13. Tax Abatement. Tax abatement for the Development Property shall be addressed in a separate agreement between Developer and the City.

[The remainder of this page has been intentionally left blank]

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

EDA:
WEST ST. PAUL ECONOMIC DEVELOPMENT AUTHORITY

By: _____
David J. Napier
Its: President

By: _____
James Hartshorn
Its: Executive Director

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020 by David J. Napier and James Hartshorn, the President and Executive Director respectively, of the West St. Paul Economic Development Authority, a public body corporate and politic organized and existing under the Constitution and laws of Minnesota, on behalf of the EDA.

_____
Notary Public

City:
WEST ST. PAUL

By: _____
David J. Napier
Its: Mayor

By: _____
Ryan Schroeder
Its: City Manager

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020 by David J. Napier and Ryan Schroeder, the Mayor and City Manager respectively, of the City of West St. Paul, a Minnesota municipal corporation organized and existing under the Constitution and laws of Minnesota, on behalf of the City.

_____
Notary Public

Developer:
KTJ 339, LLC

By: _____
Dave Scott, Vice President

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2020, before me a Notary Public within and for said County, personally appeared Dave Scott, who being by me duly sworn, did say that he is the Vice President of KTJ 339, LLC, a Minnesota limited liability company named in the foregoing instrument, and that it was signed on behalf of said corporation and acknowledged said instrument to be the free act and deed of the company.

_____
Notary Public

This document was drafted by:

Korine L. Land, #262432
LeVander, Gillen & Miller, P.A.
633 South Concord Street, Suite 400
South St. Paul, MN 55075
651-451-1831

EXHIBIT A

DEVELOPMENT PROPERTY

Legal Description

The Development Property consists of an approximately 4-5 acre to-be-platted parcel of real property in Dakota County, Minnesota, the approximate boundaries of which located within the parcels of property having the PIDs listed below:

[Part of:
PID: _____
PID: _____
Portion of PID: _____]

The parties shall cooperate in good faith to establish the boundaries of the Development Property during the site plan and subdivision approval processes. Final agreement on the boundaries of and legal description of Development Property, and approval of a subdivision plat reflecting such final agreed boundaries and legal description, shall be a condition to Developer's obligation to proceed to Closing. The subdivision plat will be recorded at or before Closing.

EXHIBIT B

DEPICTION OF MINIMUM IMPROVEMENT

EXHIBIT C

FORM OF
CERTIFICATE OF COMPLETION

WHEREAS, the West St. Paul Economic Development Authority (the "Grantor"), by a deed recorded in the office of the County Recorder in Dakota County, Minnesota, as Document No. _____, has conveyed to KTJ 339, LLC, a Minnesota limited liability company (the "Grantee"), the following described land in County of Dakota and State of Minnesota, to-wit:

(to be completed prior to execution)

and

WHEREAS, said deed was executed pursuant to that certain Contract for Private Development by and between the Grantor and the Grantee dated the ____ day of _____, 2020 and recorded in the office of the County Recorder in Dakota County, Minnesota, as Document No. _____, which Contract for Private Development contained certain covenants and restrictions regarding completion of the Minimum Improvements; and

WHEREAS, said Grantee has performed said covenants and conditions in a manner deemed sufficient by the Grantor to permit the execution and recording of this certification.

NOW, THEREFORE, this is to certify that all construction of the Minimum Improvements specified to be done and made by the Grantee has been completed and the covenants and conditions in the Contract for Private Development have been performed by the Grantee therein, and the County Recorder in Dakota County, Minnesota, is hereby authorized to accept for recording and to record the filing of this instrument, to be a conclusive determination of the satisfactory termination of the covenants and conditions relating to completion of the Minimum Improvements.

Dated: _____, ____.

WEST ST. PAUL ECONOMIC
DEVELOPMENT AUTHORITY

By _____
David J. Napier
Its President

By _____
James Hartshorn
Its Executive Director

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

The foregoing instrument as acknowledged before me this _____ day of _____, 2020, by David J. Napier and James Hartshorn, the President and Executive Director, respectively, of the West St. Paul Economic Development Authority, a public body corporate and politic organized and existing under the Constitution and laws of Minnesota, on behalf of the EDA.

_____
Notary Public

EXHIBIT D

FORM OF
DEVELOPMENT PROPERTY DEED

THIS INDENTURE, between the West St. Paul Economic Development Authority, a public body corporate and politic organized and existing under the constitution and laws of Minnesota (the "Grantor"), and KTJ 339, LLC, a Minnesota limited liability company (the "Grantee").

WITNESSETH, that Grantor, in consideration of the sum of $_____ and other good and valuable consideration, the receipt whereof is hereby acknowledged, does hereby grant, bargain, quit claim and convey to the Grantee, their heirs and assigns forever, all the tract or parcel of land lying and being in the County of Dakota and State of Minnesota described as follows, to-wit (such tract or parcel of land is hereinafter referred to as the "Property"):

To have and to hold the same, together with all the hereditaments and appurtenances thereunto belonging in now or hereafter pertaining, to the said Grantee, their heirs and assigns, forever,

Provided:

SECTION 1

It is understood and agreed that this Deed is subject to the covenants, conditions, restrictions and provisions of an agreement entered into between the Grantor and Grantee on the _____ day of _____, 2020 identified as "Contract for Private Development" (hereinafter referred to as the "Agreement") and that the Grantee shall not convey the Property, or any part thereof, without the consent of the Grantor, until a Certificate of Completion of this Agreement as to the Property or such part thereof then to be conveyed, has been placed of record with Dakota County. This provision, however, shall in no way prevent the Grantee from mortgaging this Property in order to obtain funds for the purchase of Property hereby conveyed and from erecting improvements in conformity with the Agreement, any applicable redevelopment plan and applicable provisions of the Zoning Ordinance of the City of West St. Paul, Minnesota.

It is specifically agreed that the Grantee shall promptly begin and diligently prosecute to completion the redevelopment of the Property through the construction of the Minimum Improvements thereon, as provided in the Agreement.

Promptly after completion of the improvements in accordance with the provisions of the Agreement, the Grantor will furnish the Grantee with an appropriate instrument so certifying. Such certification by the Grantor shall be (and it shall be so provided in the certification itself) a conclusive determination of the satisfaction and termination of the agreements and covenants of the Agreement and of this Deed with respect to the obligation of the Grantee, and their heirs and

assigns, to construct the improvements and the dates for the beginning and completion thereof. Such certification and such determination shall not constitute evidence of compliance with or satisfaction of any obligation of the Grantee to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance the purchase of the Property hereby conveyed or the improvements, or any part thereof.

All certifications provided for herein shall be in such form as will enable them to be recorded with the County Recorder, or Registrar of Titles, Dakota County, Minnesota. If the Grantor shall refuse or fail to provide any such certification in accordance with the provisions of the Agreement and this Deed, the Grantor shall, within thirty (30) days after written request by the Grantee, provide the Grantee with a written statement indicating in adequate detail in what respects the Grantee has failed to complete with the improvements in accordance with the provisions of the Agreement or is otherwise in default, and what measures or acts will be necessary, in the opinion of the Grantor, for the Grantee to take or perform in order to obtain such certification.

SECTION 2

In the event the Grantee herein shall, prior to the recording of the certificate of completion referred to above:

(a) Fail to begin construction of the improvements provided for in this Deed and the Agreement in conformity with the Agreement and such failure is not due to Unavoidable Delays and is not cured within thirty (30) days after written notice to do so; or

(b) Default in or violate its obligations with respect to the construction of the improvements provided for in this Deed and the Agreement, or shall abandon or substantially suspend construction work, and such default, violation or failure is not due to Unavoidable Delays and any default or violation, abandonment or suspension is not cured, ended or remedied within thirty (30) days after written demand by the Grantor to do so; or

(c) Fail to pay real estate taxes or assessments on the Property or any part thereof when due, or shall place thereon any encumbrance or lien unauthorized by the Agreement with the Grantor, or shall suffer any levy or attachment to be made, or any mechanic's liens, or any other unauthorized encumbrances or liens to attach, and such taxes or assessments shall not have been paid or the encumbrance or lien removed or discharged, or provisions satisfactory to the Grantor made for such payments, removal or discharge, within 30 days after written demand by the Grantor to do so; provided, that if the Grantee shall first notify the Grantor of his intention to do so, it may in good faith contest any mechanic's or other lien filed or established and in such event the Grantor shall permit such mechanic's or other lien to remain undischarged and unsatisfied during the period of such contest and any appeal, but only if the Grantee provides the Grantor with a bank letter of credit or other security in the amount of the lien, in a form satisfactory to the Grantor pursuant to which the bank will pay to the Grantor the amount of any lien in the event that the lien is finally determined to be valid and during the course of such contest the Grantee shall keep the EDA informed respecting the status of such defense; or

(d) Cause, in violation of the Agreement or of this Deed, any transfer of the Property or any part thereof, and such violation shall be not cured within sixty (60) days after written demand by the Grantor to the Grantee; or

(e) Fail to comply with any of its other covenants under the Agreement and fail to cure any such noncompliance within thirty (30) days after written demand to do so; or

(f) Default under the terms of a mortgage loan authorized by the Agreement and the holder of the mortgage exercises any remedy provided by the mortgage documents or exercises any remedy provided by law or equity in the event of a default in any of the terms or conditions of the mortgage;

then the Grantor shall have the right to re-enter and take possession of the Property and to terminate and revest in the Grantor the estate conveyed by this Deed to the Grantee, their heirs or successors in interest, but only if the events stated in Section 2(a-f) have not been cured within the time periods provided above, or if the events cannot be cured within such time periods, and the Grantee does not provide assurances to the EDA, reasonably satisfactory to the EDA, that the events will be cured as soon as reasonably possible.

The Grantor certifies that the Grantor does not know of any wells on the described real property.

SECTION 3

The Grantee agrees for themselves and their heirs and assigns to or of the Property or any part thereof, hereinbefore described, that the Grantee and such heirs and assigns shall:

(a) Devote the Property to, and only to and in accordance with, the uses specified in any applicable redevelopment plan as amended and extended;

(b) Not discriminate on the basis of race, color, creed, national origin, age or sex in the sale, lease, rental or in the use or occupancy of the Property or any improvements erected or to be erected thereon, or any part thereof.

It is intended and agreed that the above and foregoing agreements and covenants shall be covenants running with the land, and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Deed, be binding, to the fullest extent permitted by law and equity for the benefit and in favor of, and enforceable by, the Grantor against the Grantee, their heirs and assigns, and every successor in interest to the Property, or any part thereof or any interest therein, and any party in possession or occupancy of the Property or any part thereof.

In amplification, and not in restriction of, the provisions of the preceding section, it is intended and agreed that the Grantor shall be deemed beneficiary of the agreements and covenants provided herein. Such agreements and covenants shall run in favor of the Grantor without regard to whether the Grantor has at any time been, remains, or is an owner of any land or interest therein to, or in favor of, which such agreements and covenants relate. The Grantor shall have the right,

in the event of any breach of any such agreement or covenant to exercise all the rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which it or any other beneficiaries of such agreement or covenant may be entitled. Grantor shall be entitled to recover the costs for such enforcement, including attorneys' fees.

SECTION 4

This Deed is also given subject to:

(a) Provision of the ordinances, building and zoning laws of the City of West St. Paul, state and federal laws and regulations in so far as they affect this real estate.

(b) Taxes payable subsequent to the date of this conveyance.

[Remainder of page intentionally blank]

IN WITNESS WHEREOF, the Grantor has caused this Deed to be duly executed in its behalf by its President and Executive Director and has caused its corporate seal to be hereunto affixed this _____ day of _____, 2020.

WEST ST. PAUL ECONOMIC DEVELOPMENT AUTHORITY

By: _____
David J. Napier
Its: President

By: _____
James Hartshorn
Its: Executive Director

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020 by David J. Napier and James Hartshorn, the President and Executive Director respectively, of the West St. Paul Economic Development Authority, a public body corporate and politic organized and existing under the Constitution and laws of Minnesota, on behalf of the EDA.

_____
Notary Public

This instrument was drafted by:

Korine L. Land, #262432
LeVander, Gillen & Miller, P.A.
633 South Concord Street, Suite 400
South St. Paul, MN 55075
651-451-1831
TITLE NOT EXAMINED

SEND TAX STATEMENT TO:

EXHIBIT E
SITE IMPROVEMENTS

[Chart below to be finalized and completed prior to Closing]

Site Improvement LOC	**Estimated Construction Cost**
Sanitary Sewer	
Watermain	
Storm Sewer	
Streets	
Street Lighting	
Trail stubs and Trails	
Subtotal:	
LOC (125%)	
Total Site Improvement LOC:	

EXHIBIT F
DEVELOPER'S LETTER OF CREDIT REQUIREMENTS FOR

Grading LOC	**Unit**	**Qty**	**Unit Cost**	**Total**
Site Grading Restoration: Topsoil	CY			
Clear and grub trees	AC			
Misc. Site Grading	LS			
Soil correction	EA			
Erosion Control: Silt Fence	LF			
Excavation to basement	SY			
Street Sweeper w/ Pickup Broom	HR			
Rough Grade to street grade	CY			
Total Grading Restoration Cost				$
Grading LOC 150%				

SITE GRADING & EROSION CONTROL ITEMS

[Chart above to be finalized and completed prior to Closing]

EXHIBIT G
DEVELOPER'S CASH REQUIREMENTS AND INDIRECT COST CASH ESCROW

CASH ESCROW
ENGINEERING

Engineering Escrow	**Total**
2% of Site Improvement Subtotal (Ex. E) Plan Review Escrow	
5% of Site Improvement Subtotal (Ex. E) Inspection Escrow	
Total Escrow:	

CASH
AREA CHARGES

Area Charges	**Cost/Acre**	**Acres**	**Total**
Sanitary Area Charge*			
Storm Area Charge			
Total Area Charges:			

*to be completed following submission and review by Met Council

CASH
BUILDING ESCROW

Building Escrow	**Cost/Acre**	**Acres**	**Total**
Erosion Control	$3,000	5	$15,000

CITY OF WEST ST. PAUL

City Council Report

To: **Mayor and City Council**

Through: **Ryan Schroeder, City Manager**

From: **Dave Schletty, Assistant Parks and Recreation Director**

Date: **May 11, 2020**

Contract Extension with Rainbow Tree Care for EAB Treatments

BACKGROUND INFORMATION:

In 2015 the Council adopted the City's Emerald Ash Borer (EAB) action plan. This plan included a pledge to save as many public ash trees as possible by using chemical injection treatments. On March 13, 2017 the City Council approved a contract agreement with Rainbow Tree Care to perform EAB injection treatments of public ash trees. This agreement also offered residents a discounted rate to treat their private ash trees. The City will continue to treat ash trees in 2020 with most trees getting their 2nd injection treatment. Treatments usually last for 2-3 years. The City has recently (accepted December 9, 2019) been awarded a $25,000 grant from the Minnesota Department of Natural Resources to plant trees on boulevards and other public spaces throughout the City. The City's Emerald Ash Borer Action Plan, which the Council approved in 2012 is a three-part plan; treat, remove and replace. With tight budgets staff has only been able to replant a small number of trees over the last few years. The grant will allow the City to plant up to 100 new trees and get us caught up with our Action Plan. The entire EAB program is summarized in the attachment that was also provided to you in January 2020.

The 2017 agreement with Rainbow Tree Care had a provision to extend the contract by mutual agreement. The contractor and staff would like to exercise that provision using the same rates as in the existing contract price of $3.60 per inch (DBH) for City trees and $5.75 per inch (DBH) for private resident's trees. Given the City's great experience with Rainbow Tree Care over the past three years, staff is recommending the contract extension.

The City will continue to educate residents about EAB and encourage them to either treat their private trees with Rainbow Tree Care or one of many other vendors listed on the City's website, or remove them before they die and become hazardous.

FISCAL IMPACT:

The City Council is set to approve a budget of no more than $30,000 for ash tree injection treatments in 2020, the same as in previous years.

STAFF RECOMMENDATION:

Approve the contract extension for 2020 with Rainbow Tree Care for ash tree injection treatments.

