

Winona City Council Zoom Meeting Access and Procedures

January 19, 2021

Meeting type: The regular meeting of the Winona City Council is being conducted electronically pursuant to Minnesota State Statute 13D.021, following the adoption of Resolution 2020-17 Declaring a Special Emergency, as adopted by the Winona City Council on Monday, March 16, 2020.

All interested parties are invited to watch or listen to meeting via electronic means. This meeting is open to the public via web or phone. This meeting begins at 6:30 p.m.; please log in prior to the start of the meeting. You may exit the meeting at any time.

This meeting is open to the public via web or phone.

- To join the Zoom Meeting via web, go to: <https://zoom.us/j/869465916>
- enter Meeting ID: 896 465 916 and password **207207**
- To join via phone, dial either phone number:
1-312-626-6799 US (Priority)
1-646-558-8656 US (Backup)

When prompted, enter the following Meeting ID: 896 465 916

For participants:

- Only use one audio source; audio from computer is preferred if available.
- Be aware of background noise from your location.
- If using phone, do not use the speaker function. Please note that your phone number and/or name will be visible to other participants.
- If using a web cam, be aware of what is in your background.
- If you have headphones, please use them as that will limit background noise.
- Please mute your audio until you wish to speak. Then unmute your audio, and ask the Mayor for permission to talk.



Winona City Council Agenda

Tuesday, January 19, 2021

6:30 P.M., Meeting No. 2

City Council Chambers – City Hall

3rd Floor - 207 Lafayette Street

Mayor Scott Sherman

1st Ward Steve Young

2nd Ward Eileen Moeller

3rd Ward Pamela Eyden

4th Ward George Borzyskowski

At-Large Michelle Alexander

At-Large Aaron Repinski

1. Call to Order – Mayor & City Manager’s Comments – Roll Call	
2. Required Public Hearings	
3. Petitions, Requests, Communications	
City Clerk	1. Massage Therapy Licenses
City Clerk	2. Request Premises Permit for Lawful Gambling for Eagles Aerie 1243 Winona
City Clerk	3. Appointments to the Great River Rail Commission
4. Unfinished Business	
Engineering	1. Broadway 4 to 3 Lane Conversion Project
Public Works	2. Bluff Prairie Restoration Grant Acceptance
5. New Business	
Parks & Recreation	1. Winona Friendship Center – Juniper Agreement
Planning	2. Plat Review – Cedar Brook Final Plat
City Clerk	3. Extend Cable Television Franchise Agreement – Charter Communications
6. Reports of Committees	
7. Council Concerns	
City Clerk	1. Council Concerns
8. Consent Agenda	
City Clerk	1. Approval of Minutes – January 4, 2021
City Clerk	2. Claim Against the City by Ashely Carlson
9. Adjournment	

REQUEST FOR COUNCIL ACTION

Agenda Section: Petitions, Requests, Communications

Originating Department:

Date:

No: 3

City Clerk

01/19/21

Item: Massage Therapy Licenses

No. 3.i

SUMMARY OF REQUESTED ACTION:

The list below shows the applicants who have submitted applications for a Massage Therapist License and the Massage Therapy Business License. Each of the licenses shown below would be effective January 20, 2021 through December 31, 2021. If the Council concurs, a motion to approve the licenses would be in order.

Massage Therapist (name and primary business location):

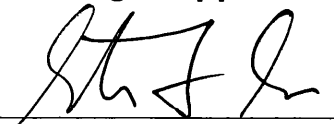
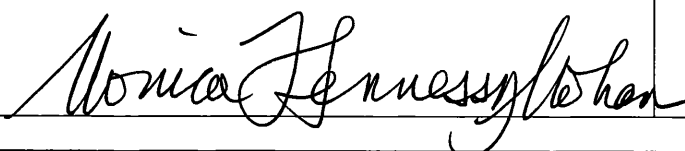
1. Alexis Taylor Ament, 161 Lafayette Street;
2. Amber Dawn Bork, 1423 West Service Drive;
3. Jenel Kathleen Briggs, 677 Main Street;
4. Mary Jo McKenna Brummer, 50 West 2nd Street, Ste. 110;
5. Jeanne Frances Handke, 1600 Gilmore Avenue, Ste. 100;
6. Angela Marie Hutchens, 1600 Gilmore Avenue, Ste. 100;
7. Kris Arin Morgensen, 370 West 2nd Street, Suite 252;
8. Skye Rebecca O'Laughlin, 855 Mankato Avenue;
9. Amber Joanna Platteter, 161 Lafayette Street;
10. Julie Rybarczyk, 51 East 4th Street, Suite 414;
11. Jiachun Strange, 940 Frontenac Drive, Suite 130;
12. Evelyn Marie Trulen, 51 East 4th St, Room 17;
13. Jaden Michelle Valerius, 855 Mankato Avenue;
14. Cecelia Sunshine Wilson, 259 East 8th Street.

Massage Therapy Business:

1. Ivory Orchid Massage Therapy, 161 Lafayette Street;
2. Mary Jo McKenna Brummer Massage Therapy, 50 West 2nd Street, Ste. 110;
3. Natural Balance Massage & Wellness, LLC 1600 Gilmore Avenue, Ste. 100;
4. Atlas Massage, 370 West 2nd Street, Suite 252;
5. Massages by Amber, 161 Lafayette Street;
6. Tranquil Massage by Julie Rybarczyk, 51 East 4th Street, Suite 414;
7. Minnesota Health Care Provider LLC, 940 Frontenac Drive, Suite 130;
8. Evelyn Trulen Massage, 51 East 4th St, Room 17;
9. Starseeds Rising, 259 East 8th Street.

Department Approval:

City Manager Approval:



REQUEST FOR COUNCIL ACTION

<i>Agenda Section:</i> Petitions, Requests, Communications	<i>Originating Department:</i>	<i>Date</i>
No: 3	City Clerk	01/19/21
<i>Item:</i> Request Premises Permit for Lawful Gambling for Eagles Aerie 1243 Winona		
No. 3.2		

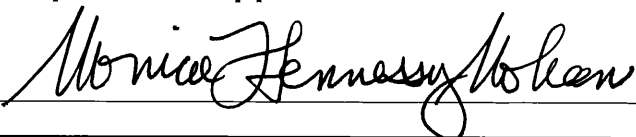
SUMMARY OF REQUESTED ACTION:

The Eagles Aerie 1243 Winona has submitted an application for a Premises Permit for Lawful Gambling to be used at the Brickyard. If the Council concurs, a motion to approve the following resolution would be in order.

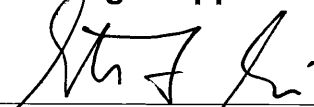
RESOLUTION

BE IT RESOLVED by the City Council of the City of Winona, Minnesota, that it approves the Premises Permit for Lawful Gambling for the Eagles Aerie 1243 Winona to conduct lawful gambling at the Brickyard, 579 East 3rd, Winona.

Department Approval:



City Manager Approval:



REQUEST FOR COUNCIL ACTION

<i>Agenda Section:</i> Petitions, Requests, Communications	<i>Originating Department:</i>	<i>Date:</i>
<i>No:</i> 3	City Clerk	01/19/21

Item: **Appointments to the Great River Rail Commission**

No. **3.3**

SUMMARY OF REQUESTED ACTION:

Mayor Sherman is considering the appointment of one member of the Council to the Great River Rail Commission, to fill the seat held by former Council Member Schollmeier, as well as an alternate member. The Mayor will announce these members at the Council meeting. If the Council concurs, a motion to confirm would be in order.

Department Approval:



City Manager Approval:



REQUEST FOR COUNCIL ACTION

Agenda Section: **Unfinished Business**

Originating Department:

Date

No: **4.**

Engineering

1/19/2021

Item: **Broadway 4 to 3 Lane Conversion Project**

No: **4.1**

SUMMARY OF REQUESTED ACTION:

Staff is aware that this project has aroused considerable emotions on the part of the community. A change in council necessitates a decision at this point so that if further expenditures are made in the plan that will not be cancelled at a later date. The Road Diet configuration for Broadway Street, also called a 4 lane to 3 lane conversion, is being brought before council so that City staff has a clear understanding of the direction that Council wants to pursue. Council may direct staff to:

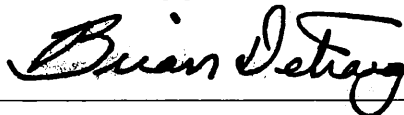
1. Proceed with finishing final plans
2. Modify the design
3. Cease working on the project.