Attachments: Current 2017-18 Contract, EAB Program Update

Emerald Ash Borer Update

Timeline:

- January 2015 – City Council approved the City's Emerald Ash Borer (EAB) Action Plan, confirming a 3-step approach to combatting EAB: Treatment, Takedown and Reforestation. The Council pledged $50k per year for 10 years starting in 2016 ($30k for treatments and $20k for takedown and replacement)
- June 2016 – City began treatments of its' 1200 boulevard ash trees. 350-400 trees are being treated each year using a 3-year cycle.
- June 2019 – Treatments continued, with most of the treated trees receiving their second treatment.
- December 2019 – The City is awarded a $25k DNR grant for reforestation. This will offset the cost of the City's program and allow for catching-up with replanting of trees lost due to EAB.
- 2020 – The City will look to continue treatment of about 400 Ash trees, remove any dead or declining Ash trees, and replant up to 40 trees using budgeted and grant funds.

Other Notes:

- Maintenance staff remove the trees that are manageable and contract out the largest trees
- Stump grinding is performed by a licensed contractor each year for all take-downs
- Removed trees and debris are currently being trucked to S&S/Davey Tree in South St Paul with no disposal charges.

Statistics:

	Ash Treated	**Ash Removed**	**New Plantings**
2015	0	11	11
2016	370	18	24
2017	390	14	10
2018	419	13	4
2019	379	12	7
2020 (est.)	400	10	40
2021 (est.)	400	10	40
2022 (est.)	400	10	30
2023 (est.)	400	14	20
2024 (est.)	400	14	20
2025 (est.)	400	13	20

Budget:

	Treatment Cost	Removal Cost	Plantings Cost	TOTAL
2015	$0	$10,291	$4,300	**$14,591**
2016	$26,160	$14,354	$9,862	**$50,376**
2017	$28,548	$20,085	$2,748	**$51,381**
2018	$27,200	$22,396	$1,150	**$50,746**
2019	$26,285	$12,809	$3,417	**$42,511**
2020 (est.)	$27,000	$14,000	$6,500 + $10k (grant)	**$57,500**
2021 (est.)	$27,000	$14,000	$6,500 + $10k (grant)	**$57,500**
2022 (est.)	$27,000	$14,000	$6,000 + $5k (grant)	**$52,000**
2023 (est.)	$27,000	$15,000	$8,000	**$50,000**
2024 (est.)	$27,000	$15,000	$8,000	**$50,000**
2025 (est.)	$27,000	$15,000	$8,000	**$50,000**

AGREEMENT FOR SERVICES

THIS AGREEMENT ("Agreement") is made and executed this 13th day of March, 2017, by and between the City of West St. Paul, 1616 Humboldt Avenue, West St. Paul, Minnesota 55118, ("City") and Rainbow Treecare, 11571 K-Tel Drive, Minnetonka, MN 55343 ("Contractor").

WHEREAS, the City has accepted the proposal of the Contractor for Ash Tree Injection Treatments; and

WHEREAS, Contractor desires to perform the Services for the City under the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual consideration contained herein, it is hereby agreed as follows:

1. SERVICES.

    a. City agrees to engage Contractor as an independent contractor for the purpose of performing certain Services ("Services"), as defined in the following documents:

        i. A proposal dated February 28, 2017, incorporated herein as Exhibit 1;

        ii. List of trees to be treated, incorporated herein as Exhibit 2.

    b. Contractor covenants and agrees to provide Services to the satisfaction of the City in a timely fashion, as set forth in the Exhibits, subject to Section 7 of this Agreement.

2. PAYMENT.

    a. City agrees to pay and Contractor agrees to receive and accept payment for Services as set forth in the Exhibits.

    b. Any changes in the scope of the work of the Services that may result in an increase to the compensation due the Contractor shall require prior written approval by the authorized representative of the City or by the City Council. The City will not pay additional compensation for Services that do not have prior written authorization.

    c. Contractor shall submit itemized bills for Services provided to City on a monthly basis. Bills submitted shall be paid in the same manner as other claims made to City.

3. TERM. The term of this Agreement is identified in the Exhibits. This Agreement may be extended upon the written mutual consent of the parties for such additional period as they deem appropriate, and upon the same terms and conditions as herein stated.

4. TERMINATION.

   a. Termination by Either Party. This Agreement may be terminated by either party upon 30 days' written notice delivered to the other party to the addresses listed in Section 13 of this Agreement. Upon termination under this provision, if there is no default by the Contractor, Contractor shall be paid for Services rendered and reimbursable expenses until the effective date of termination.

   b. Termination Due to Default. This Agreement may be terminated by either party upon written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement. The non-performing party shall have fifteen (15) calendar days from the date of the termination notice to cure or to submit a plan for cure that is acceptable to the other party.

5. SUBCONTRACTORS. Contractor shall not enter into subcontracts for any of the Services provided for in this Agreement without the express written consent of the City, unless specifically provided for in the Exhibits. The Contractor shall pay any subcontractor involved in the performance of this Agreement within the ten (10) days of the Contractor's receipt of payment by the City for undisputed services provided by the subcontractor.

6. STANDARD OF CARE. In performing its Services, Contractor will use that degree of care and skill ordinarily exercised, under similar circumstances, by reputable members of its profession in the same locality at the time the Services are provided. No warranty, express or implied, is made or intended by Contractor's undertaking herein or its performance of Services.

7. DELAY IN PERFORMANCE. Neither City nor Contractor shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the nonperforming party. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; and inability to procure permits, licenses or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either City or Contractor under this Agreement. If such circumstances occur, the nonperforming party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement. Contractor will be entitled to payment for its reasonable additional charges, if any, due to the delay.

8. CITY'S REPRESENTATIVE. The City has designated Dave Schletty, Assistant Parks & Recreation Director, to act as the City's representative with respect to the Services to be performed under this Agreement. He or she shall have complete authority to transmit instructions, receive information, interpret, and define the City's policy and decisions with respect to the Services covered by this Agreement.

9. PROJECT MANAGER AND STAFFING. The Contractor has designated Jeff Hafner to be the primary contact for the City in the performance of the Services. He shall be assisted by other staff members as necessary to facilitate the completion of the Services in accordance with the terms established herein. Contractor may not remove or replace this designated staff without the approval of the City.

10. INDEMNIFICATION.

    a. Contractor and City each agree to defend, indemnify, and hold harmless each other, its agents and employees, from and against legal liability for all claims, losses, damages, and expenses to the extent such claims, losses, damages, or expenses are caused by its negligent acts, errors, or omissions. In the event claims, losses, damages, or expenses are caused by the joint or concurrent negligence of Contractor and City, they shall be borne by each party in proportion to its own negligence.

    b. Contractor shall indemnify City against legal liability for damages arising out of claims by Contractor's employees. City shall indemnify Contractor against legal liability for damages arising out of claims by City's employees.

11. INSURANCE. During the performance of the Services under this Agreement, Contractor shall maintain the following insurance:

    a. Commercial General Liability Insurance, with a limit of $2,000,000 for any number of claims arising out of a single occurrence, pursuant to Minnesota Statutes, Section 466.04, or as may be amended;

    b. Professional Liability Insurance, with a limit of $2,000,000 for any number of claims arising out of a single occurrence.

    c. Workers' Compensation Insurance in accordance with statutory requirements.

    d. Automobile Liability Insurance, with a combined single limit of $1,000,000 for each person and $1,000,000 for each accident.

    Contractor shall furnish the City with certificates of insurance, which shall include a provision that such insurance shall not be canceled without written notice to the City. The City shall be named as an additional insured on the Commercial General Liability Insurance policy and the Professional Liability Insurance policy.

12. INTENTIONALLY LEFT BLANK

13. NOTICES. Notices shall be communicated to the following addresses:

If to City: City of West St. Paul
1616 Humboldt Ave.
West St. Paul, MN 55118
Attention: Dave Schletty

Or e-mailed: dschletty@wspmn.gov

If to Contractor: Rainbow Treecare
11571 K-Tel Drive
Minnetonka, MN 55343
Attention: Jeff Hafner

Or emailed: jhafner@rainbowtreecare.com

14. INDEPENDENT CONTRACTOR STATUS. All services provided by Contractor, its officers, agents and employees pursuant to this Agreement shall be provided as employees of Contractor or as independent contractors of Contractor and not as employees of the City for any purpose.

15. GENERAL PROVISIONS.

a. Assignment. This Agreement is not assignable without the mutual written agreement of the parties.

b. Waiver. A waiver by either City or Contractor of any breach of this Agreement shall be in writing. Such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

c. Governing Law. This Agreement shall be construed in accordance with the laws of the State of Minnesota and any action must be venued in Dakota County District Court.

d. Amendments. Any modification or amendment to this Agreement shall require a written agreement signed by both parties.

e. Severability. If any term of this Agreement is found be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.

f. Data Practices Compliance. All data collected by the City pursuant to this Agreement shall be subject to the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13.

g. Entire Agreement. This Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter hereof, whether oral or written.

CITY OF WEST ST. PAUL

By: _____
Jenny Halverson, Mayor

By: _____
Ryan Schroeder, Interim City Manager

Date: 3/28/17

CONTRACTOR

By: Jeff Hether

Its: Director of Municipal Consulting

Date: 3/23/17

CITY OF WEST ST. PAUL

REQUEST FOR PROPOSALS
EMERALD ASH BORER INJECTION TREATMENT
FOR BOULEVARD ASH TREES
FEBRUARY 2017

CONTRACT ADMINISTRATION

All correspondence regarding this RFP (Request For Proposals) & the proposed project must be addressed to:

Dave Schletty
Assistant Parks Director
City of West St. Paul
1616 Humboldt Ave.
West St. Paul, MN 55118

Ph. #651-552-4152
e-mail : dschletty@wspmn.gov

ACCEPTANCE OF PROPOSAL CONTENTS

The contents of this RFP & proposal will become contractual obligations if a contract ensues. Failure of the Consultant to meet these obligations may result in cancellation of the award. All information in the proposal is subject to disclosure under the provisions of Minnesota Statutes Chapter 13 – Minnesota Government Data Practices Act.

SCOPE OF WORK

Contractor shall provide all labor, supervision, equipment, services and expertise required to perform trunk injection treatments of ash trees with Emamectin Benzoate as specified herein.

AWARD STATEMENT

The contract will be awarded based on lowest price. The City of West St Paul reserves the right to select a higher bidder with ISA Certified Arborists on staff (over a company without) if their bid is within 5% of the lowest bid.

TIMELINE

The term of the contract will be for two (2) years, 2017-2018. Treatments shall be applied each year once trees have leafed out, between early-June and mid-August. Deadline for project completion is August 31, 2017 and August 31, 2018.

PROPOSAL SUBMITTAL
All proposals must be received by 12:00 p.m. noon (central time), Tuesday, February 28, 2017. Any proposal submitted after this date and time will be rejected. Vendors are responsible for ensuring that the above office receives their proposal before the deadline. Electronic proposals may be submitted by email. Proposals must include submittal of both pricing bid forms (Exhibits A & B).

CONTRACTOR QUALIFICATIONS
Contractor is required to submit a description of their equipment and qualifications/certifications, as well as a brief description of the Contractor's work experience as it relates to this type of project.

CONTRACT REQUIRED
The Contractor selected to perform the work will be required to submit related documents (after award of proposal) as a condition of performing the work:

- Proof of insurance
- Proof of purchase of specified products

PROOF OF PURCHASE OF SPECIFIED PRODUCTS
Prior to commencing project, Contractor shall be required to show proof of purchase of specified products and appropriate quantities.

CERTIFICATION AND LICENSES
All applicators must possess a valid Minnesota Commercial Pesticide Applicator's License. When selecting a Contractor, preference will be given to companies with ISA Certified Arborists on staff (see award statement above).

LOCATION OF WORK
Work will be performed in public rights-of-way along City streets or in parks, City-wide.

TREE TREATMENT LIST
Treatment list will be supplied to Contractor by street, address and estimated diameter inches and identified with a tree ID number. 2017 trees to be treated are attached in Exhibit C. 2018 trees to be treated will be supplied to contractor before March 31, 2018. Neighborhood maps may also be provided. Trees will not be marked for treatment.

Written updates will be sent out as necessary. The City of West St Paul will select individual trees and number of trees to be treated, as communicated in writing from the Assistant Parks and Recreation Director, prior to commencement of work.

The City of West St Paul estimates the treatment of about 350-400 trees for each year, 2017 and 2018.

Additionally, Contractor agrees to offer a special treatment rate for West St Paul property owners. The trees will be billed at the price per DBH quoted on Resident Bid Form (Exhibit B) and homeowners shall be invoiced directly. By submitting a proposal, you agree to these terms.

PRODUCT SPECIFICATIONS
Product shall be a micro-encapsulated liquid formulation of 4% Emamectin Benzoate, no substitution or equal will apply. The Product will be prepared in a micro-encapsulated concentrate using a 4% (4 grams per 100 grams) by weight Emamectin Benzoate active ingredient. An emulsifiable concentrate or suspension concentrate formulation is not an acceptable replacement.

The Product must be capable of being used as either a concentrate or mixed with water. The Product will be specifically labeled for trunk injection into trees and approved for use in the State of Minnesota.

The product EPA state approved label must include ash species (Fraxinus spp.) and Emerald Ash Borer (Agrilus planipennis) for treatment.

The manufacturer of the product shall be able to supply independent research data validating the product has efficacy and control above 95%.

All trees will be treated by the product at a medium rate of 5 ml per DBH.

EQUIPMENT SPECIFICATIONS
Contractor shall use their choice of Devices from 1, 2 or 3 (or any combination thereof) to inject tree trunks. All injection holes must be sealed with "The Plug" as identified in Device 4, or another similar equivalent device. If an alternate method is used being proposed, please specify the device on the bid price form.

Device 1 - Automatic Micro-injection Device (Air Hydraulic)
The purpose of this device is to be able to quickly and efficiently complete systemic injections on a high volume of medium to large trees with the least amount of effort.

- The device must be capable of applying the formulation at a minimum of 125 psi with the ability to regulate the pressure below 250 psi.
- The delivery system including the device, formulation reservoir, pressurization equipment and other equipment required to deliver the dose must weigh less than 15 pounds without formulation.
- The device must be able to adjust the hole to hole dose from 1 milliliter to 5 milliliters in less than 5 seconds.
- The device must be able to deliver the dose directly into the sapwood.
- The device must be capable of delivering the formulation through a self-sealing plug outlined later in this document identified as "The Plug "
- The device must be advanced by trigger pull, button push or other automatic action that does not influence the dose size or pressure of delivery.
- The device must provide evidence that the dose has been fully applied and cannot allow for a leak path back into the supply reservoir.
- Equipment must be industrial grade capable of carrying at least 1 liter of material and must currently be used in the arboriculture industry for the purpose of systemic injection.

- Identification of maintenance issues are the responsibility of the applicator. Maintenance may be done by the applicator and repairs shall be done by the manufacturer.

Device 2 - Micro-infusion Device (Tree IV)
The purpose of this device is to be able to quickly and efficiently complete systemic injections on larger trees or medium trees during poor uptake conditions. Micro-infusion devices are simple in design and they provide total flexibility for treating any size tree under a variety of environmental conditions.

- The device must be capable of applying variable pressures between 30 and 60 psi.
- The device must have a reservoir of at least one liter with the ability to deliver 25 milliliters to six hundred (600) milliliters in a single dose into the sapwood.
- The device shall accommodate a pre-filled measured dose capable of delivering the formulation as a concentrate or mixed with water.
- The device shall deliver the single dose into multiple injection sites through an interconnected manifold. Individual capsules are not interconnected and therefore not an acceptable substitute for this specification.
- The device must be capable of delivering the formulation through self-sealing plugs outlined later in this document identified as "The Plug "
- The device must be advanced by trigger pull, button push, valve opening or other automatic action that does not influence the dose size or pressure.
- The device must provide evidence that the applied dose has been fully applied.
- Equipment must be industrial grade and currently used in the arboriculture industry for this purpose.
- Equipment must remain in operating condition throughout the length of this injection program.
- Identification of maintenance issues are the responsibility of the applicator
- Repairs may be done by the applicator or the manufacturer.