Currently the plans for this project are 90% completed and approximately \$300,000 has been spent to date on engineering fees. An additional \$93,000 will be spent completing the plans and specifications for the project and preparing for bidding it out. These engineering fees are completely reimbursable if the project is constructed, but the City would have to pay any engineering fees spent already out of City finances if the project is not constructed. The City must have all items submitted to MnDOT for review by the end of February. This project is on track to be bid in the spring and constructed in the summer of this year.

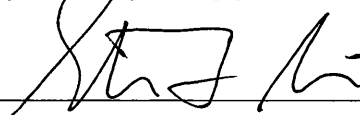
The pre-council presentation covered the aspects of the project and the conditions on the Federal Grants that were received. If Council directs staff to abandon this project we will inform the granting authorities that we are declining and returning the \$1 million AID grant and the \$900,000 TAP grant. The City would save all or part of the remaining \$93,000 that is anticipated to be spent getting the project ready for bid. The nearly \$50,000 already spent on surveying the corridor can be used for future sidewalk, pedestrian ramp and other projects in along Broadway.

City staff requests that the council direct staff to either continue with the project, modify the project, or cease all work on the project.

Department Approval:



City Manager Approval:



REQUEST FOR COUNCIL ACTION

Agenda Section: Unfinished Business	Originating Department:	Date
No: 4	Public Works	1/19/21
Item: Bluff Prairie Restoration Grant Acceptance		
No. 4.2		

SUMMARY OF REQUESTED ACTION:

In November, the City Council approved pursuing a grant opportunity through the state Conservation Partners Legacy program to restore bluff prairie areas on the south side of Sugarloaf and in two other former bluff prairie sites near the ridgeline trail to the west of Sugarloaf. The City learned in December that our grant application was successful for the requested \$14,550. These funds will be reimbursed to the City and are dependent on the City meeting our match pledge of \$1,895. The match will be achieved through an in-kind match of staff and volunteer time, and some use of City equipment.



All three prairie areas (7.25 acres) are being encroached by woody invasive plants, principally buckthorn, honeysuckle and oriental bittersweet. Restoration will involve cutting the vegetation and treating with herbicide, prescribed burns and supplemental seeding with

Department Approval:

Brian Detang

City Manager Approval:

John J. Jr.

Bluff Prairie Restoration Grant Acceptance

Page 2

native prairie plants. A contractor would likely perform the tasks with possible volunteer involvement. The City's Natural Resources and Sustainability coordinator would work closely with the Park and Recreation department to supervise the project.

This restoration activity will be consistent with recommendations of the Bluff Traverse Conservation and Recreation Area Natural Resources Management Plan, specifically opportunities and issues 3.3 and 3.4.

In order to receive the funds, the City must execute the attached standard state contract. Staff must also receive a land disturbance permit from the Planning Commission for the two sites west of Sugarloaf. The Sugarloaf site was granted a land disturbance permit in fall 2020.

If City Council concurs with accepting the grant, a motion authorizing the Mayor and City Clerk to execute the agreement would be in order.

CONSERVATION PARTNERS LEGACY GRANT PROGRAM ENCUMBRANCE WORKSHEET

City of Winona/ Winona Bluff Park Prairie Restoration

State Accounting information:

SWIFT Contract Doc. Type: _____

SWIFT Contract #: _____

SWIFT Contract Line # (Annual Plans): _____

SWIFT Purchase Order #: _____

Agency: R2901	Submitted By: Kathy Varble	Origin: A24	Vendor #: 0000197728	Category Code: 84101501
Total Amount of Contract for ALL years: \$14,550		Total Amount of Contract: \$ 14,550		For FY: 21
Total Amount of Contract:		Total Amount of Contract: \$		For FY:

Contract Start Date: **Upon Execution**

Speedchart Name: _____

Contract Expiration Date: **June 30, 2024**

Speedchart Number: _____

Grantee Name and Address:

City of Winona207 Lafayette St.WINONA, MN 55987

Did you remember to:

Check for debarred vendor? ☒ Yes ☐ NoCheck for annual plan limit? ☒ Yes ☐ NoWork on state lands? ☐ Yes ☒ NoPO Reference: **KV-FY21 CPL Winona Bluff Park Prairie Restoration**

Description: **FY2021 ECP 2; City of Winona, Winona Bluff Park Prairie Restoration. The State is in need of habitat work on public lands to improve habitat for fish, game, and wildlife and to improve public recreational opportunities.**

Statewide/ Agency Reporting Funding String

Line	Budget/ Bond Year	Amount	Fund	FinDeptID	AppropID	Account	Statewide Cost	Agency Cost 1	Agency Cost 2
1	21	\$14,550	2300	R2936725	R296K11	441352		2W205	

Project/ Grant Reporting Funding String

Line	PC Business Unit	Project	Activity	Source Type	Category	Sub-Category

State Accounting Information PO Number: _____

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STATE OF MINNESOTA
CONSERVATION PARTNERS LEGACY GRANT PROGRAM
GRANT CONTRACT
City of Winona/ Winona Bluff Park Prairie Restoration

This grant contract is between the State of Minnesota, acting through its Commissioner of Natural Resources, ("State") and City of Winona, 207 Lafayette St., WINONA, MN 55987 ("Grantee").

Recitals

1. Under Minnesota Laws 2020, Regular Session, Chapter 104, Article 1, Section 2, Subd. 5(r), and Minnesota Statute § 84.026 the State is empowered to enter into this grant.
1. The State is in need of habitat work on public lands to improve habitat for fish, game, and wildlife and to improve public recreational opportunities.
2. The Grantee represents that it is duly qualified and agrees to perform all services described in this grant contract to the satisfaction of the State. Pursuant to Minn.Stat. §16B.98, Subd. 1, the Grantee agrees to minimize administrative costs as a condition of this grant.

Grant Contract

1 Term of Grant Contract

- 1.1 **Effective date:** The date the State obtains all required signatures under Minn. Stat. §16B.98, Subd. 5. Per, Minn.Stat. §16B.98 Subd. 7, no payments will be made to the Grantee until this grant contract is fully executed. **The Grantee must not begin work under this grant contract until this contract is fully executed and the Grantee has been notified by the State's Authorized Representative to begin the work.**
- 1.2 **Expiration date:** June 30, 2024, or until all obligations have been satisfactorily fulfilled, whichever occurs first.
- 1.3 **Survival of Terms.** The following clauses survive the expiration or cancellation of this grant contract: 2.4. Signage; 11. Liability; 13. State Audits; 14. Government Data Practices and Intellectual Property Rights; 15. Data Compatibility and Availability Requirements; 16. Publicity and Endorsement; 17. Governing Law, Jurisdiction, and Venue; 23. Data Disclosure; and 24. Use of Funds for Match or Reimbursement.

2 Duties

Grantee's Duties

The Grantee, who is not a state employee, will:

- 2.1 Comply with required grants management policies and procedures set forth through Minn.Stat. §16B.97, Subd. 4 (a) (1).
- 2.2 Perform each of the duties outlined in Attachment A, Work Plan, which is attached and incorporated into this grant contract. Any changes to the Work Plan must have prior written approval from the State's Authorized Representative.
- 2.3 Apply for and receive all necessary approvals and permits to complete the project and comply with all applicable local, state and federal laws, ordinances, rules, and regulations. This includes all legal restrictions and requirements contained in Minnesota Laws 2019, First Special Session, Chapter 2, Article 1, Section 2, Subd. 5(p), and MN Statute 97A.056.
- 2.4 Meet all grant program requirements, as described in the *Conservation Partners Legacy Grant Program (CPL) FY2018 Request for Proposal*, which is incorporated into this grant contract by reference. The *Request for Proposal (RFP)* may be located at https://files.dnr.state.mn.us/fish_wildlife/cpl/rfp.pdf.
- 2.5 Erect signage in accordance with Minnesota Laws 2009, Chapter 172, Article 5, Section 10, and MN Statute 97A.056. Signs have been designed and created and will be ordered and mailed to Grantee towards the end of the grant period. Grantee is not responsible for the cost of signs but is responsible for placing signs according to MN Laws.
- 2.6 Submit a progress report based on expenditures made and work performed during the previous year, in a form prescribed by the State, by December 31 of each year during the term of this grant contract. A final report must

be submitted prior to or with the request for final payment.

2.7 To provide match as pledged in the approved Work Plan in non-state cash or in-kind services for the costs incurred for the completion of the Project.

2.8 Follow all Invasive Species regulations, policies and procedures of the Department of Natural Resources (DNR) to prevent or limit the introduction, establishment, and spread of invasive species (see section 4.2). This requirement applies to all activities performed on all lands under this grant contract and is not limited to lands under DNR control or public waters.

State's Duties

2.9 To provide Grantee up to \$14,550 for the costs incurred for the completion of the Project.

2.10 For grants over \$50,000, the State's Authorized Representative(s) or other designated State Representative will conduct at least one monitoring visit per grant period. For grants over \$250,000, these visits will be on an annual basis. A monitoring visit may be in person or by telephone.

3 Time

The Grantee must comply with all the time requirements described in this grant contract. In the performance of this grant contract, time is of the essence.

4 Project Requirements

4.1 **Vegetation Requirements.** All projects funded in whole or in part by this grant use only seed mixes or plant lists approved by the Land Manager of the project site. Approval by land manager should be kept on file by grantee for auditing purposes.

4.2 **Invasive Species Prevention.** The DNR requires active steps to prevent or limit the introduction, establishment, and spread of invasive species during all activities performed on all lands under this grant contract. The grantee and/or hired contractor shall prevent invasive species from entering into or spreading within a project site by cleaning equipment prior to arriving at the project site.

If the equipment, vehicles, gear, or clothing arrives at the project site with soil, aggregate material, mulch, vegetation (including seeds) or animals, it shall be cleaned by grantee/contractor furnished tool or equipment (brush/broom, compressed air or pressure washer) at the staging area. The grantee/contractor shall dispose of material cleaned from equipment and clothing at a location determined by the land manager. If the material cannot be disposed of onsite, secure material prior to transport (sealed container, covered truck, or wrap with tarp) and legally dispose of offsite.

The grantee/contractor shall ensure that all equipment and clothing used for work in infested waters has been adequately decontaminated for invasive species (ex. zebra mussels) prior to being used in non-infested waters. All equipment and clothing including but not limited to waders, tracked vehicles, barges, boats, turbidity curtain, sheet pile, and pumps that comes in contact with any infested waters must be thoroughly decontaminated.

4.3 **Project Sites.** All restoration and enhancement projects funded with this grant must be on land permanently protected by a conservation easement or public ownership or in public waters as defined in Minnesota Statutes, section 103G.005, subdivision 15.

4.4. **Restoration and Management Plan.** Hereinafter known as R&M Plan.

(a) For all restorations, prepare and retain an ecological restoration and management plan that, to the degree practicable, is consistent with current conservation science and ecological goals for the restoration site. Consideration should be given to soil, geology, topography, and other relevant factors that would provide the best chance for long-term success and durability of the restoration. The plan shall include the proposed timetable for implementing the restoration, including, but not limited to, site preparation, establishment of diverse plant species, maintenance, and additional enhancement to establish the restoration; identify long-term maintenance and management needs of the restoration and how the maintenance, management, and enhancement will be financed; and use the current conservation science to achieve the best restoration.

(b) The R&M plan shall be prepared on a form provided by the State's Authorized Representative.

4.5 **Timely written contact of Conservation Corps Minnesota.** All grantees must give consideration to and make timely written contact with the Conservation Corps Minnesota or its successor for consideration of possible use of their services to contract for restoration and enhancement services. A copy of the written contact must be filed with the State's Authorized Representative within 10 days of grant execution.

4.6 **Pollinator Best Management Practices.** Habitat restorations and enhancements conducted on DNR lands and prairie restorations on state lands or on any lands using state funds are subject to pollinator best management practices and habitat restoration guidelines pursuant to Minnesota Statutes, section 84.973. Practices and guidelines ensure an appropriate diversity of native species to provide habitat for pollinators through the growing season. Current specific practices and guidelines to be followed for contract and grant work can be found here: http://files.dnr.state.mn.us/natural_resources/npc/bmp_contract_language.pdf.

4.7 **Prescribed Burning on State Lands.** For prescribed burns on state lands, contractors must meet the equipment and personnel requirements (including training and experience) called for in the prescribed burn plan provided by the State. Requirements can be found at https://files.dnr.state.mn.us/forestry/wildfire/rxfire/prescribedBurn_Handbook2010.pdf.

4.8 **Revenues.** Any revenues generated during the grant period from activities on land acquired, restored, or enhanced with CPL funding must be disclosed to CPL staff and used for habitat purposes to be agreed upon.

5 Additional Restrictions

CPL funded projects may not be used as future mitigation for any loss or destruction of habitat.

6 Consideration and Payment

6.1 **Consideration.** The State will pay for all services performed by the Grantee under this grant contract as follows:

(a) **Compensation.** The Grantee will be paid according to the breakdown of costs contained in Attachment A, which is attached and incorporated into this grant contract. Partial payments are allowed. Grantees may vary by 10% between budget categories without prior approval from the State's Authorized Representative. Reasonable amounts may be advanced to accommodate cash flow needs or to match federal share. The advances must be approved in the Work Plan.

(b) **Travel Expenses.** Payment for travel and subsistence expenses actually and necessarily incurred by the Grantee as a result of this grant contract will not exceed \$; provided that the Grantee will be reimbursed for travel and subsistence expenses in the same manner and in no greater amount than provided in the current "Commissioner's Plan" promulgated by the Commissioner of Minnesota Management and Budget (MMB). The Grantee will not be reimbursed for travel and subsistence expenses incurred outside Minnesota unless it has received the State's prior written approval for out of state travel. Minnesota will be considered the home state for determining whether travel is out of state.

(c) **Total Obligation.** The total obligation of the State for all compensation and reimbursements to the Grantee under this grant contract will not exceed \$14,550.

6.2 Payment

(a) **Invoices.** The State will promptly pay the Grantee after the Grantee presents an itemized invoice for the services actually performed and the State's Authorized Representative accepts the invoiced services. Invoices must be submitted, on or before **4 pm local time, July 25, 2024**. Invoices must include copies of appropriate documentation to prove the work has been completed. Invoices must be submitted in a timely manner and in the manner described in the CPL Payment Manual, which is incorporated into this grant contract by reference and can be found at:

http://files.dnr.state.mn.us/assistance/grants/habitat/lessard_sams/grantee/payment_manual.pdf

(b) **Hold Back.** No less than 5% of the amount of the grant must be held back from payment until the grant recipient has completed a grant accomplishment report by the deadline in the form prescribed by and satisfactory to the State and LSOHC.

(c) **Direct Expenditures.** Grant and match funds may only be used for the eligible direct expenditures as

described in the approved Work Plan. Indirect costs and institutional overhead costs are ineligible.

(d) **Match Requirements Met.** All match requirements must have been fulfilled by the Grantee prior to final payment by the State.

(e) **Federal Funds.** No Federal funds will be used.

- 6.3 **Work assigned to the State.** The Grantee may provide portions of the proceeds of this contract to the State. Work done by the State must be so specified in the Work Plan. A letter shall be sent to the State's Authorized Representative and include: the specific area of the Work Plan authorizing the work; the portion of the proceeds to be used by the State; the name, title, address, phone number and e-mail address for the State's representative assigned to accomplish the work; the expected completion date of the work; and a brief description of the nature of the work sufficient as the basis for judgment of whether or not the work was accomplished. If the work authorized by the Grantee is acquisition of land or an interest in land, the amount made available to the State shall include the Grantee's proportionate cost of professional services to complete the acquisition. The Grantee's proportion shall be determined by the ratio of its contribution to the acquisition price as a portion of the whole acquisition price. The Grantee's proceeds available under Clause 8, Payment Procedures, of this contract shall be reduced by the amount provided for State use.