Device 3 - Manual Micro-injection Device (QUIK-jet)
The purpose of this device is to be able to quickly and efficiently complete systemic injections on a low to moderate volumes of small to medium size trees with a light weight simple device moving quickly from tree to tree.

- The device must be capable of manually applying the formulation at a minimum of 70 psi but not be able to exceed 250psi.
- The device and formulation reservoir must weigh less than 1.5 pounds when empty.
- The device must be able to deliver varied doses of at least 1 milliliter to 5 milliliters directly into the sapwood.
- The device must be able to be quickly and easily adjust the dose at the device without opening the reservoir. Filling the dose manually or with syringe does not qualify for this specification as adjustable.
- The device must be capable of delivering the formulation through a self-sealing plug outlined later in this document identified as "The Plug "

- The device may be advanced manually and the action may influence the pressure of delivery but not the dose size.
- The device must provide evidence that the applied dose has been fully applied and cannot allow for a leak path back into the supply reservoir.
- Equipment must be industrial grade and currently used in the arboriculture industry for this purpose.
- Equipment must remain in operating condition throughout the length of this injection program.
- Identification of maintenance issues are the responsibility of the applicator
- Repairs may be done by the applicator or the manufacturer.

Device 4 – The Plug
The purpose of this device is to be able to assure the proper dose is sealed within the sapwood during and after pressurized applications protecting the environment and the operator from contact with the pesticide.

- The plug shall have a hard exterior plastic shell or housing which when installed will hold back internal pressures up to 600 psi.
- The plug shall be able to be set into the sapwood.
- The hole needed for installation of the plug shall not exceed a 3/8 diameter drilled hole.
- The plug shall have a soft inner core capable of sealing around an insertion needle during and after an injection of up to 600psi.
- The plug shall not contain any metal.
- The plug shall not be threaded into the hole.

TIMING AND SCHEDULING OF WORK
Work may commence upon receipt of signed, binding contract which is contingent on receipt of all required documentation. Work may begin as soon as conditions allow after submission of required documents. Work must be completed as weather and conditions permit prior to August 31 of each year. No work shall be performed on Saturdays or Sundays.

RECORD KEEPING
Contractor shall keep records of all pesticide applications in accordance with MN State laws and regulations. Application record components shall include the name and license number of the individual who applied the pesticide, the date and approximate starting and ending times of the application, the locations of sites (tree ID # is sufficient) where the pesticide was applied, the EPA registration number and either the brand or product name of the pesticide, the pesticide application rate and the total quantity of pesticide applied, and the location, if other than a licensed business location, at which the pesticide was mixed and or loaded into the application equipment. Contractor shall submit copies of the records to the Assistant Parks and Recreation Director upon completion of the project.

CONTRACTOR SIGNAGE
The Contractor is not allowed to post signs on or around any treated tree identifying their business or logo.

POSTING REQUIREMENT
Official pesticide application warning signs shall be posted so as to be clearly visible to the public and adjacent to the treated tree.

Warning signs must remain posted until sunset of the day following the application, or until sunset of the day on which the restricted entry interval on the pesticide label expires, whichever is later. A warning sign for each pesticide application near school grounds is to remain for at least 72 hours following the application. Applicators are not required to remove warning signs.

SUPERVISION
Contractor shall consult the Assistant Parks and Recreation Director concerning details and scheduling of all work. Contractor must have a responsible person in charge of work at all times to whom the Assistant Parks and Recreation Director may contact (by telephone) and issue directives. The Contractor's responsible person(s) must be available to the Assistant Parks and Recreation Director for the duration of the treatment project.

WORK SAFETY
Work shall conform to the most recent editions/standards of work safety including: OSHA and American National Standards Institute.

RESIDENTIAL SAFETY
Contractor shall remain attentive to road and work zone safety with regard to pedestrians at all times.

EVIDENCE
In all situations involving injury or property damage, Contractor is not to perform further work until photography, police reports and other evidence gathering activities are completed. Contractor is to make no statement to anyone about which party might be liable for damages or injuries, or what caused any tree to break apart, fall, etc. All such questions shall be directed to the Assistant Parks and Recreation Director at 651-552-4152.

PAYMENTS
One payment shall be made upon conclusion of treatments each year. Payment will follow a final inspection of project work, receipt of an invoice and treatment records, and internal payment processing.

INADEQUACIES AND OMISSIONS
Contractor shall bring any inadequacies, omissions or conflicts to the attention of the Assistant Parks and Recreation Director. Prompt clarification will be supplied to Contractor, in writing. Failure to request clarification of any inadequacy, omission or conflict, will not relieve the Contractor of responsibility.

COMMUNICATIONS/PUBLIC RELATIONS

Contractor is required to provide the Assistant Parks and Recreation Director 24 hours advanced notice of beginning work and to check in weekly to report a planned route, progress of work, and any issues or problems.

Contractor shall at all times endeavor to maintain good relations with the public and respectfully answer questions from the public. Contractor will be required to direct inquiring citizens to the Assistant Parks and Recreation Director for more information about the treatment project. Contractors shall not imply or promise any particular outcome from the treatment.

City of West St Paul
Tree Injection Services

Exhibit A- Ash Tree Injection Price Quote for Emamectin benzoate - **City Property (City Invoiced)** over two(2) year time period at the **Medium Rate**

Medium Rate (ml. product/tree)	Tree Diameter (DBH) Class in inches	Number of trees (A)	Price Per Tree (B)	Quote (Number of trees X Price per tree) (C)	Price per inch (DBH)
55	10-12	1			
70	13-15	1			
85	16-18	1			
100	19-21	1			
115	22-24	1			
130	25-27	1			
145	28-30	1			
160	31-33	1			
175	34-36	1			
190	37-39	1			
205	40-42	1			
220	43-45	1			
235	46-48	1			
250	49-51	1			
265	52-54	1			
280	55-57	1			
295	58-60	1			
310	61-63	1			
325	64-66	1			
340	67-69	1			
355	70-72	1			
Total Amount of Quote (Sum of Column C) (Number of trees x price per tree)					

Name of Company: _____ Authorized Signature: _____

Address: _____ Date: _____

Phone: _____

ALTERNATE DEVICE METHOD (if applicable): _____

_____

City of West St Paul
Tree Injection Services

Exhibit B- Ash Tree Injection Price Quote for Emamectin benzoate – **Resident/Private Property (Resident Invoiced)** trees over two(2) year time period at the **Medium Rate**

Medium Rate (ml. product/tree)	Tree Diameter (DBH) Class in inches	Number of trees (A)	Price Per Tree (B)	Quote (Number of trees X Price per tree) (C)	Price per inch (DBH)
55	10-12	1			
70	13-15	1			
85	16-18	1			
100	19-21	1			
115	22-24	1			
130	25-27	1			
145	28-30	1			
160	31-33	1			
175	34-36	1			
190	37-39	1			
205	40-42	1			
220	43-45	1			
235	46-48	1			
250	49-51	1			
265	52-54	1			
280	55-57	1			
295	58-60	1			
310	61-63	1			
325	64-66	1			
340	67-69	1			
355	70-72	1			
Total Amount of Quote (Sum of Column C) (Number of trees x price per tree)					

Name of Company: _____ Authorized Signature: _____

Address: _____ Date: _____

Phone: _____

ALTERNATE DEVICE METHOD (if applicable): _____

_____

EXHIBIT C

ID	SPECIE	DBH	CONDITION	NOTES	HOUSE	STREET
1	Green ash	14	4		821	Allen Ave
2	Green ash	18	4		823	Allen Ave
3	Green ash	19	5		867	Allen Ave
4	Green ash	19	5		922	Allen Ave
5	Green ash	22	4		949	Allen Ave
6	Green ash	22	5		949	Allen Ave
7	Green ash	26	5		958	Allen Ave
8	Green ash	21	4		965	Allen Ave
9	Green ash	20	4		1108	Allen Ave
10	Green ash	27	5		1114	Allen Ave
11	Green ash	22	5		1114	Allen Ave
12	Green ash	16	5		1140	Allen Ave
13	Green ash	23	5		1140	Allen Ave
14	Green ash	20	5		1200	Allen Ave
15	Green ash	26	5		1212	Allen Ave
16	Green ash	18	5		1212	Allen Ave
17	Green ash	24	5		194	Altman Ct
18	Green ash	23	5		4	Amelia Ct
19	Green ash	20	5		6	Amelia Ct
20	Green ash	29	4		8	Amelia Ct
21	Green ash	18	5		13	Amelia Ct
22	Green ash	21	5		13	Amelia Ct
23	Green ash	15	5		66	Annapolis St E
24	Green ash	16	5		232	Annapolis St E
25	Green ash	15	5		244	Annapolis St E
26	Green ash	23	3		248	Annapolis St E
27	Green ash	9	5		284	Annapolis St E
28	Green ash	19	5		28	Annapolis St W
29	Green ash	14	5		168	Annapolis St W
30	Green ash	13	5		168	Annapolis St W
31	Green ash	20	4		164	Arion St E
32	Green ash	24	5		176	Arion St E
33	Green ash	7	4		203	Arion St E
34	Green ash	14	5		271	Arion St E
35	Green ash	20	5		271	Arion St E
36	Green ash	35	4		90	Arion St W
37	Green ash	4	5		98	Arion St W
38	Green ash	23	4		901	Bellows St
39	Green ash	17	4		908	Bellows St
40	Green ash	18	5		1167	Bellows St
41	Green ash	14	5		1167	Bellows St
42	Green ash	16	4		1174	Bellows St

43	Green ash	17	5		1174	Bellows St
44	Green ash	31	5		1188	Bellows St
45	Green ash	30	5		1207	Bellows St
46	Green ash	20	5		60	Bernard St E
47	Green ash	16	5		60	Bernard St E
48	Green ash	10	5		130	Bernard St E
49	Green ash	27	5		172	Bernard St E
50	Green ash	18	5		187	Bernard St E
51	Green ash	20	5		187	Bernard St E
52	Green ash	21	5		245	Bernard St E
53	Green ash	6	5		245	Bernard St E
54	Green ash	21	5		253	Bernard St E
55	Green ash	24	5		291	Bernard St E
56	Green ash	21	5		291	Bernard St E
57	Green ash	18	5		411	Bernard St E
58	Green ash	23	5		411	Bernard St E
59	Green ash	21	5		11	Bernard St W
60	Green ash	16	4		125	Bernard St W
61	Green ash	11	4		163	Bernard St W
62	Green ash	11	4		163	Bernard St W
63	Green ash	12	4		425	Betty Ln
64	Green ash	22	5		445	Betty Ln
65	Green ash	29	5		459	Betty Ln
66	Green ash	16	5		839	Bidwell St
67	Green ash	29	3		884	Bidwell St
68	Green ash	22	3		890	Bidwell St
69	Green ash	26	5		892	Bidwell St
70	Green ash	10	5		941	Bidwell St
71	Green ash	9	5		941	Bidwell St
72	Green ash	19	5		953	Bidwell St
73	Green ash	17	5		953	Bidwell St
74	Green ash	18	5		969	Bidwell St
75	Green ash	29	4		973	Bidwell St
76	Green ash	26	2		976	Bidwell St
77	Green ash	17	4	2x	1030	Bidwell St
78	Green ash	14	5		1141	Bidwell St
79	Green ash	18	5		1092	Carrie St
80	Green ash	17	5		1092	Carrie St
81	Green ash	13	5		1363	Carrie St
82	Green ash	27	3		924	Charleton Ave
83	Green ash	19	5		931	Charleton Ave
84	Green ash	12	5		932	Charleton Ave
85	Green ash	18	5		1061	Charleton Ave
86	Green ash	20	5		1061	Charleton Ave
87	Green ash	17	5		1105	Charleton Ave
88	Green ash	22	4		886	Cherokee Ave
89	Green ash	17	5		936	Cherokee Ave

90	Green ash	18	5
91	Green ash	28	5
92	Green ash	33	4
93	Green ash	18	4
94	Green ash	30	4
95	Green ash	25	3
96	Green ash	19	5
97	Green ash	15	5
98	Green ash	14	5
99	Green ash	25	5
100	Green ash	15	5
101	Green ash	16	5
102	Green ash	21	4
103	Green ash	17	5
104	Green ash	14	5
105	Green ash	28	5
106	Green ash	12	5
107	Green ash	12	5
108	Green ash	18	5
109	Green ash	18	5
110	Green ash	25	5
111	Green ash	28	5
112	Green ash	21	5
113	Green ash	23	5
114	Green ash	21	5
115	Green ash	24	5
116	Green ash	16	5
117	Green ash	6	3
118	Green ash	9	4
119	Green ash	14	4
120	Green ash	12	4
121	Green ash	13	4
122	Green ash	10	5
123	Green ash	10	4
124	Green ash	14	5
125	Green ash	17	5
126	Green ash	26	5
127	Green ash	7	4
128	Green ash	14	4
129	Green ash	15	5
130	Green ash	18	5
131	Green ash	19	4
132	Green ash	17	5
133	Green ash	17	5
134	Green ash	17	5
135	Green ash	15	4
136	Green ash	16	4

962	Cherokee Ave
976	Cherokee Ave
997	Cherokee Ave
1039	Cherokee Ave
1051	Cherokee Ave
1136	Cherokee Ave
1159	Cherokee Ave
1163	Cherokee Ave
1196	Cherokee Ave
1196	Cherokee Ave
1229	Cherokee Ave
1231	Cherokee Ave
1280	Cherokee Ave
1306	Cherokee Ave
1338	Cherokee Ave
1351	Cherokee Ave
893	Christensen Ave
893	Christensen Ave
897	Christensen Ave
170	Conver St
173	Conver St
179	Conver St
196	Conver St
199	Conver St
203	Conver St
208	Conver St
215	Conver St
1	Crusader Ave E
1	Crusader Ave E
1	Crusader Ave E
1	Crusader Ave E
1	Crusader Ave E
1	Crusader Ave E
2	Crusader Ave E
2	Crusader Ave E
191	Curtice St W
215	Curtice St W
237	Curtice St W
243	Curtice St W
250	Curtice St W
250	Curtice St W
824	Deppe St
824	Deppe St
824	Deppe St
824	Deppe St
838	Deppe St
838	Deppe St

137	Green ash	16	4	791	Dodd Rd
138	Green ash	17	4	845	Dodd Rd
139	Green ash	17	5	848	Dodd Rd
140	Green ash	10	5	849	Dodd Rd
141	Green ash	16	5	849	Dodd Rd
142	Green ash	15	5	865	Dodd Rd
143	Green ash	18	5	886	Dodd Rd
144	Green ash	14	5	931	Dodd Rd
145	Green ash	19	5	932	Dodd Rd
146	Green ash	12	5	970	Dodd Rd
147	Green ash	20	3	276	Emerson Ave W
148	Green ash	12	4	286	Emerson Ave W
149	Green ash	17	4	293	Emerson Ave W
150	Green ash	18	4	299	Emerson Ave W
151	Green ash	11	4	300	Emerson Ave W
152	Green ash	20	5	340	Emerson Ave W
153	Green ash	23	4	385	Emerson Ave W
154	Green ash	29	5	385	Emerson Ave W
155	Green ash	27	4	454	Emerson Ave W
156	Green ash	24	2	485	Emerson Ave W
157	Green ash	18	5	1023	Felix St
158	Green ash	25	5	1024	Felix St
159	Green ash	20	5	1028	Felix St
160	Green ash	25	5	1046	Felix St
161	Green ash	26	4	968	Galvin Ave
162	Green ash	25	5	968	Galvin Ave
163	Green ash	26	4	980	Galvin Ave
164	Green ash	27	5	980	Galvin Ave
165	Green ash	26	4	986	Galvin Ave
166	Green ash	25	5	986	Galvin Ave
167	Green ash	23	4	990	Galvin Ave
168	Green ash	16	5	990	Galvin Ave
169	Green ash	11	5	996	Galvin Ave
170	Green ash	14	5	996	Galvin Ave
171	Green ash	26	5	1026	Galvin Ave
172	Green ash	24	4	1032	Galvin Ave
173	Green ash	20	5	1037	Galvin Ave
174	Green ash	22	5	1037	Galvin Ave
175	Green ash	27	5	1038	Galvin Ave
176	Green ash	21	4	1043	Galvin Ave
177	Green ash	22	4	1049	Galvin Ave
178	Green ash	22	5	1049	Galvin Ave
179	Green ash	23	4	1050	Galvin Ave
180	Green ash	29	5	1050	Galvin Ave
181	Green ash	25	5	894	Gorman Ave
182	Green ash	19	5	895	Gorman Ave
183	Green ash	21	5	983	Gorman Ave