6.4 Contracting and Bidding Requirements.

(a) **Municipalities.** Per Minn. Stat. §471.345, grantees that are municipalities as defined in Subd. 1 must do the following if contracting funds from this grant contract for any supplies, materials, equipment or the rental thereof, or the construction, alteration, repair or maintenance of real or personal property.

i. If the amount of the contract is estimated to exceed \$175,000, a formal notice and bidding process must be conducted in which sealed bids shall be solicited by public notice. Municipalities may, as a best value alternative, award a contract for construction, alteration, repair, or maintenance work to the vendor or contractor offering the best value under a request for proposals as described in Minn. Stat. §16C.28, Subd. 1, paragraph (a), clause (2).

ii. If the amount of the contract is estimated to cost between \$25,000 and \$174,999, the contract may be made either upon sealed bids or by direct negotiation, by obtaining two or more quotations for the purchase or sale when possible, and without advertising for bids or otherwise complying with the requirements of competitive bidding. All quotations obtained shall be kept on file for a period of at least one year after receipt thereof. Municipalities may, as a best value alternative, award a contract for construction, alteration, repair, or maintenance work to the vendor or contractor offering the best value under a request for proposals as described in Minn. Stat. §16C.28, Subd. 1, paragraph (a), clause (2) and paragraph (c).

iii. If the amount of the contract is estimated to be \$25,000 or less, the contract may be made either upon quotation or in the open market, in the discretion of the governing body. If the contract is made upon quotation it shall be based, so far as practicable, on at least two quotations which shall be kept on file for a period of at least one year after their receipt. Alternatively, municipalities may award a contract for construction, alteration, repair, or maintenance work to the vendor or contractor offering the best value under a request for proposals as described in Minn. Stat. §16C.28, Subd. 1, paragraph (a), clause (2).

(b) **Nonprofit Organizations.**

i. Any services and/or materials that are expected to cost \$100,000 or more must undergo a formal notice and bidding process.

ii. Services and/or materials that are expected to cost between \$25,000 and \$99,999 must be competitively awarded based on a minimum of three verbal quotes or bids.

iii. Services and/or materials that are expected to cost between \$10,000 and \$24,999 must be competitively awarded based on a minimum of two verbal quotes or bids or awarded to a targeted vendor.

iv. The grantee must take all necessary affirmative steps to assure that targeted vendors from businesses with active certifications through these entities are used when possible:

- State Department of Administration's Certified Targeted Group, Economically Disadvantaged and Veteran-Owned Vendor List
- Metropolitan Council's Targeted Vendor list: Minnesota Unified Certification Program
- Small Business Certification Program through Hennepin County, Ramsey County, and City of St. Paul: Central Certification Program

v. The grantee must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts.

(c) **Support documentation.** Documentation of the bidding process utilized to contract services must be included in the grantee's financial records, including support documentation justifying a single/sole source bid, if applicable, for both municipalities and nongovernmental organizations.

(d) **Prevailing wage.** For any project that includes construction work of \$25,000 or more, prevailing wage rules apply per; Minn. Stat. §§177.41 through 177.44 consequently, the bid request must state the project is subject to *prevailing wage*. These rules require that the wages of laborers and workers should be comparable to wages paid for similar work in the community as a whole. A prevailing wage form should accompany these bid submittals. Additional information on prevailing wage requirements is available on the Department of Labor and Industry (DOLI) website at <http://www.dli.mn.gov/LS/PrevWage.asp>. Questions about the application of prevailing wage rates should be directed to DOLI at 651-284-5091. The Grant recipient is solely responsible for payment of all required prevailing wage rates.

(e) The grantee must not contract with vendors who are suspended or debarred in MN: <http://www.mmd.admin.state.mn.us/debarredreport.asp>.

7 Conditions of Payment

All services provided by the Grantee under this grant contract must be performed to the State's satisfaction, as determined at the sole discretion of the State's Authorized Representative and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Grantee will not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state, or local law.

8 Payment Procedures

8.1 **Documentation Requirements.** To obtain the payment approved for work under this grant contract, the grantee must follow all payment procedures documented within the CPL Payment Manual.

9 Authorized Representative

The State's Authorized Representatives:

Kathy Varble
CPL Program Coordinator
500 Lafayette Road Box #20
St. Paul, MN 55155
651-259-5216
kathy.varble@state.mn.us

or successor(s) have the responsibility to monitor the Grantee's performance and the authority to accept the services provided under this grant contract. If the services are satisfactory, the State's Authorized Representative will certify acceptance on each invoice submitted for payment.

The Grantee's Authorized Representative(s) are:

Project Manager	Fiscal Contact
John Howard	John Howard

Natural Resources and Sustainability Coordinator	Natural Resources and Sustainability Coordinator
PO Box 378	207 Lafayette St.
WINONA, MN 55987	WINONA, MN 55987
jhoward@ci.winona.mn.us	jhoward@ci.winona.mn.us
507-457-8273	507-457-8273

If the Grantee's Authorized Representative(s) changes at any time during this grant contract, the Grantee must immediately notify the State.

10 Assignment, Amendments, Waiver, and Grant Contract Complete

- 10.1 **Assignment.** The Grantee may neither assign nor transfer any rights or obligations under this grant contract without the prior consent of the State, approved by the same parties who executed and approved this grant contract, or their successors in office.
- 10.2 **Amendments.** Any amendment to this grant contract must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original grant contract, or their successors in office.
- 10.3 **Waiver.** If the State fails to enforce any provision of this grant contract, that failure does not waive the provision or the State's right to enforce it.
- 10.4 **Grant Contract Complete.** This grant contract contains all negotiations and agreements between the State and the Grantee. No other understanding regarding this grant contract, whether written or oral, may be used to bind either party.

11 Liability and Insurance

- 11.1 **Liability.** The Grantee must indemnify, save, and hold the State, its agents, and employees harmless from any claims or causes of action, including attorney's fees incurred by the State, arising from the performance of this grant contract by the Grantee or the Grantee's agents or employees. This clause will not be construed to bar any legal remedies the Grantee may have for the State's failure to fulfill its obligations under this grant contract.
- 11.2 **General Insurance Requirements.** The Grantee shall not commence work under the contract until proof of insurance or compliance with insurance requirements has been met. Grantee must meet the insurance requirements applicable to grantee's project, as described in the FY2021 *Conservation Partners Legacy Grant Program Request for Proposal*, which is incorporated into this grant contract by reference.
- 11.3 **Worker's Compensation.** The Grantee certifies that it is in compliance with Minn. Stat. §176.181, Subd. 2, pertaining to workers' compensation insurance coverage. The Grantee's employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way the State's obligation or responsibility.

12 In the Event of a Lawsuit

- 12.1 An appropriation or portion of an appropriation from a legacy fund is canceled to the extent that a court determines that the appropriation unconstitutionally substitutes for a traditional source of funding.
- 12.2 Any grant contract or similar contract that awards money from a legacy fund must contain the information in paragraph 11.1, Liability.

13 State Audits

Under Minn. Stat. § 16B.98, Subd.8, the Grantee's books, records, documents, and accounting procedures and practices of the Grantee or other party relevant to this grant contract or transaction are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the

end of this grant contract, receipt and approval of all final reports, or the required period of time to satisfy all state and program retention requirements, whichever is later.

14 **Government Data Practices and Intellectual Property Rights**

14.1 *Government Data Practices.* The Grantee and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the State under this grant contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Grantee under this grant contract. The civil remedies of Minn. Stat. §13.08 apply to the release of the data referred to in this clause by either the Grantee or the State. If the Grantee receives a request to release the data referred to in this Clause, the Grantee must immediately notify the State. The State will give the Grantee instructions concerning the release of the data to the requesting party before the data is released. The Grantee's response to the request shall comply with applicable law.

14.2 *Intellectual Property Rights.*

(a) ***Intellectual Property Rights.*** All rights, title, and interest to all intellectual property rights, including all copyrights, patents, trade secrets, trademarks, and service marks in the works and documents funded through the State of Minnesota Conservation Partners Legacy Grant Program, shall be jointly owned by the Grantee and the State. Works shall mean all inventions, improvements, or discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes or disks, conceived, reduced to practice, created, or originated by the Grantee, its employees and subcontractors, either individually or jointly with others, in the performance of this contract. Documents shall mean the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether intangible or electronic forms, prepared by the Grantee, its employees, or subcontractors, in the performance of this contract. The ownership interests of the State and the Grantee in the works and documents shall equal the ratio of each party's contributions to the total costs described in the Budget of this contract. The party's ownership interest in the works and documents shall not be reduced by any royalties or revenues received from the sale of the products or the licensing or other activities arising from the use of the works and documents. Each party hereto shall, at the request of the other, execute all papers and perform all other acts necessary to transfer or record the appropriate ownership interests in the works and documents.