184	Green ash	6	5
185	Green ash	11	5
186	Green ash	23	5
187	Green ash	28	3
188	Green ash	36	1
189	Green ash	24	5
190	Green ash	30	5
191	Green ash	21	5
192	Green ash	14	5
193	Green ash	7	5
194	Green ash	7	3
195	Green ash	29	5
196	Green ash	28	5
197	Green ash	23	5
198	Green ash	22	5
199	Green ash	7	5
200	Green ash	23	5
201	Green ash	23	5
202	Green ash	21	5
203	Green ash	19	4
204	Green ash	10	5
205	Green ash	22	5
206	Green ash	20	5
207	Green ash	26	3
208	Green ash	35	5
209	Green ash	7	4
210	Green ash	10	5
211	Green ash	27	5
212	Green ash	19	5
213	Green ash	20	5
214	Green ash	7	5
215	Green ash	13	5
216	Green ash	10	5
217	Green ash	23	4
218	Green ash	9	5
219	Green ash	24	5
220	Green ash	23	5
221	Green ash	28	5
222	Green ash	9	4
223	Green ash	17	5
224	Green ash	17	5
225	Green ash	29	5
226	Green ash	33	5
227	Green ash	11	4
228	Green ash	25	5
229	Green ash	21	5
230	Green ash	15	5

987	Gorman Ave
1016	Gorman Ave
1027	Gorman Ave
1045	Gorman Ave
1063	Gorman Ave
1104	Gorman Ave
911	Hall Ave
911	Hall Ave
926	Hall Ave
926	Hall Ave
960	Hall Ave
975	Hall Ave
987	Hall Ave
1023	Hall Ave
1041	Hall Ave
1228	Hall Ave
1245	Hall Ave
1266	Hall Ave
1267	Hall Ave
1304	Hall Ave
1309	Hall Ave
1083	Harmon Ave
1097	Harmon Ave
127	Haskell St E
200	Haskell St E
240	Haskell St E
254	Haskell St E
254	Haskell St E
383	Haskell St E
383	Haskell St E
383	Haskell St E
383	Haskell St E
383	Haskell St E
214	Haskell St W
152	Hurley St E
155	Hurley St E
166	Hurley St E
173	Hurley St E
292	Kopp Dr
292	Kopp Dr
292	Kopp Dr
5	Langer Cir
5	Langer Cir
8	Langer Cir
10	Langer Cir
912	Livingston Ave
931	Livingston Ave

231	Green ash	18	5
232	Green ash	11	5
233	Green ash	17	5
234	Green ash	19	5
235	Green ash	13	5
236	Green ash	21	5
237	Green ash	25	5
238	Green ash	29	4
239	Green ash	21	5
240	Green ash	13	5
241	Green ash	13	5
242	Green ash	10	5
243	Green ash	28	5
244	Green ash	18	5
245	Green ash	23	5
246	Green ash	29	5
247	Green ash	21	5
248	Green ash	28	5
249	Green ash	8	5
250	Green ash	12	5
251	Green ash	10	5
252	Green ash	29	5
253	Green ash	20	5
254	Green ash	17	5
255	Green ash	11	5
256	Green ash	28	4
257	Green ash	19	4
258	Green ash	25	5
259	Green ash	20	5
260	Green ash	15	5
261	Green ash	15	5
262	Green ash	11	5
263	Green ash	10	5
264	Green ash	23	5
265	Green ash	33	5
266	Green ash	24	5
267	Green ash	19	5
268	Green ash	22	5
269	Green ash	30	5
270	Green ash	16	5
271	Green ash	18	5
272	Green ash	25	5
273	Green ash	6	5
274	Green ash	10	5
275	Green ash	17	5
276	Green ash	33	4
277	Green ash	27	5

947	Livingston Ave
984	Livingston Ave
985	Livingston Ave
1071	Livingston Ave
1096	Livingston Ave
1106	Livingston Ave
1112	Livingston Ave
1113	Livingston Ave
1880	Livingston Ave
1880	Livingston Ave
170	Logan Ave E
170	Logan Ave E
175	Logan Ave E
175	Logan Ave E
1	Logan Ave W
10	Logan Ave W
25	Logan Ave W
50	Logan Ave W
55	Logan Ave W
102	Logan Ave W
180	Logan Ave W
154	Mainzer St
154	Mainzer St
157	Mainzer St
163	Mainzer St
169	Mainzer St
249	Mainzer St
253	Mainzer St
258	Mainzer St
266	Mainzer St
273	Mainzer St
274	Mainzer St
274	Mainzer St
965	Manomin Ave
979	Manomin Ave
1333	Manomin Ave
1333	Manomin Ave
1334	Manomin Ave
1334	Manomin Ave
137	Moreland Ave E
137	Moreland Ave E
363	Moreland Ave W
363	Moreland Ave W
330	Moreland Cir
881	Ohio St
958	Ohio St
1025	Ohio St

278	Green ash	20	5		1025	Ohio St
279	Green ash	22	5		1028	Ohio St
280	Green ash	21	5		1028	Ohio St
281	Green ash	29	5		1041	Ohio St
282	Green ash	29	5		1041	Ohio St
283	Green ash	18	5		1047	Ohio St
284	Green ash	28	4		1060	Ohio St
285	Green ash	21	4		1090	Ohio St
286	Green ash	22	4		1090	Ohio St
287	Green ash	9	5		1222	Ohio St
288	Green ash	22	5		1231	Ohio St
289	Green ash	24	4		1252	Ohio St
290	Green ash	6	5		294	Orme St W
291	Green ash	7	5		294	Orme St W
292	Green ash	9	5		294	Orme St W
293	Green ash	26	5		896	Ottawa Ave
294	Green ash	22	5		901	Ottawa Ave
295	Green ash	21	5		905	Ottawa Ave
296	Green ash	12	5		936	Ottawa Ave
297	Green ash	13	5		963	Ottawa Ave
298	Green ash	24	4		996	Ottawa Ave
299	Green ash	19	5		1096	Ottawa Ave
300	Green ash	28	5		1173	Ottawa Ave
301	Green ash	25	5		1173	Ottawa Ave
302	Green ash	24	5		1346	Ottawa Ave
303	Green ash	29	5		1352	Ottawa Ave
304	Green ash	16	5		380	Rehnberg Pl
305	Green ash	21	5		381	Rehnberg Pl
306	Green ash	21	5		234	Roeller St
307	Green ash	18	5		251	Roeller St
308	Green ash	19	5		260	Roeller St
309	Green ash	18	5		266	Roeller St
310	Green ash	18	5		417	Roeller St
311	Green ash	17	5		417	Roeller St
312	Green ash	8	4		291	Ruby Dr
313	Green ash	16	4		301	Ruby Dr
314	Green ash	13	3		334	Ruby Dr
315	Green ash	34	4		340	Ruby Dr
316	Green ash	4	4		421	Ruby Dr
317	Green ash	19	2		431	Ruby Dr
318	Green ash	22	5		432	Ruby Dr
319	Green ash	24	4		436	Ruby Dr
320	Green ash	23	4		463	Ruby Dr
321	Green ash	11	5		475	Ruby Dr
322	Green ash	23	3		476	Ruby Dr
323	Green ash	10	6	Weschcke park	0	Runge Ln
324	Green ash	12	6	Weschcke park	0	Runge Ln

325	Green ash	15	6	Weschcke park	0	Runge Ln
326	Green ash	10	4		267	Runge Ln
327	Green ash	14	2		1867	Scott Ln
328	Green ash	15	3		1867	Scott Ln
329	Green ash	14	4		1867	Scott Ln
330	Green ash	13	5		1867	Scott Ln
331	Green ash	14	5		1867	Scott Ln
332	Green ash	14	3		1891	Scott Ln
333	Green ash	21	3		1891	Scott Ln
334	Green ash	14	3		1891	Scott Ln
335	Green ash	13	3		1891	Scott Ln
336	Green ash	12	3		1891	Scott Ln
337	Green ash	11	3		1891	Scott Ln
338	Green ash	13	4		1891	Scott Ln
339	Green ash	16	5		1891	Scott Ln
340	Green ash	21	4		967	Seminole Ave
341	Green ash	14	5		1131	Seminole Ave
342	Green ash	20	3	Dodd Park	0	Smith Ave
343	Green ash	22	4	Dodd Park	0	Smith Ave
344	Green ash	17	5		1039	Smith Ave
345	Green ash	31	5		1093	Smith Ave
346	Green ash	24	5		1096	Smith Ave
347	Green ash	23	5		1103	Smith Ave
348	Green ash	14	5		1141	Smith Ave
349	Green ash	16	5		1144	Smith Ave
350	Green ash	16	5		1188	Smith Ave
351	Green ash	14	4		1216	Smith Ave
352	Green ash	14	4		960	Sperl St
353	Green ash	33	5	3x	966	Sperl St
354	Green ash	25	4		1054	Sperl St
355	Green ash	16	5		130	Stanley St
356	Green ash	15	5		179	Stanley St
357	Green ash	17	5		270	Stanley St
358	Green ash	19	5		271	Stanley St
359	Green ash	11	5		886	Stryker Ave
360	Green ash	7	5		914	Stryker Ave
361	Green ash	18	5		925	Stryker Ave
362	Green ash	17	5		936	Stryker Ave
363	Green ash	19	4		947	Stryker Ave
364	Green ash	16	5		948	Stryker Ave
365	Green ash	18	5		985	Stryker Ave
366	Green ash	14	5		1044	Stryker Ave
367	Green ash	21	4		1051	Stryker Ave
368	Green ash	31	3		1769	Vivian Ln
369	Green ash	8	5		141	Westchester Dr
370	Green ash	24	4		142	Westchester Dr
371	Green ash	24	5		153	Westchester Dr

372	Green ash	19	5
373	Green ash	20	5
374	Green ash	11	5
375	Green ash	16	4
376	Green ash	12	3
377	Green ash	17	3
378	Green ash	15	3
379	Green ash	15	4
380	Green ash	13	3
381	Green ash	12	3
382	Green ash	17	4
383	Green ash	14	4
384	Green ash	19	3
385	Green ash	29	4
386	Green ash	16	3
387	Green ash	27	3
388	Green ash	36	4
389	Green ash	9	3
390	Green ash	36	4
391	Green ash	34	4
392	Green ash	28	4

176	Westchester Dr
176	Westchester Dr
186	Westchester Dr
187	Westchester Dr
255	Westview Dr
255	Westview Dr
255	Westview Dr
255	Westview Dr
285	Westview Dr
285	Westview Dr
285	Westview Dr
285	Westview Dr
310	Westview Dr
211	Winona St W
235	Winona St W
892	Winslow Ave
892	Winslow Ave
916	Winslow Ave
930	Winslow Ave
1053	Winslow Ave
1057	Winslow Ave

CITY OF WEST ST. PAUL

City Council Report

To: **Mayor and City Council**

Through: **Ryan Schroeder, City Manager**

From: **Ross Beckwith, Public Works & Parks Director/City Engineer**

Date: **May 11, 2020**

Materials Testing Contract for Dome Exit Stairs Project 20-5

BACKGROUND INFORMATION:

On February 24, 2020, City Council awarded a contract to TMG Construction to reconstruct the westerly emergency exits at the Sports Dome. The contractor is planning to start work in mid-May. Like any construction project, materials testing is a requirement to ensure that materials are all up to required standards.

FISCAL IMPACT:

Proposals were received from Braun Intertec ($13,810) and WSB & Associates ($10,671). Staff and the design consultant have reviewed the proposals and recommends WSB & Associates be awarded the contract for materials testing.

STAFF RECOMMENDATION:

Staff recommends that City Council award a contract to WSB & Associates, Inc. for material testing of City Project 20-5 in the amount of $10,671.

Attachment: WSB CP 20-5 Materials Testing Proposal

May 1, 2020

Mr. Ross Beckwith
City Engineer
City of West St. Paul
1616 Humboldt Avenue
West St. Paul, MN 55118

Re: Proposal for Special Inspections and Construction Materials Testing
Regional Athletics Center – West Stairs Modification
West St. Paul, Minnesota

Dear Mr. Beckwith:

WSB is pleased to present this proposal to provide professional services for special inspections and construction materials testing in conjunction with the above referenced project. The following includes a description of our understanding of the project, an outline of the scope of work, and an estimate of charges for these services.

PROJECT INFORMATION

It is our understanding that this project will consist of the re-construction of six sets of stair entrance ways from parking lot level to the Regional Athletics Center. The existing stairways will be completely removed and replaced. As part of the construction process, the adjacent bituminous and concrete flatwork will also be removed and replaced.

In preparing this proposal, we reviewed the following information.

- RFP, Stantec Architecture Inc, dated April 28, 2020
- Architectural Drawings, Stantec Architecture Inc, dated January 21, 2020
- Project Manual, Stantec Architecture Inc, dated January 21, 2020

We were not provided a construction schedule to assist in formulating our proposal.

3701 40TH AVENUE NW | SUITE 100 | ROCHESTER, MN | 55901 | 507.218.3745 | WSBENG.COM

SCOPE OF SERVICES

We anticipate our work will be provided on a part-time, will-call basis as requested by the Contractor or the Owner. Based on our experience with similar type construction; we anticipate the following inspection and testing services will be required:

Soils:

- Evaluate the suitability of the soils exposed at the base of the excavations for earth supported footing and slabs to support the proposed construction.
- Perform laboratory testing, including standard Proctor tests and sieve analyses on materials imported for fill and backfill.
- Perform density and moisture testing with the nuclear density gauge on any engineered fill and backfill.

Concrete:

- Perform observations of the concrete reinforcement and formwork prior to concrete placement.
- Perform field testing of plastic concrete including air content, slump, temperature and casting of cylinders for compressive strength testing.
- Perform laboratory concrete compressive strength testing on cylinders cast by WSB personnel.

Adhesive Anchors:

- Perform observations of the post-installed adhesive anchor placement to verify embedment, clean-out and adhesive type.

Structural Steel:

- Perform welding inspections.
- Perform high-strength bolting inspections.

Bituminous Pavement:

- Perform drain down testing on the porous pavements after placement.
- Retrieve samples of the hot mix for testing of MnDOT Gyratory Mix Properties.

ASSUMPTIONS

In preparing this proposal, we have made the following assumptions:

- We have assumed that inspections of the steel fabrication shops will not be required.
- We are not aware of any full penetration welds on this project that will require testing.

If these assumptions are incorrect, this proposal should be revised. These services can be provided at additional cost.

DELIVERABLES AND REPORTING

WSB utilizes a laboratory information management system (LIMS) for both field and laboratory reporting and document distribution.

Our reporting system is a mobile solution for our technicians and inspectors to electronically replace paper-based information gathering on site for construction materials testing and construction inspection activities. This field data collection software connects field testing and inspection staff with the laboratory or office. This field information management system enables us to allocate, track and capture field related work in real time, and simplifying report review and approval, reducing report turnaround times.

We will submit both field and laboratory test reports electronically through the Construction Hive. The Construction Hive is a cloud-based platform providing applications for the distribution and analysis of information for construction industry participants. It provides a centralized repository of documents and data (testing and inspection) that is available for analytical reporting and integration. Prior to start of the project, we will request email addresses of those who should be provided access to our test reports. As test reports become available, these individuals will receive email alerts when reports are available for review and downloading.

COSTS

Enclosed is the Construction Materials Testing Estimate of Costs for the various phases of the work indicated. WSB recommends that the Estimated Project Cost of **$10,671.00** be used for budgeting purposes. Nevertheless, fees for the project will depend on the amount of observation and testing requested by the design team and the owner.