(b) ***Obligations***

1. ***Notification:*** Whenever any invention, improvement, or discovery (whether or not patentable) is made or conceived for the first time, or actually or constructively reduced to practice by the Grantee, including its employees and subcontractors, in the performance of this contract, the Grantee shall immediately give the State's Authorized Representative written notice thereof, and shall promptly furnish the Authorized Representative with complete information and/or disclosure thereon. All decisions regarding the filing of patent, copyright, trademark or service mark applications and/or registrations shall be the joint decision of the Grantee and the State, and costs for such applications shall be divided as agreed by the parties at the time of the filing decisions. In the event the parties cannot agree on said filing decisions, the filing decision will be made by the State.

2. ***Representation:*** The Grantee shall perform all acts, and take all steps, necessary to ensure that all intellectual property rights in the Works and Documents are the sole property of the Grantee and the State as agreed herein, and that no Grantee employee, agent, or contractor retains any interest in and to the Works and Documents. The Grantee represents and warrants that the Works and Documents do not and shall not infringe upon any intellectual property rights of others. The Grantee shall indemnify, defend, and hold harmless the State, at the Grantee's expense, from any action or claim brought against the State to the extent that it is based on a claim that all or part of the Works and Documents infringe upon the intellectual property rights of others. The Grantee shall be responsible for payment of any and all such

claims, demands, obligations, liabilities, costs, and damages including, but not limited to, attorney fees. If such a claim or action arises, or in the Grantee's or the State's opinion is likely to arise, the Grantee shall, at the State's discretion, either procure for the State the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing Works and Documents necessary and appropriate to obviate the claim. This remedy shall be in addition to, and not exclusive of, other remedies provided by law.

(c) ***Uses of the Works and Documents.***

The State and Grantee shall jointly have the right to make, have made, reproduce, modify, distribute, perform, and otherwise use the works, including Documents produced under this Contract, for noncommercial research, scholarly work, government purposes, and other noncommercial purposes without payment or accounting to the other party. No commercial development, manufacture, marketing, reproduction, distribution, sales or licensing of the Works, including Documents, shall be authorized without a future written contract between the parties.

(d) ***Possession of Documents.***

The Documents may remain in the possession of the Grantee. The State may inspect any of the Documents at any reasonable time. The Grantee shall provide a copy of the Documents to the State without cost upon the request of the State.

15 Data Compatibility and Availability Requirements

15.1 Data Compatibility. Data collected by the Projects funded under this contract that have value for planning and management of natural resources, emergency preparedness, and infrastructure investments shall conform to the enterprise information architecture developed by the Office of Enterprise Technology (or its successor). Spatial data must conform to geographic information system guidelines and standards outlined in that architecture and adopted by the Minnesota Geographic Data Clearinghouse at the Land Management Information Center. A description of these data that adheres to the Office of Enterprise Technology (or its successor) geographic metadata standards shall be submitted to the Land Management Information Center to be made available online through the clearinghouse and the data must be accessible and free to the public unless made private under the Data Practices Act, Minnesota Statutes, Chapter 13.

15.2 Data Availability. To the extent practicable, summary data and results of projects funded by this grant program should be readily accessible on the Grantee's website and identified as a Lessard-Sams Outdoor Heritage Council and Conservation Partners Legacy Grant Program project.

16 Publicity, Advertising and Endorsement

16.1 Publicity. Any publicity regarding the subject matter of this grant contract must identify the State and L-SOHC as the sponsoring agency. A copy of any publicity shall be furnished to the State's Authorized Representative upon its release. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Grantee individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this grant contract.

16.2 Endorsement. The Grantee must not claim that the State endorses its products or services.

17 Governing Law, Jurisdiction, and Venue

Minnesota law, without regard to its choice-of-law provisions, governs this grant contract. Venue for all legal proceedings out of this grant contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

18 Accessibility and Safety

18.1 Accessibility. Structural and nonstructural facilities and programs must meet all state and federal accessibility laws, regulations, and guidelines, including the American with Disabilities Act (ADA). Accessibility guidelines and standards can be found at <http://www.access-board.gov>.

18.2 Safety. All programs must adhere to federal safety regulations, which can be found on the Occupational Health and Safety Administration's website at www.osha.gov/law-regs.html.

19 Subgrantees/ Vendor Services

If any subgrants or contracts for any portion of the work covered under this grant contract are made to another entity, the contract with the subgrantee or contractor will contain all appropriate provisions of this grant contract. It is recommended that all Subgrantees/Contractors carry the same insurance as the Grantee. Subgrantee or Vendor services must follow requirements listed in the *Conservation Partners Legacy Grant Program (CPL) Request for Proposal*, located at https://files.dnr.state.mn.us/fish_wildlife/cpl/rfp.pdf as applicable.

20 Purchase of Recycled or Recyclable Materials

The purchase of recycled, repairable, and durable materials must be in compliance with Minn. Stat. § 16B.121. The purchase and use of paper stock and printing must be in compliance with Minn. Stat. 16B.122.

21 Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

21.1. The prospective lower tier participant certifies, by submission of this contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

21.2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this contract.

22 Termination

22.1 **Termination by the State.** The State may immediately terminate this grant contract with or without cause, upon 30 days' written notice to the Grantee. Upon termination, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

22.2 **Termination for Cause.** The State may immediately terminate this grant contract if the State finds that there has been a failure to comply with the provisions of this grant contract, that reasonable progress has not been made or that the purposes for which the funds were granted have not been or will not be fulfilled. The State may take action to protect the interests of the State of Minnesota, including the refusal to disburse additional funds and requiring the return of all or part of the funds already disbursed.

23 Data Disclosure

Under Minn. Stat. § 270C.65, Subd. 3, and other applicable law, the Grantee consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring the Grantee to file state tax returns and pay delinquent state tax liabilities.

24 Use of Funds for Match or Reimbursement

Grant funds cannot be used by the Grantee as match or for reimbursement for any other grant or program without prior written authorization from the State's Authorized Representative.

(a) The Grantee must submit a written request for authorization no less than 10 business days prior to applying for the new funds or program to the State's Authorized Representative. This request must include the following information: CPL project name, CPL grant contract number, the amount of CPL grant funds to be used, location where CPL grant funds were or will be used, activity the grant funded, and current landowner. The project name, location where the new funds will be used, activity to be funded, funding source of the new grant or program, and a brief description of the grant or program being applied for must also be included.

(b) If the new grant or program will add any encumbrances to the land where grant funds were or will be spent, these encumbrances must be approved in writing by the State's Authorized Representative and the current landowner.

25 Conflict of Interest

Under the Minnesota Department of Administration's Office of Grants Management Conflict of Interest Policy for State Grant Making (available at http://mn.gov/admin/images/grants_policy_08-01.pdf) and other applicable laws, Grantees must disclose actual, potential, perceived, and organizational conflicts of interest.

State Accounting Information PO Number: _____

1. STATE ENCUMBRANCE

VERIFICATION

3. STATE AGENCY

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

By: _____

Date: _____

Purchase Order Number:

Contract #: _____

3. DEPARTMENT OF NATURAL RESOURCES

By: _____

with delegated authority

Name: Dave Olfelt

Title: Director, Division of Fish and Wildlife

Date: _____

2. GRANTEE

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

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

**DIVISION OF FISH AND WILDLIFE
CONSERVATION PARTNERS LEGACY GRANT**

Revision: 20191104

Data Date: December 17, 2020

PROJECT CONTACT

Project Name: Winona Bluff Park Prairie Restoration
Organization Name: City of Winona
Organization Type: Government
Mailing Address 1: PO Box 378
City, State ZIP Code: WINONA, MN 55987

Project Manager: John Howard
Title: Natural Resources and Sustainability Coordinator
Phone: 507-457-8273
Email: jhoward@ci.winona.mn.us

PROJECT OVERVIEW**Sites / Location**

County Name: Winona
Project Site Name: Bluff Park
Total Project Sites: 3
Total Project Acres: 7

Land Ownership

Primary Land Ownership: Local Government
Additional Land Ownerships: (N/A)

Habitat

Primary Type: Prairie
Additional Types: (N/A)

Activities

Primary Activity: Restoration
Additional Activities: (N/A)

PROJECT FUNDING SUMMARY

Grant Type: (N/A)

Grant Request Level: (N/A)

Total Grant Amount Requested: \$14,550

Total Match Amount Pledged: \$1,895

Additional Funding Amount: \$0

Total Project Cost: \$16,445

PROJECT SUMMARY

Historically, the majority of south facing bluff sides in the driftless area were prairies, but encroachment by woody invasive plants, principally buckthorn, honeysuckle and oriental bittersweet have greatly altered these ecosystems. This proposed project would reverse the trend by restoring three remnant prairie area in Winona's Bluff Park. Some restoration work has already taken place on the eastern most prairie section, and the prairie has bounced back. This gives up hope that a similar result is possible in the nearby areas referred to as the central and west sites.