If there are additional services necessary for this project that are not included in this proposal, we would be happy to discuss how WSB can assist.

SCHEDULE

WSB is prepared to meet your project schedule. We anticipate that your Contractor will handle coordination of the site services and that we will be given a sufficient amount of advanced notification when tests and inspections are required.

ACCEPTANCE

This letter represents our complete understanding of the proposed scope of services. If you are in agreement with the scope of services, proposed fees and enclosed General Contract Provisions, please have an authorized representative of the City sign in the appropriate space below and return one copy to our attention. If you have any questions about this proposal, please feel free to call us or email us.

This fee proposal is valid for ninety (90) days from the creation date noted in the header. WSB may reissue a revised proposal upon request if the indicated time period has lapsed. Should the scope of work change in nature or be expanded to include additional services, we reserve the right to renegotiate the fees with you. Once we begin work on this project any counteroffers will not be accepted.

WSB appreciates the opportunity of being considered for this project and we look forward to providing our professional services to you.

Sincerely,

WSB

Emily DeSchepper
Project Coordinator
612.289.3048
edeschepper@wsbeng.com

Joe Carlson, PE
Project Manager
612.499.8416
joecarlson@wsbeng.com

Enclosures: Construction Materials Testing Estimate of Costs
General Contract Provisions 11.01.16

ACCEPTED BY: City of West. St. Paul

The City of West St. Paul hereby accepts this WSB proposal for Construction Materials Testing and Special Inspection as outlined above and according to the general contract provisions enclosed.

Signature: _____

Name: _____

Title: _____

Date: _____

Construction Materials Testing Estimate of Costs

City of West St. Paul

Regional Athletics Center

West Stairs Modification

May 1, 2020

CMT Unit	Service Description	Estimated Units	Hourly or Unit Cost	Total Unit Cost
	Aggregate and Soils			
	Field Testing			
CMT03	Excavation Observations *2 trips at 3.00 hours each*	6.00 hours	$ 81.00	$ 486.00
CMT02	Compaction Testing of Fill and Backfill *2 trips at 2.00 hours each*	4.00 hours	$ 72.00	$ 288.00
3510	Nuclear Density Testing *6 tests on aggregate base*	6 tests	$ 16.00	$ 96.00
2130	Trip Charge	4 trips	$ 30.00	$ 120.00
	Laboratory Testing			
3025	Sieve Analysis through no. 200 Sieve *1 tests on aggregate base* *1 tests on choker aggregate* *1 tests on filter aggregate*	3 tests	$ 135.00	$ 405.00
3260	Standard Proctor *1 tests on aggregate base*	1 tests	$ 135.00	$ 135.00
			Subtotal	$ 1,530.00
	Asphalt Pavements			
	Field Testing			
CMT03	Porous Pavement Drain Down Testing *1 trips at 4.00 hours each*	4.00 hours	$ 81.00	$ 324.00
CMT01	Sample Pick Up *2 trips at 1.25 hours each*	2.50 hours	$ 54.00	$ 135.00
2130	Trip Charge	3 trips	$ 30.00	$ 90.00
	Laboratory Testing			
4090	MnDOT Gyratory Mix Properties	2 tests	$ 495.00	$ 990.00
			Subtotal	$ 1,539.00
	Concrete Reinforcement			
CMT03	Concrete Reinforcement Observations Footings *2 trips at 1.00 hours each* Walls *2 trips at 1.00 hours each* Slabs *2 trips at 1.00 hours each* Stairs *2 trips at 1.00 hours each*	8.00 hours	$ 81.00	$ 648.00
2130	Trip Charge	8 trips	$ 30.00	$ 240.00
			Subtotal	$ 888.00
	Concrete			
	Field Testing			
CMT02	Testing of Concrete Footings *2 pours at 1.75 hours each* Walls *2 pours at 1.75 hours each*	19.25 hours	$ 72.00	$ 1,386.00

Slabs	2 pours at 1.75 hours each			
Stairs	2 pours at 1.75 hours each			
Curb/Gutter	1 pours at 1.75 hours each			
Flatwork	2 pours at 1.75 hours each			
CMT01	Sample Pickup 8 trips at 1.25 hours each	10.00 hours	$ 54.00	$ 540.00
2130	Trip Charge	20 trips	$ 30.00	$ 600.00
	Laboratory Testing			
2040	Concrete Curing and Compressive Strength Testing 11 sets at 4 cylinders each	44 cylinders	$ 27.00	$ 1,188.00
			Subtotal	$ 3,714.00
	Adhesive Anchors			
CMT03	Field - Inspection & Observation 2 trips at 3.00 hours each	6.00 hours	$ 81.00	$ 486.00
2130	Trip Charge	2 trips	$ 30.00	$ 60.00
			Subtotal	$ 546.00
	Structural Steel			
CMT04	Field - Inspection and Testing, Bolts/Welds 2 trips at 5.00 hours each	10.00 hours	$ 99.00	$ 990.00
2130	Trip Charge	2 trips	$ 30.00	$ 60.00
			Subtotal	$ 1,050.00
	Project Supervision, Review and Management			
CMT80	Project Engineer/Manager	4.00 hours	$ 117.00	$ 468.00
CMT70	Project Assistant	10.00 hours	$ 81.00	$ 810.00
CMT90	Project Administrator	2.00 hours	$ 63.00	$ 126.00
			Subtotal	$ 1,404.00

Inspection and Testing Project Summary

Aggregate and Soils	$	1,530.00
Asphalt Pavements	$	1,539.00
Concrete Reinforcement	$	888.00
Concrete	$	3,714.00
Adhesive Anchors	$	546.00
Structural Steel	$	1,050.00
Project Supervision, Review and Management	$	1,404.00
Estimated Total	**$**	**10,671.00**

EXHIBIT A
GENERAL CONTRACT PROVISIONS

ARTICLE 1 – PERFORMANCE OF THE WORK

Consultant shall perform the services under this Agreement in accordance with the care and skill ordinarily exercised by members of Consultant's profession practicing under similar circumstances at the same time and in the same locality. Consultant makes no warranties, express or implied, under this Agreement or otherwise, in connection with its services.

ARTICLE 2 – ADDITIONAL SERVICES

If the Client requests that the Consultant perform any services which are beyond the scope as set forth in the Agreement, or if changed or unforeseen conditions require the Consultant to perform services outside of the original scope, then, Consultant shall promptly notify the Client of cause and nature of the additional services required. Upon notification, Consultant shall be entitled to an equitable adjustment in both compensation and time to perform.

ARTICLE 3 – SCHEDULE

Unless specific periods of time or dates for providing services are specified in a separate Exhibit, Consultant's obligation to render services hereunder will be for a period which may reasonably be required for the completion of said services. The Client agrees that Consultant is not responsible for damages arising directly or indirectly from any delays for causes beyond Consultant's control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions, or other natural disasters or acts of God; fires, riots, war or other emergencies; any action or failure to act in a timely manner by any government agency; actions or failure to act by the Client or the Client's contractor or consultants; or discovery of any hazardous substance or differing site conditions. If the delays outside of Consultant's control increase the cost or the time required by Consultant to perform its services in accordance with professional skill and care, then Consultant shall be entitled to a reasonable adjustment in schedule and compensation.

ARTICLE 4 – CONSTRUCTION OBSERVATION

If requested by Client, Consultant shall visit the project during construction to become familiar with the progress and quality of the contractors' work and to determine if the work is proceeding, in general, in accordance with plans, specifications or other contract documents prepared by Consultant for the Client. The Client has not retained the Consultant to make detailed inspections or to provide exhaustive or continuous project review and observation services.

Consultant neither guarantees the performance of any Contractor retained by Client nor assumes responsibility for any Contractor's failure to furnish and perform the work in accordance with the construction documents. Client acknowledges Consultant will not direct, supervise or control the work of contractors or their subcontractors, nor shall Consultant have authority over or responsibility for the contractors' means, methods, or procedures of construction. Consultant's services do not include review or evaluation of the Client's, contractor's or subcontractor's safety measures, or job site safety. Job Site Safety shall be the sole responsibility of the contractor who is performing the work.

For Client-observed projects, the Consultant shall be entitled to rely upon and accept representations of the Client's observer. If the Client desires more extensive project observation or full-time project representation, the Client shall request such services be provided by the Consultant as an Additional Service. Consultant and Client shall then enter into a Supplemental Agreement detailing the terms and conditions of the requested project observation.

ARTICLE 5 – OPINIONS OF PROBABLE COST

Opinions, if any, of probable cost, construction cost, financial evaluations, feasibility studies, economic analyses of alternate solutions and utilitarian considerations of operations and maintenance costs, collectively referred to as "Cost Estimates," provided for are made or to be made on the basis of the Consultant's experience and qualifications and represent the Consultant's best judgment as an experienced and qualified professional design firm. The parties acknowledge, however, that the Consultant does not have control over the cost

of labor, material, equipment or services furnished by others or over market conditions or contractor's methods of determining their prices, and any evaluation of any facility to be constructed or acquired, or work to be performed must, of necessity, be viewed as simply preliminary. Accordingly, the Consultant and Client agree that the proposals, bids or actual costs may vary from opinions, evaluations or studies submitted by the Consultant and that Consultant assumes no responsibility for the accuracy of opinions of Cost Estimates and Client expressly waives any claims related to the accuracy of opinions of Cost Estimates. If Client wishes greater assurance as to Cost Estimates, Client shall employ an independent cost estimator as part of its Project responsibilities.

ARTICLE 6 – REUSE AND DISPOSITION OF INSTRUMENTS OF SERVICE

All documents, including reports, drawings, calculations, specifications, CADD materials, computers software or hardware or other work product prepared by Consultant pursuant to this Agreement are Consultant's Instruments of Service and Consultant retains all ownership interests in Instruments of Service, including copyrights. The Instruments of Service are not intended or represented to be suitable for reuse by the Client or others on extensions of the Project or on any other project. Copies of documents that may be relied upon by Client are limited to the printed copies (also known as hard copies) that are signed or sealed by Consultant. Files in electronic format furnished to Client are only for convenience of Client. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. Consultant makes no representations as to long term compatibility, usability or readability of electronic files.

If requested, at the time of completion or termination of the work, the Consultant may make available to the Client the Instruments of Service upon (i) payment of amounts due and owing for work performed and expenses incurred to the date and time of termination, and (ii) fulfillment of the Client's obligations under this Agreement. Any use or re-use of such Instruments of Service by the Client or others without written consent, verification or adaptation by the Consultant except for the specific purpose intended will be at the Client's risk and full legal responsibility and Client expressly releases all claims against Consultant arising from re-use of the Instruments of Service without Consultant's written consent, verification or adaptation.

The Client will, to the fullest extent permitted by law, indemnify and hold the Consultant harmless from any claim, liability or cost (including reasonable attorneys' fees, and defense costs) arising or allegedly arising out of any unauthorized reuse or modification of these Instruments of Service by the Client or any person or entity that acquires or obtains the reports, plans and specifications from or through the Client without the written authorization of the Consultant. Under no circumstances shall transfer of Instruments of Service be deemed a sale by Consultant, and Consultant makes no warranties, either expressed or implied, of merchantability and fitness for any particular purpose. Consultant shall be entitled to compensation for any consent, verification or adaption of the Instruments of Service for extensions of the Project or any other project.

ARTICLE 7 – PAYMENTS

Payment to Consultant shall be on a lump sum or hourly basis as set out in the Agreement. Consultant is entitled to payment of amounts due plus reimbursable expenses. Client will pay the balance stated on the invoice unless Client notifies Consultant in writing of any disputed items within fifteen (15) days from the date of invoice. In the event of any dispute, Client will pay all undisputed amounts in the ordinary course, and the Parties will endeavor to resolve all disputed items. All accounts unpaid after thirty (30) days from the date of original invoice shall be subject to a service charge of 1-1/2% per month, or the maximum amount authorized by law, whichever is less. Consultant reserves the right to retain instruments of service until all invoices are paid in full. Consultant will not be liable for any claims of loss, delay, or damage by Client for reason of withholding services or instruments of service until all invoices are paid in full. Consultant shall be entitled to recover all reasonable costs and disbursements, including reasonable attorney fees, incurred in connection with collecting amounts owed by Client. In addition, Consultant may, after giving seven (7) days' written notice to Client, suspend services under this Agreement until it receives full payment for all amounts then due for services, expenses and charges. Payment methods, expenses and rates may be more fully described in Exhibit C and Exhibit E.

ARTICLE 8 – SUBMITTALS AND PAY APPLICATIONS

If the Scope of Work includes the Consultant reviewing and certifying the amounts due the Contractor, the Consultant's certification for payment shall constitute a representation to the Client, that to the best of the Consultant's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in general accordance with the Documents issued by the Consultant. The issuance of a Certificate for Payment shall not be a representation that the Consultant has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Client to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum. Contractor shall remain exclusively responsible for its Work.

If the Scope of Work includes Consultant's review and approval of submittals from the Contractor, such review shall be for the limited purpose of checking for conformance with the information given and the design concept. The review of submittals is not intended to determine the accuracy of all components, the accuracy of the quantities or dimensions, or the safety procedures, means or methods to be used in construction, and those responsibilities remain exclusively with the Client's contractor.

ARTICLE 9 – HAZARDOUS MATERIALS

Notwithstanding the Scope of Services to be provided pursuant to this Agreement, it is understood and agreed that Consultant is not a user, handler, generator, operator, treater, arranger, storer, transporter, or disposer of hazardous or toxic substances, pollutants or contaminants as any of the foregoing items are defined by Federal, State and/or local law, rules or regulations, now existing or hereafter amended, and which may be found or identified on any Project which is undertaken by Consultant.

The Client agrees to indemnify Consultant and its officers, subconsultant(s), employees and agents from and against any and all claims, losses, damages, liability and costs, including but not limited to costs of defense, arising out of or in any way connected with, the presence, discharge, release, or escape of hazardous or toxic substances, pollutants or contaminants of any kind, except that this clause shall not apply to such liability as may arise out of Consultant's sole negligence in the performance of services under this Agreement arising from or relating to hazardous or toxic substances, pollutants, or contaminants specifically identified by the Client and included within Consultant's services to be provided under this Agreement.

ARTICLE 10 – INSURANCE

Consultant has procured general and professional liability insurance. On request, Consultant will furnish client with a certificate of insurance detailing the precise nature and type of insurance, along with applicable policy limits. Additional Insurance requirements are listed in Exhibit D.

ARTICLE 11 – TERMINATION OR SUSPENSION

If Consultant's services are delayed or suspended in whole or in part by Client, or if Consultant's services are delayed by actions or inactions of others for more than sixty (60) days through no fault of Consultant, Consultant shall be entitled to either terminate its agreement upon seven (7) days written notice or, at its option, accept an equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect reasonable costs incurred by Consultant in connection with, among other things, such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.

This Agreement may be terminated by either party upon seven (7) days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination. In the event of termination Consultant shall be compensated for services performed prior to termination date, including charges for expenses and equipment costs then due and all termination expenses.

This Agreement may be terminated by either party upon thirty (30) days' written notice without cause. Consultant shall upon termination only be entitled to payment for the work performed up to the Date of termination. In the event of termination, copies of plans, reports, specifications, electronic drawing/data files (CADD), field data, notes, and other documents whether written, printed or recorded on any medium whatsoever, finished or unfinished,

prepared by the Consultant pursuant to this Agreement and pertaining to the work or to the Project, (hereinafter "Instruments of Service"), shall be made available to the Client upon payment of all amounts due as of the date of termination. All provisions of this Agreement allocating responsibility or liability between the Client and Consultant shall survive the completion of the services hereunder and/or the termination of this Agreement.

ARTICLE 12 – INDEMNIFICATION

The Consultant agrees to indemnify and hold the Client harmless from any damage, liability or cost to the extent caused by the Consultant's negligence or willful misconduct.

The Client agrees to indemnify and hold the Consultant harmless from any damage, liability or cost to the extent caused by the Client's negligence or willful misconduct.