PROBLEM STATEMENT

The City of Winona budget is likely to be tight for the foreseeable future due to Covid-19 economic impacts. The City is also undergoing a sustainability planning process that is consuming much of the natural resources budget. Thus grants are critical to undertaking this project. The matching funds will come from staff and volunteer time, as well as some dollars from our park fund and natural resources fund. A financial contribution of \$1,450 is much more palatable to our City Council than \$14,500.

If not funded, volunteers may still try to do some work, but it is unlikely they would complete more than one site, and it may not be as thorough as a contractor's work. Without intervention, the prairie areas will continue to be choked out by woody vegetation, and be much more difficult to restore once local biodiversity is lost.

PROJECT OBJECTIVES

Restoration will involve cutting the woody vegetation and treating the stump with herbicide, prescribed burns split over two or three season, and supplemental seeding with native prairie plants. Small seedlings of buckthorn and other invasives will be killed by overspraying if they not killed by the prescribed burns. The cut stump treatment method worked well in our initial prairie efforts, and is an economical way to limit herbicide spraying.

CONSERVATION PARTNERS LEGACY GRANT

PROJECT OBJECTIVES *(Continued)*

Most of the work will be carried out by contractors. The City will give the Conservation Corps notice of the project, and would be happy to work with them. Volunteers may be recruited to do some brush removal alongside the contractor, and potentially also with seeding.

METHODS

(N/A)

EXPERIENCE / ABILITIES

(N/A)

PROJECT TIMELINE

Time Frame	Goal
Winter 2020-2021	Woody vegetation clearing of 1-3 sites.
February 2021	Small prescribed burn of sugarloaf/eastern prairie.
July-August 2021	Retreatment of resprouts, treatment of remaining sites.
August 2021	Plant biological inventory of sites.
November 2021-February 2022	Potential prescribed burn on west and central sites.
February 2022	Seeding of burned areas if limited biodiversity.
November 2022-March 2023	Prescribed burns of the un-burned portions.
February - March 2023	Seeding of newly burned areas if lacking biodiversity
June-July 2023	Review status, determine need of additional work.

Estimated Project Completion Date: 2023-07-14

PROJECT INFORMATION

1. Describe the degree of collaboration and local support for this project.

(N/A)

2. Describe any urgency associated with this project.

(N/A)

3. Discuss if there is full funding secured for this project, the sources of that funding and if CPL Grant funds will supplement or supplant existing funding.

(N/A)

4. Describe public access at project site for hunting and fishing, identifying all open seasons.

(N/A)

5. Discuss use of native vegetation *(if applicable)*.

(N/A)

6. Discuss your budget and why it is cost effective.

(N/A)

7. Provide information on how your organization encourages a local conservation culture. This includes your organization's history of promoting conservation in the local area, visibility of work to the public and any activities and outreach your organization has completed in the local area.

(N/A)

BUDGET INFORMATION

CONSERVATION PARTNERS LEGACY GRANT

BUDGET INFORMATION *(Continued)*

Organization's Fiscal Contact Information

Name: John Howard
 Title: Natural Resources and Sustainability Coordinator
 Email: jhoward@ci.winona.mn.us
 Phone: 507-457-8273

Street Address 1: 207 Lafayette St.

City, State ZIP Code: WINONA, MN 55987

Budget Details

Personnel

Name	Title / Work to be completed	Amount	Grant/Match	In-kind/Cash
Alicia Lano	Land Manager	\$150	Match	In-Kind
John Howard	Project management	\$1,120	Match	In-Kind

Contracts

Contractor Name	Contracted Work	Amount	Grant/Match	In-kind/Cash
LandSpirit Design	Continue eastern prairie work	\$4,300	Grant	(N/A)
Prairie Restorer	Prairie Restoration	\$8,600	Grant	(N/A)

Professional Services

Professional Name	Description of Services	Amount	Grant/Match	In-kind/Cash
Prairie Expert	Identifying prairie species	\$300	Match	In-Kind

Equipment/Tools/Supplies

Item	Purpose	Amount	Grant/Match	In-kind/Cash
Herbicide	Invasive removal	\$325	Match	In-Kind
Seeds	Promoting diversity	\$1,650	Grant	(N/A)

Additional Funding

Additional Funding Amount: \$0

Budget Overview

Item Type	Grant	Match	Total
Personnel	-	\$1,270	\$1,270
Contracts	\$12,900	-	\$12,900
Fee Acquisition with PILT	-	-	-
Fee Acquisition without PILT	-	-	-
Easement Acquisition	-	-	-
Easement Stewardship	-	-	-
Travel (in-state)	-	-	-
Professional Services	-	\$300	\$300
DNR Land Acquisition Cost	-	-	-
Equipment/Tools/Supplies	\$1,650	\$325	\$1,975
Additional Budget Items	-	-	-
Totals:	\$14,550	\$1,895	\$16,445

SITE INFORMATION

You may group your project sites together as long as land ownership, activity and habitat information is the same for the land manager.

CONSERVATION PARTNERS LEGACY GRANT

SITE INFORMATION *(Continued)*

Land Manager

Name: Alicia Lano
 Organization: City of Winona
 Title: Outdoor Recreation Coordinator

Phone: 507-457-8241
 Email: alano@ci.winona.mn.us

Site Information

Habitat: Prairie	Activity: Restoration	Land Ownership: Local Government
(1) Site Name: Bluff Park Prairies	Open to Public Hunting?	No
DOW Lake #: (N/A)	Open to Public Fishing?	Yes - all
Acres: 7		
PLS Section: Township - 107, Range - 7W, Section - 35		

NATURAL HERITAGE DATABASE REVIEW

Natural Heritage elements were found within my project site(s): Yes

Natural Heritage Sites and Managers: (N/A)

Natural Heritage Elements: (N/A)

Natural Heritage Mitigation: Animals

Crotalus horridus: timber rattlesnake (THR)

Pantherophis ramspotti: western foxsnake (watchlist)

Lepomis gulosus: warmouth (SPC)

Morone mississippiensis: yellow bass (SPC)

Opsopoeodus emiliae: pugnose shiner (watchlist)

Vireo bellii: Bell's vireo (SPC)

The fish species will not be impacted in any way by the prairie work. The snakes do not utilize any of the invasive plants. The vireo may perch on invasive plants presently, but will benefit from prairie. A prescribed burn is unlikely to have detrimental effects since the area being burned at one time is small (likely no more than one half of the prairie at a time). Temporary extirpation between the fire and vegetation establishment may lead to the snakes to move to adjacent areas, and cause stress. However, a vibrant prairie would be in the long term best interest of the species, particularly the timber rattlesnake.

Vascular Plants

Encalypta procera: tall extinguisher moss (SPC)

Penstemon digitalis: beardtongue (watchlist)

Berula erecta: stream parsnip (THR)

The moss and parsnip are unlikely to be found at the project sites. Beardtongue is a native prairie plant, and will benefit from a restored prairie.

ATTACHMENTS

Additional Documentation

Attach additional documentation as applicable using the appropriate categories below. If you exceed the size limit while uploading, contact CPL Grant staff to discuss your options.