ARTICLE 13 – WAIVER OF CONSEQUENTIAL DAMAGES

The Consultant and Client waive claims against each other for consequential damages arising out of or relating to this contract. This mutual waiver includes damages incurred by the Client for rental expenses, for loss of use, loss of income, lost profit, project delays, financing, business and reputation and for loss of management or employee productivity or of the services of such persons; and (2) Damages incurred by the Consultant for principal office expenses including the compensation for personnel stationed there, for losses of financing, business and reputation and for loss of profit except anticipated profit arising directly from the Work. The Consultant and Client further agree to obtain a similar waiver from each of their contractors, subcontractors or suppliers.

ARTICLE 14 – WAIVER OF CLAIMS FOR PERSONAL LIABILITY

It is intended by the parties to this Agreement that Consultant's services shall not subject Consultant's employees, officers or directors to any personal legal exposure for the risks associated with this Agreement. Therefore, and notwithstanding anything to the contrary contained herein, the Client agrees that as the Client's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against Consultant, and not against any of Consultant's individual employees, officers or directors.

ARTICLE 15 – ASSIGNMENT

Neither Party to this Agreement shall assign its interest in this agreement, any proceeds due under the Agreement nor any claims that may arise from services or payments due under the Agreement without the written consent of the other Party. Any assignment in violation of this provision shall be null and void. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Consultant or Client. This Agreement is for the exclusive benefit of Consultant and Client and there are no other intended beneficiaries of this Agreement.

ARTICLE 16 – CONFLICT RESOLUTION

In an effort to resolve any conflicts that arise during the design or construction of the project or following the completion of the project, the Client and Consultant agree that all disputes between them arising out of or relating to this Agreement shall be submitted to nonbinding mediation as a precondition to any formal legal proceedings.

ARTICLE 17 – CONFIDENTIALITY

The Consultant agrees to keep confidential and not to disclose to any person or entity, other than the Consultant's employees, subconsultants and the general contractor and subcontractors, if appropriate, any data and information furnished to the Consultant and marked CONFIDENTIAL by the Client. These provisions shall not apply to information in whatever form that comes into the public domain, nor shall it restrict the Consultant from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency or other authority with proper jurisdiction, or if it is reasonably necessary for the Consultant to complete services under the Agreement or defend itself from any suit or claim.

ARTICLE 18 – AVAILABLE INSURANCE PROCEEDS AND LIMITATION OF LIABILITY

Consultant maintains professional liability insurance with a liability limit of not less than $2,000,000 per claim. The Consultant's total liability to Client shall not exceed the total available insurance policy limits per claim available to Consultant under its professional liability insurance policy. Client hereby agrees that to the fullest extent permitted by law, the Consultant's total liability to Client for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to or arising from this Agreement from any cause or causes including, but not limited to, Consultant's negligence, errors, omissions, strict liability, breach of contract or breach of warranty (Client's Claims) shall not exceed the total policy limits available to Consultant under its professional liability insurance policy for settlement or satisfaction of Client's Claims under the terms and conditions of the Consultant's professional liability insurance policy applicable hereto.

Notwithstanding the language above, Client agrees that with regard to any claim arising from or relating to Consultant's provision of geotechnical engineering services, construction materials testing, special inspections, and/or environmental engineering services, including but not limited to environmental site assessments, that Consultant's liability for any claims asserted by or through Client shall be limited to $50,000.

Client and Consultant each further agree that neither will be responsible for any incidental, indirect, or consequential damages (including loss of use or loss of profits) sustained by the other, its successors or assigns. This mutual waiver shall apply even if the damages were foreseeable and regardless of the theory of recovery plead or asserted.

ARTICLE 19 – CONTROLLING LAW

This Agreement is to be governed by the laws of the State of Minnesota. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, including but not limited to claims for negligence or breach of warranty, that is not settled by nonbinding mediation shall be settled by the law of the state of Minnesota.

ARTICLE 20 – LOCATION OF UNDERGROUND IMPROVEMENTS

Where requested by Client, Consultant will perform customary research to assist Client in locating and identifying subterranean structures or utilities. However, Consultant may reasonably rely on information from the Client and information provided by local utilities related to structures or utilities and will not be liable for damages incurred where Consultant has complied with the standard of care and acted in reliance on that information. The Client agrees to waive all claims and causes of action against the Consultant for claims by Client or its contractors relating to the identification, removal, relocation, or restoration of utilities, or damages to underground improvements resulting from subsurface penetration locations established by the Consultant.

CITY OF WEST ST. PAUL

City Council Report

To: **Mayor and City Council**

Through: **Ryan Schroeder, City Manager**

From: **Char Stark, Finance Director**

Date: **May 11, 2020**

Dakota Broadband Board (DBB) Fiber Optic Agreement

BACKGROUND INFORMATION:

The DBB, in which the City of West St. Paul (WSP) is a member, is requesting each member's authoritative board to adopt the attached agreement. This agreement allows the DBB to have the Indefeasible right to use the fiber system owned by WSP. This gives the DBB the ability to add fiber into the City of WSP with conduit built into our street infrastructure.

In the past, the City had been putting in conduit whenever we open up a street project for future expansion of the fiber system within the City. Our current direction is changing. The current plan is to include conduit when additional fiber is of value to the City operation (providing connectivity). An example would be putting in conduit and fiber from City Hall to the Arena or to the City's pool. We would not add conduit into a street project where the primary usage is residential.

Our reasons for this change are as follows:

1. Added costs of putting in conduit for every future street project.
2. The City of WSP does not see a future for the City to become a provider of Internet services to non- governmental entities.
3. With the future of 5G coming into existence the City would not be able to compete with the technology in place and to keep up with the demands of new technology in the future.
4. This will allow us to build stronger partnerships with neighboring cities. These partnerships will allow us to have data stored in neighboring cities to help with CJIS and disaster recover options.

FISCAL IMPACT:

		Amount
Fund:		
Department:		
Account:		

STAFF RECOMMENDATION:

Approval of the Agreement between the City and the DBB with the knowledge the City will not be adding to the conduit infrastructure unless a City need is being met.

DBB Contract # _____

FIBER OPTIC INDEFEASIBLE RIGHT TO USE

AGREEMENT BY AND BETWEEN

CITY OF WEST ST PAUL AS GRANTOR

AND

DAKOTA BROADBAND BOARD AS GRANTEE

FIBER OPTIC INDEFEASIBLE RIGHT TO USE AGREEMENT

This Agreement for the indefeasible right to use (or "IRU") together with the attached exhibit (collectively the "Agreement" or the "IRU Agreement") is made by and between the City of West St Paul, a Minnesota municipal corporation ("IRU Grantor" or "the City"), and Dakota Broadband Board, a Minnesota independent joint powers organization, acting by and through its Board of Directors ("IRU Grantee", or "the DBB"). The IRU Grantor and IRU Grantee may be referred to herein individually as a "Party" or collectively as the "Parties."

BACKGROUND

A. The City has installed and maintained, or plans to install and maintain, certain Fibers and Fiber Facilities, and

B. The City is a participant in and a member of the Dakota Broadband Board and to further the purpose and goals of the DBB, the City agrees to grant to the DBB the right to use, manage and maintain Fibers and Fiber Facilities within certain Fiber Optic Cable segments on the terms and conditions set forth below.

C. The DBB desires to use, manage and maintain optic Fibers and Fiber Facilities from the City as described in this Agreement.

DEFINITIONS

The following terms are used in this IRU Agreement:

A. "County Right-of-Way" means the real property, including all fee simple, easements, access rights, rights of use and other interests, owned and/or operated by Dakota County, devoted to County road or highway purposes.

B. "City Right-of-Way" means the real property, including all fee simple, easements, access rights, rights of use and other interests owned and/or operated by the City, devoted to City road or highway purposes.

C. "Dakota Broadband Network" means a high-performance network connecting local government facilities in Dakota County with the physical assets (conduit, fiber optic cable, handholes, cabinets, network equipment) owned by DBB members but maintained and managed by the DBB.

D. "Effective Date" is the date upon which all Parties have executed this Agreement.

E. "Fiber" means a glass strand or strands which is/are used to transmit a communication signal along the glass strand in the form of pulses of light.

F. "Fiber Facilities" means a handhole, conduit, splice enclosures and related equipment, but excluding any electronic or optronic equipment at termination points located in City facilities.

G. "Fiber Optic Cable" or "Cable" means a collection of fibers with a protective outer covering.

H. "IRU Assets" means the City's IRU conduit, IRU Cable, IRU Fibers and Fiber Facilities that is subject to this Agreement as more specifically described in Exhibit A.

I. "IRU Cable" means a Cable containing one or more Fibers, constructed and owned by the City in which the DBB has an IRU pursuant to the terms of this Agreement.

J. "IRU Fibers" means the specific City owned Fiber described in Exhibit A, an IRU for which is granted to the DBB in the IRU Cable pursuant to the terms of this Agreement.

K. "Indefeasible Right of Use" or "IRU" means an indefeasible right to use, maintain and manage the IRU Fibers and Fiber Facilities, provided, however, that granting of such IRU does not convey legal title to the IRU Fibers or Fiber Facilities.

L. "Optical Splice Point" means a point where the City's Cable is connected to another entity's Cable within a splice enclosure.

M. "Relocation" means any physical movement of fiber optic cable or conduit required due to reconstruction, modification, change in grade, expansion or relocation of a County road or highway, or a city street or other public improvement.

In consideration of their mutual promises, the Parties expressly agree as follows:

ARTICLE I
LICENSES

Section 1.1 The DBB desires to obtain an IRU in the City's IRU Assets further described in Exhibit A to this Agreement, which is incorporated into this IRU by reference. In consideration of the promises by the DBB in this Agreement, the City grants an IRU to the DBB in the IRU Assets identified in Exhibit A hereto, subject to any interests the City has previously granted to other cities or Dakota County, pursuant to IRUs or other contractual arrangements. The DBB shall be entitled to use the IRU Assets for any lawful purposes subject to (i) agreeing to be bound by all laws, regulations and any requirements of the City regarding access to City rights of way, and (ii) otherwise complying with the terms and conditions of this IRU.

Section 1.2 Subject to the terms and conditions of this IRU Agreement, City hereby grants to the DBB a license to access and use the IRU Assets during the term of this Agreement and any extension of this Agreement. The Parties acknowledge and agree that they may add additional IRU Assets owned by the City to become subject to this Agreement, and will agree upon an amended Exhibit A that reflects the changes to the City IRU Assets to be subject to DBB use and management, which shall supersede all previous versions of Exhibit A. Such amended Exhibit A

need not be formally approved by the DBB Board or the City Council of the City in order for the amendment to become effective.

Section 1.3 The IRU Assets are provided to the DBB "as is." If any new Fiber Facilities or any fiber splices are needed to interconnect IRU Fibers to the Dakota Broadband Network, the DBB shall be responsible for coordinating this work with the City and shall pay any and all costs and fees associated with connecting the IRU Fibers to other fibers not owned by the City for Dakota Broadband Network purposes. The DBB and the city or cities that own the Dakota Broadband Network assets shall confer and agree upon which Party is responsible for the costs and fees associated with connecting the IRU Fibers to other fibers for Dakota Broadband Network purposes of parties outside of the DBB or shall agree upon an allocation of the costs and fees between the Parties. If the Parties cannot agree upon the responsibility for costs and fees related to Dakota Broadband Network connections, the issue shall be presented to the DBB Board and the DBB Board decision on cost responsibility shall be final.

Section 1.4 Notwithstanding anything contained to the contrary in this Agreement, the Parties acknowledge and agree nothing contained in this Agreement shall operate to limit, interfere with, or otherwise adversely affect each Party's right to manage, control, construct, relocate, maintain, replace and expand the portion of its fiber optic network equipment and infrastructure that is not subject to this Agreement, and is not included in the description of Fiber and Fiber Facilities in Exhibit A.

ARTICLE II
EFFECTIVE DATE AND TERM

The DBB may use the granted IRU Assets commencing on the Effective Date. This Agreement has an initial term of 10 years, with two separate five-year renewals which shall be effective unless the DBB Board affirmatively decides not to renew and provides ninety (90) days' notice to the City prior to termination or unless terminated by agreement of the Parties in writing or by one of the events in Article XI, Section 11.2 of this Agreement, whichever occurs first.

ARTICLE III
LICENSE FEES

The City will not impose, and the DBB shall not pay a fee for the use of the IRU Assets during the term of this Agreement on any renewal of this Agreement. The City will contribute to the cost of using, managing and maintaining the City's Fiber Assets through its DBB participant fees and other financial contributions as approved by the DBB Board.

ARTICLE IV
MAINTENANCE AND REPAIR

The DBB shall be responsible for the maintaining, repairing and when necessary replacing the City's IRU Assets assigned to the DBB as described in Exhibit A within the Dakota Broadband Network managed by the DBB. Responsibility for the cost of maintenance and repair of new City Fiber Facilities used within the Dakota Broadband Network will be as follows:

> If the City has amended Exhibit A of its IRU Agreement with the DBB to include the new Dakota Broadband Network/city fiber among the IRU Assets to be managed and maintained by the DBB, the cost of maintenance and repair of the new Dakota Broadband Network fiber is the responsibility of the DBB.
>
> If the City has not amended Exhibit A of its IRU Agreement with the DBB to include the new city fiber among the IRU Assets to be managed and maintained by the DBB, the cost of maintenance and repair of the new Dakota Broadband Network/City fiber is the responsibility of the city until the new Dakota Broadband Network fiber is added to Exhibit A.

The response time to repair breaks or other failures causing an interruption in communications through City IRU Assets will be the response time standards set forth in the break/fix contract between the DBB, or its network administrator, and the selected break/fix repair contractor.

ARTICLE V
REPRESENTATIONS AND WARRANTIES

Section 5.1 The DBB's use of the IRU Assets shall comply with all applicable governmental codes, ordinances, laws, rules, regulations and/or restrictions.

Section 5.2 The City represents and warrants that it has the right to grant this IRU in its IRU Assets.

ARTICLE VI
LIABILITY; INDEMNIFICATION

Section 6.1 Neither the City nor the DBB shall be liable to the other for any indirect, special, punitive or consequential damages arising under this Agreement or from any breach or partial breach of the provisions of this Agreement or arising out of any act or omission of either Party hereto, its directors, officers, employees, servants, contractors and/or agents.

Section 6.2 The DBB assumes, releases and agrees to indemnify, defend, protect and save City (including its officers, agents, representatives and employees) harmless from and against any claim, damage, loss, liability, injury, cost and expense (including reasonable attorney's fees and expenses) in connection with any loss or damage to any person or property arising out of or resulting in any way from the acts or omissions to act, negligence or willful misconduct of the

DBB, its directors, officers, employees, servants, contractors and/or agents in connection with the exercise of its rights and obligations under the terms of this IRU.

The City assumes, releases and agrees to indemnify, defend, protect and save DBB (including its officers, agents, representatives and employees) harmless from and against any claim, damage, loss, liability, injury, cost and expense (including reasonable attorney's fees and expenses) in connection with any loss or damage to any person or property arising out of or resulting in any way from the acts or omissions to act, negligence or willful misconduct of the City, its directors, officers, employees, servants, contractors and/or agents in connection with the exercise of its rights and obligations under the terms of this IRU.

Notwithstanding the foregoing, such indemnity is limited to the amount of available insurance coverage and nothing herein shall be considered as a waiver of its statutory tort limits under Minn. Stat. Chap. 466.

Section 6.3 Nothing contained herein shall operate as a limitation on the right of either Party hereto to bring an action for damages, including consequential damages, against any third party based on any acts or omissions of such third party as such acts or omissions may affect the construction, operation or use of the Fiber, Cable, or IRU Fibers; provided, however, that (i) the Parties to this Agreement shall not have any claim against the other Party for indirect, incidental, special, punitive or consequential damages (including, but not limited to, any claim from any customer for loss of services), and (ii) each Party hereto shall assign such rights or claims, execute such documents and do whatever else may be reasonably necessary to enable the injured party to pursue any such action against such third party.