Photo

File Name

Description

IMG_20190919_140410.jpg

Blue prairie flower

IMG_20190919_141155.jpg

Sugarloaf Prairie area (partly restored)

IMG_20190919_142056.jpg

Prairie with woody encroachment

Natural_communities_map.png

Close up of Natural Communities Map

CONSERVATION PARTNERS LEGACY GRANT

FINAL APPLICATION SUBMISSION

- P I certify that I have read the Conservation Partners Legacy Grants Program Request for Proposal, Program Manual and other program documents, and have discussed this project with the appropriate public land manager, or private landowner and easement holder.
- P I certify I am authorized to apply for and manage these grant and match funds, and the project work by the organization or agency listed below. I certify this organization to have the financial capability to complete this project and that it will comply with all applicable laws and regulations.
- P I certify that all of the information contained in this application is correct as of the time of the submission. If anything should change, I will contact CPL Grant staff immediately to make corrections.
- P I certify that if funded I will give consideration to and make timely written contact to Minnesota Conservation Corps or its successor for consideration of possible use of their services to contract for restoration and enhancement services. I will provide CPL Grant staff a copy of that written contact within 10 days after the execution of my grant, should I be awarded.
- P I certify that I am aware at least one Land Manager Review and Approval form is required for every application and at least one Public Waters Contact form is required for all public waters work. I am aware I must submit all completed forms by uploading them into this application. I have attached the required type and number of forms as necessary for this project.
- P I am aware that by typing my name in the box below, I am applying my signature to this online document.

Signature: John Howard

Organization / Agency: City of Winona

Title: Natural Resources and Sustainability

Date Signed: November 16, 2020

Coordinator

(CPL Grant Application ID = 1794)

REQUEST FOR COUNCIL ACTION

Agenda Section: **New Business**

Originating Department:

Date

No: **5**

Parks and Recreation

01/19/21

Item: **Winona Friendship Center – Juniper Agreement**

No. **5.1**

SUMMARY OF REQUESTED ACTION:

The Winona Friendship Center is interested in expanding program offerings for the community by partnering with the Minnesota based company, Juniper.

Juniper is helping communities across Minnesota create a culture of health, where prevention and wellness are the norm. Juniper programs provide education, fitness instruction, and self-care strategies for participants; they do not replace clinical care provided by doctors, nurses and other medical professionals. Evidence-based programs help people across the state experience improved wellness and quality of life.

Evidence-based programs are developed and verified by researchers to promote self-management of chronic health, conditions such as diabetes and chronic pain, prevent falls, and foster individual well-being.

The Friendship Center is interested in offering these programs to the Winona Community not only for the well-being of the members, but also to keep their national accreditation by providing evidence based programming.

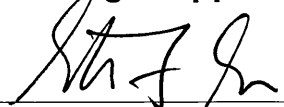
City staff and the Attorney have reviewed the attached agreement and recommend the execution of the agreement.

If Council concurs, a motion to approve the agreement with Juniper substantially as to form, but allowing for minor or technical changes approved by the City Attorney, and authorizing and directing the Mayor and City Clerk to execute the agreement.

Department Approval:



City Manager Approval:



innovations for aging

CONTRACT FOR SERVICES AGREEMENT

Juniper®

This contract agreement (“Agreement”) is entered into as of the date last signed below (“Effective Date”) between Innovations for Aging, LLC, a limited liability company under the laws of the State of Minnesota, 1265 Grey Fox Road, Suite 2, Arden Hills, MN 55112 (“Agency”), and the City of Winona, Minnesota, a municipal corporation under the laws of the State of Minnesota, 207 Lafayette Street, Winona MN 55987 (“City”), by and through the City of Winona Friendship Center facility located at 251 Main Street, Winona, MN 55987 (“Facility” or “Contractor”).

WHEREAS Agency is the managing organization for the Juniper initiative, expanding evidence-based health promotion (“EBHP”) classes throughout the state of Minnesota, and

WHEREAS City is the owner and operator of the Facility, and the Facility desires to participate in the Juniper initiative and provide EBHP classes.

NOW, THEREFORE, the parties agree as follows:

1. Purpose and Scope

Agency is leading a collaborative initiative, Juniper, in cooperation with the Area Agencies on Aging in Minnesota to increase EBHP classes across the state, primarily, but not exclusively for older adult participants. Agency desires to enter into cooperative arrangements for the purchase of EBHP and evidence informed classes from qualified contractors across a defined set of twelve (12) programs, which are outlined in Attachment A, Program Descriptions. Contractor is not required to provide all programs listed in Attachment A. These programs help older adults maintain confidence about living independently and help them improve their overall health.

2. Obligations of the Contractor

- 2.1 Maintain usual and customary insurance applicable to Contractor’s obligations under this Agreement, including Commercial General Liability Insurance covering products and completed operations, property damage, bodily injury and personal & advertising injury and workers compensation insurance that is in compliance with applicable statutory guidelines.
- 2.2 Provide a location/facility which meets applicable Minnesota and local building codes sufficient to conduct in-person EBHP classes.

Contract Number:

Innovations for Aging, LLC | 1265 Grey Fox Road, Suite 2 | Arden Hills, MN 55112 | www.yourjuniper.org

Page | 1

- 2.3 Use a remote platform which meets applicable Minnesota Government Data Practices Act and the Health Insurance Portability and Accountability Act (HIPAA) to conduct remote EBHP classes.
- 2.4 Contractor shall appoint an employee to serve as the primary point of contact with the Agency in connection with this Agreement, and who shall be accountable for the Contractor deliverables as captured in Section 3 of this Agreement. This appointee will hold the title as Provider Contact for purposes of this Agreement and for purposes of the Provider Contact role in the yourjuniper.org database.
- 2.5 Follow all applicable state and federal laws including the Minnesota Government Data Practices Act and HIPAA to safeguard and otherwise protect identifying and protected health information (PHI) of class participants. Contractor agrees to execute and comply with the terms of the HIPAA Business Associate Agreement attached hereto as Attachment D and incorporated herein.
- 2.6 Contractor shall complete any training required and will follow necessary requirements to follow EBHP program fidelity. Contractor will engage in activities to learn about program fidelity. Contractor shall recruit speakers, or class leaders, for each of the classes offered by Contractor and speakers, or class leaders, shall maintain fidelity to the curriculum.
- 2.7 Contractor shall make arrangements for class location, including in-person locations or remote locations; provide participant materials; and provide other supplies or items necessary to conduct the session.
 - 2.7.1 For the Aging Mastery Program, Contractor shall order participant materials via the online form at www.yourjuniper.org at least 4 weeks in advance of the first-class session.
- 2.8 Contractor will assist and provide necessary information to Agency for Agency's reimbursement from health plans and communicate the availability of the EBHP workshops to members of their community.
- 2.9 Give permission to Agency to cite Contractor as a participant in the Juniper initiative, including on Agency's website, yourjuniper.org.
- 2.10 Include the logo for Juniper, and the National Council on Aging (NCOA) logo when applicable, and within the Juniper style guidelines, in all marketing materials and references to the classes.
- 2.11 Participate in class participant data collection and class participant consent requirements subject to the Minnesota Government Data Practices Act.

Contract Number:

Innovations for Aging, LLC | 1265 Grey Fox Road, Suite 2 | Arden Hills, MN 55112 | www.yourjuniper.org

- 2.12 Register participants, leaders, and list all EBHP classes, as applicable to the Contractor class selections, funded under this Agreement on the website, yourjuniper.org.
- 2.13 Ensure all available participants' pre- and post- survey information is entered into the yourjuniper.org database that attended over one (1) session into yourjuniper.org.
- 2.14 Enter all scheduled classes into yourjuniper.org no later than sixty (60) days prior to the start of the class.
- 2.15 In the event of a class cancellation, Contractor will not cancel a class less than three (3) business days before the class session one (1) start date.
- 2.16 In the event of a class cancellation, Contractor will contact each registered participant by telephone and email, when email is available, indicating the class has been cancelled. Contractor will provide the registered participant alternative class registration information and refer the participant to the alternative class' registration contact.
- 2.17 Contractor will schedule classes in a manner that aligns with EBHP program fidelity and successful participant completion. As applicable to the program selected by Contractor, Contractor will schedule classes once or twice a week or every other week and shall not schedule more than two classes per day.
- 2.18 Contractor shall participate with Agency and their designated Juniper Provider Relationship Manager to develop a sustainability plan for successful delivery of the Juniper Program(s).