ARTICLE VII
FORCE MAJEURE

The obligations of the parties hereto are subject to force majeure and neither party shall be in default under this Agreement if any failure or delay in performance is caused by strike or other labor dispute; accidents; acts of God; fire; flood; earthquake; lightning; unusually severe weather; material or facility shortages or unavailability not resulting from such party's failure to timely place orders therefor; lack of transportation; acts of any governmental authority; condemnation or the exercise of rights of eminent domain; war or civil disorder; or any other cause beyond the reasonable control of either party hereto. The excused party shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes are removed or ceased.

ARTICLE VIII
RELOCATION OF CABLE

Section 8.1 The City shall have the right to relocate the IRU Assets at any time upon written notice to the DBB (a "Relocation"). The City and/or Dakota County shall be responsible for all costs associated with a Relocation of the IRU Assets in County Right-of-Way that is required by alteration of the County Right-of-Way or by the request of a third party having authority to require

the move. The City may seek and receive funding or reimbursement from a third party for a Relocation within County Right-of-Way.

The City shall be responsible for all costs associated with a Relocation of its IRU Assets in City Right-of-Way that is required by alteration of the City Right-of-Way or by the request of a third party having authority to require the move. The City may seek and receive funding or reimbursement from a third party for a Relocation by the City.

Section 8.2 Either Party shall give the other Party at least sixty (60) days prior notice of any Relocation, if possible. The City has the right to determine the extent of, the timing of, and the methods to use for such Relocation; provided that any such relocated IRU Assets shall be constructed and tested in accordance with industry standard specifications and requirements. In addition, the City shall use reasonable efforts to ensure Relocation does not result in an adverse change to the operations, performance or connection points with the DBB Fiber Optic Cable network

Section 8.3 The DBB has the right to review the Relocation plans at least fourteen (14) days prior to commencement of any Relocation. Either party may submit comments on the Relocation plans, which comments shall not delay commencement of the Relocation. Both parties shall have the right to have a representative present at the time a Relocation occurs.

ARTICLE IX
CONFIDENTIALITY

The Parties agree and recognize that this Agreement as well as information and documents the Parties receive from one another during the term of this Agreement may be considered public data under the Minnesota Government Data Practices Act, Minn. Stat. Ch 13, as amended. The Parties agree to comply with the Minnesota Government Data Practices Act as it applies to all data provided by the Parties under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by any Party under this Agreement. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data referred to in this clause by any Party. If either Party receives a request to release data arising out of or related to the Fiber Facilities or the use, operation or maintenance thereof, the Party receiving the request must immediately notify the other Party of the request. The Parties will promptly consult and discuss the best way to respond to the request.

ARTICLE X
ABANDONMENT; TERMINATION; EFFECT OF TERMINATION

Section 10.1 Should the City decide to abandon all or part of the IRU Fibers during the term of this Agreement, it may do so by providing sixty (60) days' notice informing the DBB in writing of its intent to abandon. Such abandonment shall be at no cost to either Party except as set forth in this Article. If the City provides notice of intent to abandon, the DBB may notify the City prior to the expiration of the notice period of its intent to take ownership of the IRU Fibers. If the

DBB provides timely notice of such intent, the Parties will execute any agreements or documents transferring legal title of the IRU Fibers to the DBB, at no cost to either Party.

Section 10.2 This Agreement shall terminate upon the first to occur of the following:

(a) Expiration of the term of this Agreement;
(b) Upon written notice from either Party to the other if a default occurs that is not cured within the time allowed hereunder, or
(a) Upon a termination as provided in Section 10.4.

Section 10.3 If this Agreement terminates under Article X, Section 10.2(a), neither Party shall have any liability to the other Party for the use of the IRU Fibers; If this Agreement terminates under Article X, Section 10.2(b), the non-defaulting party shall not have any liability to the defaulting party, and the defaulting party shall be liable for such damages to the non-defaulting party as the non-defaulting party may establish in a court of law, except as limited by this Agreement. Upon termination of this Agreement for any reason, the Parties agree to promptly execute any documents reasonably required to effect such termination.

Section 10.4 The City may terminate this Agreement as to any IRU Assets owned by it with not less than two years prior written notice to the DBB. The DBB Board will consent to such termination unless the removal will render the Optical Fiber Dakota Broadband Network Backbone to be less than carrier class or violate any DBB contracts. The Parties recognize the two-year notice period is necessary and appropriate to permit the DBB to make alternative provisions for the continuance of service. The DBB Board may waive the two-year notice if it determines, in its sole discretion, that early termination will not adversely impact the Network.

Section 10.5 Upon termination of this Agreement for any reason, the DBB shall cease to have any rights to the IRU Assets or other rights under this Agreement or any obligations under this Agreement except for obligations under this Article and any other obligations that arose prior to such termination.

Section 10.6 If the City ceases to be a member of the DBB prior to the expiration or termination of this Agreement, this IRU Agreement will continue to be in effect until expiration.

ARTICLE XI
DEFAULT

Section 11.1 Neither Party shall be in default under this Agreement unless and until the other Party shall have given the defaulting party written notice of such default and the defaulting party shall have failed to cure the default within thirty (30) days after written receipt of such notice; provided, however, that where a default cannot be reasonably cured within the thirty (30) day period, if the defaulting party shall promptly proceed to cure the default with due diligence, the time for curing the default shall be extended for a period of up to ninety (90) days from the date of receipt of the default notice or until the default is cured, whichever is shorter.

Section 11.2 Upon the failure by the defaulting party to timely cure any default after notice thereof from the non-defaulting party, the non-defaulting party may take any action it determines, in its discretion, to be necessary to correct the default, and/or pursue any legal remedies it may have under applicable law or principles of equity relating to the breach.

ARTICLE XII
NOTICES

Section 12.1 Unless otherwise provided herein, all notices and communications concerning this Agreement shall be in writing and addressed as follows:

If to the City:	City of West St Paul IT Department, Attn: James Grommersch 1616 Humboldt Avenue West St Paul, MN 55118
With a copy to:	Levander, Gillen & Miller, P.A. Attn: Kori Land, Attorney 633 Concord St S, Suite 400 South St Paul, MN 55075
If to DBB:	Dakota Broadband Board Attn: Carah Koch, Executive Director 430 Third Street Farmington, MN 55024
With a copy to:	Dakota Broadband Board Attorney: Paul Beaumaster Dakota County Attorney's Office 1560 Hwy 55 Hastings, MN 55033

Section 12.2 Unless otherwise provided herein, notices shall be sent by certified U.S. Mail, return receipt requested, or by commercial overnight delivery service which provides acknowledgment of delivery, and shall be deemed delivered: if sent by U.S. Mail, five (5) days after deposit; if sent by commercial overnight delivery service, upon verification of receipt.

ARTICLE XIII
LIMITATION ON PROPERTY INTEREST

This Agreement does not grant the DBB any property interest or estate in or lien upon the City's property, the City's Optical Fiber Network or any components thereof or any Intellectual Property, except for use of the IRU Assets during the term of this Agreement. All liens, claims and charges of the DBB shall not attach to any interest of the City or in any property owned by the City.

This Agreement does not grant the City any property interest or estate in or lien upon the DBB's property, its Optical Fiber Dakota Broadband Network or any components thereof or any Intellectual Property. All liens, claims and charges of the City shall not attach to any interest of the DBB or in any property owned by the DBB.

ARTICLE XIV
GOVERNING LAW AND VENUE

This Agreement shall be governed and construed in accordance with the laws of the State of Minnesota without regard to its conflict of laws provision. The Parties agree that any action arising out of this Agreement or with respect to the enforcement of this Agreement shall be venued in the Dakota County District Court, State of Minnesota.

ARTICLE XV
INDEPENDENT CONTRACTOR

The performance by the DBB and the City of all duties and obligations under this Agreement shall be as independent local government units and not as agents of the other Party, and no person employed or utilized by a party shall be considered the employee or agent of the other. Neither Party shall have the authority to enter into any agreement purporting to bind the other without its specific written authorization. The Parties agree this Agreement does not create a partnership between, or a joint venture of the DBB and the City.

ARTICLE XVI
MISCELLANEOUS

Section 16.1 The headings of the Articles in this Agreement are strictly for convenience and shall not in any way be construed as amplifying or limiting any of the terms, provisions or conditions of this IRU Agreement.

Section 16.2 When interpreting this Agreement, words used in the singular shall include the plural and the plural, the singular, and "of" is used in the inclusive sense, in all cases where such meanings would be appropriate.

Section 16.3 If any provision of this Agreement is found by any court of competent jurisdiction to be invalid or unenforceable, then the parties hereby waive such provision to the extent that it is found to be invalid or unenforceable and to the extent that to do so would not deprive one of the parties of the substantial benefit of its bargain. Such provision, to the extent allowable by law and the preceding sentence, shall not be voided or canceled, but instead will be modified by such court so that it becomes enforceable with all of the other terms of this Agreement continuing in full force and effect.

Section 16.4 This IRU Agreement may be amended only by a written instrument executed by all Parties.

Section 16.5 No failure to exercise and no delay in exercising, on the part of either Party hereto, any right, power or privilege hereunder shall operate as a waiver hereof, except as expressly provided herein. Any waiver by either Party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Agreement unless and until agreed to in writing by both Parties.

Section 16.6 All actions, activities, consents, approvals and other undertakings of the Parties in this IRU Agreement shall be performed in a reasonable and timely manner.

Section 16.7 Unless expressly defined herein, words having well known technical or trade meanings shall be so construed.

Section 16.8 This IRU Agreement is solely for the benefit of the parties hereto and their permitted successors and assigns.

ARTICLE XVII
ENTIRE AGREEMENT

This Agreement and any Exhibits referenced and attached hereto or to be attached hereto constitutes the entire agreement between the Parties and supersede any and all prior negotiations, understandings and agreements, whether oral or written.

IRU GRANTOR:

CITY OF WEST ST PAUL

By: _____
Its: Mayor
Date: _____

By: _____

Its: Clerk

IRU GRANTEE:

DAKOTA BROADBAND BOARD

By: _____
Its: Board Chair
Date: _____

Approved as to Form

_____
Assistant County Attorney Date

EXHIBIT A

Description of City IRU Assets Subject to the IRU

CITY OF WEST ST. PAUL

City Council Report

To: **Mayor and City Council**

Through: **Ryan Schroeder, City Manager**

From: **Ross Beckwith, Public Works & Parks Director/City Engineer**

Date: **May 11, 2020**

Lease Amendment with New Cingular Wireless PCS, LLC

BACKGROUND INFORMATION:

With the recent painting of the Marie Avenue water tower, all cellular antennas and radios had to be taken down. As carriers re-install their equipment to the water tower, some made changes to their infrastructure.

New Singular Wireless PCS, LLC will be reinstalling the six antenna they previously had, but increasing the number of radio heads from nine to twelve. As such, a lease amendment is required which is attached. The initial lease is from October 26, 2006 and this will be the third amendment.

FISCAL IMPACT:

Based on the City's current fee schedule this lease amendment will increase monthly fees by $990/month. The old monthly lease payment was $4,474.52 and the new payment will be $5,464.52.

STAFF RECOMMENDATION:

Staff recommends that City Council approve Amendment 3 for the Marie Avenue water tower lease agreement with New Singular Wireless PCS, LLC.

Attachment: Lease Amendment 3

THIRD AMENDMENT TO OPTION AND STRUCTURE LEASE AGREEMENT DATED OCTOBER 26, 2006, BETWEEN THE CITY OF WEST ST. PAUL AND NEW CINGULAR WIRELESS PCS, LLC

This Third Amendment to Option and Structure Lease Agreement (the "Third Amendment") is made and entered into effective as of the ____ day of _____, 2020, by and between City of West St. Paul, a Minnesota municipal corporation, whose address is 1616 Humboldt Avenue North, West St. Paul, MN 55118-3972 ("Landlord"), and New Cingular Wireless PCS, LLC, a Delaware limited liability company ("Tenant").

WITNESSETH:

A. Landlord and Tenant entered into an Option and Structure Lease Agreement (the "Lease Agreement") dated as of October 26, 2006 and the First Amendment to Option and Structure Lease Agreement (the "First Amendment") dated February 8, 2012, and the Second Amendment to Option and Structure Lease Agreement (the "Second Amendment") dated May 9, 2016, allowing Tenant to operate a Communication Facility at Landlord's water tower located at 151 East Marie Avenue ("Marie Avenue Water Tower");

B. Tenant desires to add and replace certain equipment to and on the Marie Avenue Water Tower;

C. The modifications to Tenant's Communication Facility are described in the attached plans, incorporated herein as Exhibit 1;

D. Tenant currently pays $4,474.52 per month and pursuant to Section 2(c) of the Lease Agreement, an upgrade to the facility shall result in an increase in rent; and

E. Landlord and Tenant mutually desire to amend Tenant's use of the Leased Premises and define additional rights and responsibilities of the parties hereto, as set forth in this Amendment.

NOW, THEREFORE, in consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. TENANT CHANGES. The changes to Tenant's Communication Facility are as follows:

    a. Replace six (6) of the antennas, two (2) per sector, with six (6) new antennas;

b. Increase the number of RRH radio heads from nine (9), three (3) per sector, to twelve (12), four (4) per sector.

2. RENT. Paragraph 4 is hereby amended such that as of the effective date of this Third Amendment, the monthly rental payment shall increase to the amount of $5,464.52, which shall be due and payable as set forth in Paragraph 4 of the Lease Agreement.

3. EFFECT OF AMENDMENT. Except as expressly amended by the provisions hereof, the terms and provisions contained in the Lease Agreement, First Amendment, and Second Amendment shall continue to govern the rights and obligations of the parties, and the Lease Agreement, First Amendment, and Second Amendment shall remain in full force and effect.

4. DEFINED TERMS. Terms defined in the Lease Agreement, First Amendment, and Second Amendment have the same meaning in this Third Amendment.

5. EXHIBIT 1. Exhibit 1 to the Lease Agreement is hereby amended by the attached Exhibit 1, which is incorporated by reference as an exhibit to this Third Amendment. Tenant shall have the right, at Tenant's sole cost and expense, and in accordance with the Lease Agreement, to modify its Communication Facility as provided in Exhibit 1.

6. NOTICE. Paragraph 17 of the Agreement is hereby amended to reflect Tenant's current notice and with copy to addresses as follows:

If to Tenant:

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site #: MNL03427; Cell Site Name: MARIE AVE WT (MN)
Fixed Asset No: 10111973
1025 Lenox Park Blvd NE
3rd Floor
Atlanta, GA 30319

With copy to:

New Cingular Wireless PCS, LLC
Attn: AT&T Legal Department
Re: Cell Site #: MNL03427; Cell Site Name: MARIE AVE WT (MN)
Fixed Asset No: 10111973
208 S. Akard Street
Dallas, Texas, 75202-4206

IN WITNESS WHEREOF, the parties have executed the Third Amendment as of the _____ day of _____ 2020.

CITY OF WEST ST. PAUL

_____
David J. Napier, Mayor

_____
Ryan Schroeder, City Manager

STATE OF MINNESOTA)
) SS.
COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before me this _____ day of _____ 2020, by David J. Napier, the Mayor of West St. Paul, and Ryan Schroeder, City Manager, respectively, on behalf of the City of West St. Paul.

_____
Notary Public

NEW CINGULAR WIRELESS, PCS, LLC
a Delaware limited liability company
By: AT&T Mobility Corporation
Its: Manager

_____
Name:
Its:

STATE OF)
) SS.
COUNTY OF _____)

On this _____ day of _____, 2020, before me a Notary Public within and for said County, personally appeared _____ to me personally known, who being by me duly sworn, did say that s/he is the _____ of AT&T Mobility Corporation, the manager of New Cingular Wireless PCS, LLC, a Delaware limited liability company named in the foregoing instrument, and that said instrument was signed on behalf of said company by authority of the Board of Directors and said _____ acknowledged said instrument to be the free act and deed of the company.

_____
Notary Public

EXHIBIT 1
TO
THIRD AMENDMENT
TO
OPTION AND STRUCTURE LEASE AGREEMENT

See attached Plans

CITY OF WEST ST. PAUL

City Council Report

To: **Mayor and City Council**

Through: **Ryan Schroeder, City Manager**

From: **Dave Schletty, Assistant Parks & Recreation Director**

Date: **May 11, 2020**

Art Park Metropolitan Regional Arts Council Grant

BACKGROUND INFORMATION:

The City of West St. Paul was recently awarded a $10,000 grant from the Metropolitan Regional Arts Council (MRAC). In December, a subcommittee of the Parks and Recreation Advisory Committee submitted a grant to install a new mosaic sculpture (example attached) at the art park at the corner of Butler and Oakdale. The grant proposed a project with St. Paul Artist Lori Greene to lead community events coordinating the creation of a mosaic column to be installed at Butler and Oakdale (the "Art Park"). The City is required to provide a $2,500 match ($500 of that has already been contributed by the South Robert Street Business Association). Fundraising for the remainder will begin this spring, followed by a series of events where the community will be invited to participate in creating the sculpture. The finished product will be installed in fall 2020 or spring 2021. Accepting this project grant is a first step to bring public art to the City of West St. Paul. Grant funds will be spent in 2020.

STAFF RECOMMENDATION:

By motion, accept the Art Park Metropolitan Regional Arts Council Grant.

ATTACHMENT:

Sample Mosaic Sculpture

CITY OF WEST ST. PAUL

City Council Report

To: **Mayor and City Council**

Through: **Ryan Schroeder, City Manager**

From: **Melissa Sonnek, City Planner**

Date: **May 11, 2020**

First Reading – Unbuilt Right-of-Way Vacation South of Crusader and West of Stryker

BACKGROUND INFORMATION:

As a result of the recent approvals for the expansion of the Net Ministries building, the City has taken steps to vacate a portion of unbuilt right-of-way south of Crusader Avenue and west of Stryker Avenue.

Right-of-way and alley vacations must be adopted as an ordinance, which requires two readings with one Public Hearing. Typically, Public Hearings are noticed in the newspaper, as well as sent to surrounding property owners. However, since Net Ministries occupies and owns all of the land surrounding unbuilt right-of-way, notices will not be mailed out to surrounding property owners. The Public Hearing will be held during the final reading, on Tuesday, May 26, 2020.

FISCAL IMPACT:

		Amount
Fund:		
Department:		
Account:		**N/A**

STAFF RECOMMENDATION:

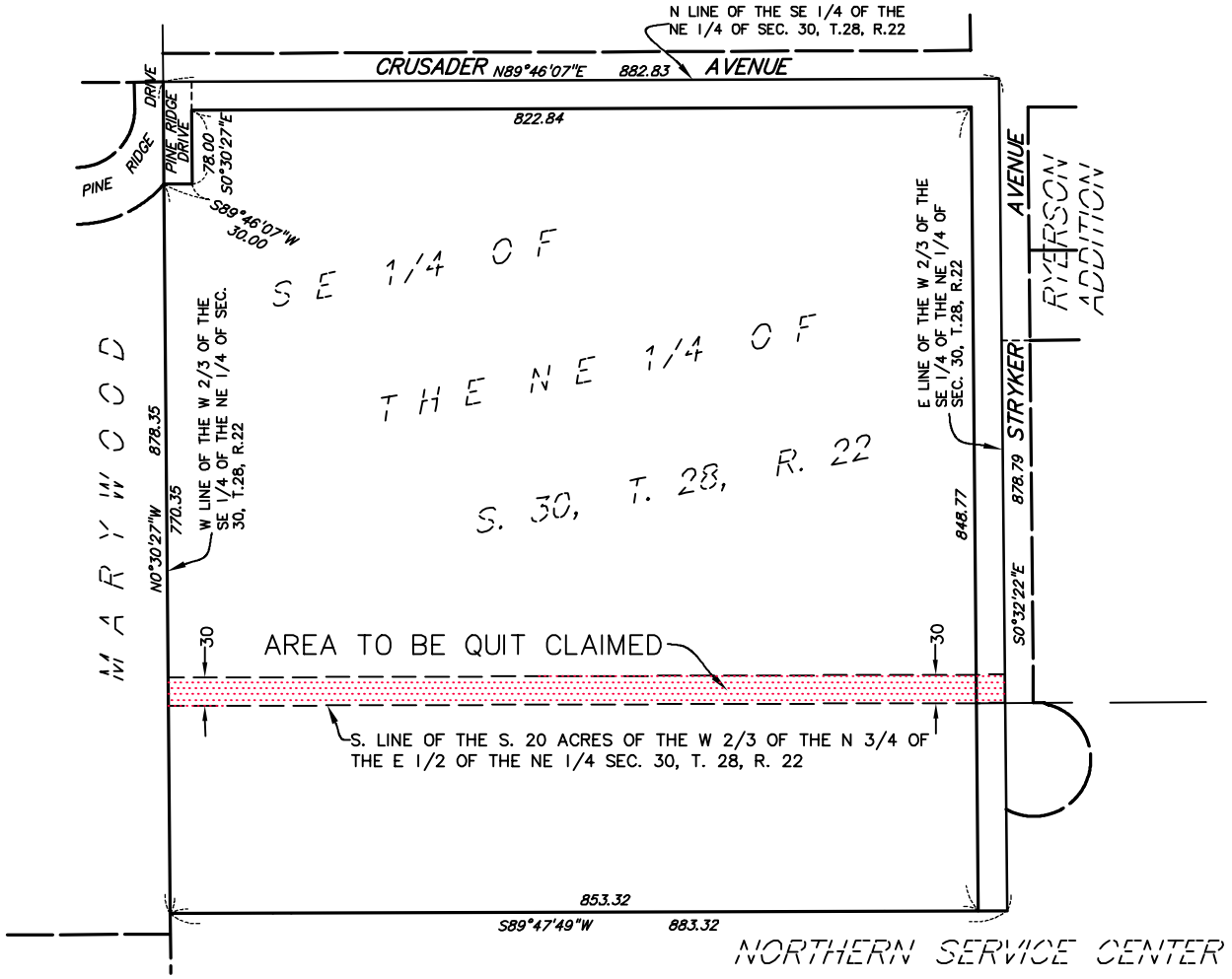
City Staff recommends the Council review the attached ordinance and approve the first reading.

ATTACHMENTS:

Map of Area
Proposed Ordinance

DESCRIPTION OF PROPERTY TO BE QUIT CLAIMED FROM THE CITY OF WEST ST. PAUL TO NET MINISTRIES, INC.

The South Thirty (S. 30) feet of the South Twenty (S. 20) acres of the West Two-thirds (W. 2/3) of the North Three-quarters (N. 3/4) of the East Half of the Northeast Quarter (E 1/2 of NE 1/4) of Section Thirty (30), Township Twenty-eight (28) North, Range Twenty-two (22) West, Dakota County, Minnesota.



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

Dated this 19th day of March, 2020

SUNDE LAND SURVEYING, LLC.

By: Leonard F. Carlson

Leonard F. Carlson, P.L.S. Minn. Lic. No. 44890

SUNDE LAND SURVEYING
9001 East Bloomington Freeway (35W) • Suite 118
Bloomington, Minnesota 55420-3435
952-881-2455 (Fax: 952-888-9526)
www.sunde.com

2000-012-A 1044/14 T.28, R.22, S.30
2000212A-VACATION DESC.dwg NDN

CITY OF WEST ST. PAUL
DAKOTA COUNTY, MINNESOTA

ORDINANCE NO. 20-

AN ORDINANCE APPROVING THE SALE OF PROPERTY LOCATED WITHIN THE CITY OF WEST ST. PAUL, MINNESOTA TO NET MINISTRIES, INC.

The City of West Saint Paul does ordain:

SECTION 1. Pursuant to West St. Paul City Charter § 12.05, the City Council may dispose of real property within the City by Ordinance; and

WHEREAS, the City desires to sell real property to NET Ministries, Inc. ("NET Ministries"), situated in Dakota County, Minnesota, legally described as follows:

> The South Thirty (S. 30) feet of the South Twenty (S. 20) acres of the West Two-thirds (W. 2/3) of the North Three-quarters (N. 3/4) of the East Half of the Northeast Quarter (E 1/2 of NE 1/4) of Section Thirty (30), Township Twenty-eight (28) North, Range Twenty-two (22) West, Dakota County, Minnesota.
>
> Abstract Property
> PID: 42-03000-09-012

("Property"); and

WHEREAS, the Property is located south of Crusader Avenue West and west of Stryker Avenue and is unbuilt right-of-way that is impeding orderly development; and

WHEREAS, on May 26, 2020, the City held a public hearing on the sale of the Property and the City considered all of the information presented at the public hearing.

NOW THEREFORE BE IT RESOLVED, by the City Council of the City of West St. Paul:

> The sale of the Property to NET Ministries is in the public interest of the City and its people; and the appropriate officials are authorized to take such action so as to effectuate such sale.

SECTION 2. SUMMARY PUBLICATION. Pursuant to Minnesota Statutes Section 412.191, in the case of a lengthy ordinance, a summary may be published. While a copy of the entire ordinance is available without cost at the office of the City Clerk, the following summary is approved by the City Council and shall be published in lieu of publishing the entire ordinance:

The ordinance allows the City to convey property to NET Ministries, Inc. The property is unbuilt right-of-way, generally located south of Crusader Avenue West and west of Stryker Avenue, in West St. Paul, MN.

SECTION 3. EFFECTIVE DATE. This Ordinance shall be in full force and effect from and after its passage and publication according to law.

Passed by the City Council of the City of West St. Paul, Minnesota, this 26th day of May 2020.

Attest:

_____	_____
David J. Napier, Mayor	Shirley R Buecksler, City Clerk

CITY OF
WEST ST. PAUL

City Council Report

To: **Mayor and City Council**

Through: **Ryan Schroeder, City Manager**

From: **Jim Hartshorn, Community/Economic Development Director**

Date: **May 11, 2020**

Food Truck Ordinance Amendment

BACKGROUND INFORMATION:

The police department receives a few requests annually for food truck businesses to set up in WSP on a temporary basis, usually in shopping center parking lots. The City currently has a "food vending" ordinance, but this ordinance provides very little regulatory authority to manage these operations. Example, we have no authority to grant or deny any food truck staying longer than 21 days. Currently, we have no authority that allows us to regulate their duration in one particular spot. The attached proposed food truck ordinance repeals and replaces the "food vending" ordinance we have today.

1. They would not need a peddler's license. They would not need any other city license either – just proof of insurance, permission on public property, follow performance standards. We can issue administrative citations if they violate the ordinance.
2. They are allowed in industrial zones in a parking lot (with permission) or on a public street adjacent thereto with permission of the abutting property owner.
3. They are allowed on residential property with permission as part of an event (wedding, graduation) or on a public street adjacent thereto with permission of the abutting property owner and it is not open to the general public.

FISCAL IMPACT:

		Amount
Fund:		**N/A**
Department:		
Account:		

STAFF RECOMMENDATION:

Review and direct staff.

CITY OF WEST ST. PAUL
DAKOTA COUNTY, MINNESOTA

ORDINANCE NO. 20-

AN ORDINANCE REPEALING SECTION 111.01 (B) REGARDING FOOD VENDING OF THE CITY CODE OF THE CITY OF WEST ST. PAUL AND ENACTING SECTION 111.01 (B) REGARDING MOBILE FOOD UNITS

The City of West Saint Paul does ordain:

SECTION 1. AMENDMENT. West St. Paul City Code Section 111.01 (B) relating to Mobile Food Vending is hereby repealed and replaced as follows:

(B) *Special conditions applicable to food sellers operating mobile food units.* The following conditions only apply to food sellers operating mobile food units.

(1) PURPOSE:

This section is intended to describe the requirements for an establishment preparing and serving food from a self-contained readily moveable vehicle in the city and to regulate the conditions from which the establishment operates within the city for the promotion of business within the city and for the protection of customers and the general public. All Mobile Food Units must comply with this ordinance in order to operate within the city.

(2) DEFINITION:

For the purpose of this section, the following definition applies:

MOBILE FOOD UNIT:

(a) A self-contained food service operation, located in a readily movable motorized wheeled or towed vehicle that is readily movable without disassembling, and that is used to store, prepare, display, or serve food intended for individual portion service; or

(b) A mobile food unit as defined in Minnesota statutes section 157.15, subdivision 9.

(3) REQUIREMENTS:

(a) License. The mobile food unit operator must be licensed by the Minnesota Department of Health, Minnesota Department of Agriculture, and/or Dakota County Department of Public Health as required under Minnesota State law. The license must be clearly posted. No peddlers license shall be required from the City.

(b) Fire Code. The mobile food unit must meet State Fire Code requirements.

(c) Insurance. The mobile food unit operator must have the following forms of insurance by an insurance company authorized to do business in the State of Minnesota:

1. Commercial general liability insurance, with a limit of not less than one million dollars ($1,000,000) each occurrence and a general aggregate limit of not less than two million dollars ($2,000,000);

2. Automobile liability insurance with a limit of not less than two million dollars ($2,000,000) combined single limit covering the vehicle licensed as a mobile food unit, and if applicable, any vehicle used in conjunction with the mobile food unit;

3. Workers compensation insurance (statutory limits) or evidence of exemption from state law; and

4. If the mobile food unit will be operated on public property, including public right-of-way, the City shall be named as a certificate holder and as an additional insured, and must be provided with a certificate of insurance.

(4) LOCATIONS:

(a) Allowed Locations. A mobile food unit may only operate in the locations and under the conditions set forth in this section:

1. A mobile food unit may only operate in a parking lot in an industrial zoning district or on residential property with the written consent of the property owner. When operations occur on residential property, mobile food unit sales may only be for catering purposes (such as a private graduation party or wedding) and not open for sales to the general public.

2. A mobile food unit may only operate on public right-of-way if immediately adjacent to property where the property owner has invited the mobile food unit to participate in an event, provided it does not create a public safety hazard.

3. A mobile food unit may only operate in a city park or on other city property in conjunction with an event authorized by the City after obtaining permission from the event sponsor; additional permits may be required for such operations.

(b) Prohibited Locations. Notwithstanding Section (4)(A) above, a mobile food unit may not operate in the following locations:

1. Any street posted with no parking signs.

2. Any street with a posted speed limit greater than 30 miles per hour.

3. Within 300 feet of the property line of any other permanent food establishment. The setback shall be measured from the vehicle to the property line of the permanent food establishment.

4. Any location that may cause a safety hazard for other vehicles, pedestrians, or the general public.

(5) **PERFORMANCE STANDARDS**:

A mobile food unit owner/operator is subject to the following performance standards:

(a) Mobile food unit sales may only conduct sales between 7:00 a.m. and 10:00 p.m.

(b) Waste generated by the mobile food unit must be transported out of the city and disposed of in accordance with all federal, state, and local regulations. Grey water may not be drained into city stormwater drains.

(c) The owner/operator of the mobile food unit shall be responsible for the conduct of their employees and agents while operating a mobile food unit.

(d) A mobile food unit is not required to obtain a sign permit from the city. However, no additional signage is permitted beyond that which is on the mobile food unit unless it meets the following requirements:

1. One single sandwich board style sign is permitted per mobile food unit;

2. The maximum sign size is eight (8) square feet;

3. The sign must be placed on the ground and within ten (10) feet of the mobile food unit;

4. The sign must not be placed in a manner that hinders passage upon any sidewalk;

5. The sign must not be placed within the improved travel surface of the public right-of-way except with the express written permission of the city; and

6. The sign cannot project from the mobile food unit or be mounted to the roof of the mobile food unit.

SECTION 3. SUMMARY PUBLICATION. Pursuant to Minnesota Statutes Section 412.191, in the case of a lengthy ordinance, a summary may be published. While a copy of the entire ordinance is available without cost at the office of the City Clerk, the following summary is approved by the City Council and shall be published in lieu of publishing the entire ordinance:

> The ordinance provides performance standards for the operation of mobile food units within the City.

SECTION 4. EFFECTIVE DATE. This Ordinance shall be in full force and effect from and after its passage and publication according to law.

Passed by the City Council of the City of West St. Paul, Minnesota, this ___ day of _____ 2020.

Attest:

_____ _____

David J. Napier, Mayor Shirley R Buecksler, City Clerk