3. Contractor Deliverables

- 3.1 Contractor shall have the recommended number of participants based on program license guidance with exceptions to be negotiated between Agency and Contractor upon request.
 - 3.1.1 For participants to qualify as completers, they must complete at least 2/3 of all classes scheduled. See Attachment B, Class Completion Requirements for a full list of class requirements ("Completer(s)").
- 3.2 Contractor shall ensure that participants complete registration forms, as well as pre- and post- class surveys to establish baselines, measure progress, collect demographic data, and support evaluation for evidence-based healthy aging programs.
- 3.3 Contractor shall enter and submit required information into yourjuniper.org noted below within fourteen (14) days of class completion.

Contract Number:

Innovations for Aging, LLC | 1265 Grey Fox Road, Suite 2 | Arden Hills, MN 55112 | www.yourjuniper.org

- 3.3.1 Submit Participant Privacy Policy Acknowledgement form by uploading directly to Participant Details page on yourjuniper.org.
- 3.3.2 Submit Request for Payment by accessing the Juniper Resource page, resources.yourjuniper.org/leader-materials, and select Completer Payment Request form.
- 3.3.3 Ensure the following available data is entered into the yourjuniper.org database:
 - 3.3.3.1 Participant registration data, including health insurance information;
 - 3.3.3.2 Participant pre-survey data;
 - 3.3.3.3 Participant post-survey data;
 - 3.3.3.4 Participant Privacy Policy acknowledgement; and
 - 3.3.3.5 Participant attendance data.
- 3.4 Contractor shall complete the required HIPAA training provided by the Agency, prior to the first class occurring, and annually thereafter.

4. Agency Deliverables

4.1 In consideration for the Services to be performed by Contractor, Agency agrees to:

- 4.1.1 Make available to Contractor the ability to use the management information system yourjuniper.org ("Website"). For purposes of this section, management information system is defined as software designed to facilitate the storage, organization, and retrieval of information.
- 4.1.2 Manage Website and provide the following Website capabilities to Contractor:
 - 4.1.2.1.1 Data capture and reporting;
 - 4.1.2.1.2 Ability to track participant outcomes;
 - 4.1.2.1.3 Filter classes by multiple filters including location of class, date(s), and funding source;
 - 4.1.2.1.4 View list of all partnering organizations;
 - 4.1.2.1.5 View list of classes leaders have led;
 - 4.1.2.1.6 View and edit leaders associated with organization;
 - 4.1.2.1.7 Add, view, and remove participants from a class;
 - 4.1.2.1.8 Enter participant survey data and attendance;
 - 4.1.2.1.9 Export participant roster data in single file format; and
 - 4.1.2.1.10 Ability to publicize network events.
- 4.1.3 Provide marketing support; and

Contract Number:

Innovations for Aging, LLC | 1265 Grey Fox Road, Suite 2 | Arden Hills, MN 55112 | www.yourjuniper.org

Page | 4

4.1.4 Provide Contractor the ability to be a part of a high-impact network with access to best practices and a broad community of learning.

4.2 In kind support, Agency provides to the Contractor:

- 4.2.1 Wellness Engagement Center Support for assistance in registering class participants and providing user support;
- 4.2.2 Management Information System access with yourjuniper.org;
- 4.2.3 Access to the program license at no cost to the Contractor;
- 4.2.4 An online form to order Aging Mastery Program class materials;
- 4.2.5 The ability to use the National Council on Aging's Aging Mastery Program Dropbox to facilitate access to information needed to market and run classes, including power point slides for session speakers; and
- 4.2.6 Provider network membership where the Agency negotiates for no cost on behalf of Contractor.

4.3 Agency may make changes from time to time in the manner of performing the Services delineated in Subsections 4.1 and 4.2 of this Section and may suspend or terminate the provision of one or more of the Services delineated in Subsections 4.1 and 4.2 of this Section.

5. Term

The term of this Agreement will commence on January 1, 2021 and continue until December 31, 2021.

6. Payment

- 6.1 Upon fulfillment of the activities, deliverables, and other requirements of this Agreement, Agency will pay Contractor in the amount and manner set forth in Attachment C, Fee Schedule.
- 6.2 Payment for a Completer, as defined in Attachment A, will only be made to Contractor for a Completer that provides a Minnesota residence address or for any Completer who resides in a bordering Minnesota community that is no more than sixty (60) miles from the Minnesota border.
- 6.3 Request for payment is due no later than thirty (30) days after completion of the class. Payment will be mailed within fifteen (15) days after request is received for all undisputed amounts.
- 6.4 Subject to available resources, Contractor may request additional funding for completers of evidence-based programs. Funds must be requested prior to class implementation. Submit request for additional funding to Sarah Shepherd at sshepherd@yourjuniper.org.

Contract Number:

Innovations for Aging, LLC | 1265 Grey Fox Road, Suite 2 | Arden Hills, MN 55112 | www.yourjuniper.org

Page | 5

6.5 Contractor shall not charge a direct fee to a participant whose participation is covered by a BlueCross and BlueShield of Minnesota's Minnesota Senior Health Options ("MSHO") health plan benefit.

6.6 For purposes of this section, "BlueCross and BlueShield of Minnesota's Minnesota Senior Health Options health plan benefit" is defined as BlueCross and BlueShield's SecureBlue health plan.

7. Relationship of Parties

It is understood by the parties that Contractor is not an agent or employee of Agency for any purpose whatsoever but is an independent Contractor. Nothing will authorize the Contractor to act as an agent or employee for Agency or to conduct business in the name of or on the account of Agency. It is understood by the parties that Agency is not an agent or employee of Contractor for any purpose whatsoever but is an independent contractor. Nothing will authorize the Agency to act as an agent or employee for Contractor or to conduct business in the name of or on the account of Contractor, except as provided in this Agreement.

8. Indemnification

8.1 Each party will mutually indemnify and hold harmless each other, its officers, directors, agents and employees from and against all claims, demands, or causes of action arising out of or resulting from any breach of this Agreement by or tortious or unlawful acts of the other party and its officers, directors, agents, and employees in the performance of its duties pursuant to this Agreement.

The party seeking indemnification must notify the other party immediately of any lawsuits, claims, or demands for which the party seeking indemnification is responsible and will give that other party the opportunity to arrange and direct the defense of the case and provide all necessary information and assistance for such defense. This provision will survive termination of this Agreement.

8.2 Contractor agrees to indemnify and hold harmless Agency, its officers, directors, agents and employees from causes of action, claims, demands, losses, or costs to the extent caused by the negligent or otherwise wrongful acts or omissions of Contractor related to the delivery of the evidence-based programs offered by Contractor. Nothing in this Agreement shall be construed to waive any immunities or limitations to which Contractor is entitled under Minn. Stat. Chapter 466 or otherwise.

9. Confidentiality

Contract Number:

Innovations for Aging, LLC | 1265 Grey Fox Road, Suite 2 | Arden Hills, MN 55112 | www.yourjuniper.org

Page | 6

- 9.1 Subject to applicable law, including the Minnesota Government Data Practices Act, as a result of this Agreement, the parties may have access to or become acquainted with confidential information relating to each other's business operations. Both parties, on their own behalf and on behalf of their employees, acknowledge the importance to the other party of maintaining the confidentiality of such information and agree never to use or disclose such information except as necessary to carry out their obligations under this Agreement.
- 9.2 Confidential information shall not include: (a) information generally known to the public; (b) information which becomes known to the public through no action of either Agency or Contractor; (c) information for which the disclosure has been consented to by each of the parties; or (d) government data classified as public data pursuant to applicable law, including the Minnesota Government Data Practices Act.
- 9.3 After acceptance of this Agreement, and from time to time thereafter, one Party may disclose ("Disclosing Party") to the other undersigned Party ("Receiving Party") confidential and/or proprietary information (hereafter "Confidential Information"), including but not limited to: discussion of marketing strategies; pricing and other details of program proposals or contracts with purchasers of evidence-based programs; details of the value propositions for health plans, employer groups and other potential purchases; confidential information about business models; confidential information about MIS systems; Health Plan fee structures; and any other information classified as confidential or proprietary.
- 9.4 Subject to applicable law, including the Minnesota Government Data Practices Act, Contractor and Agency agree that without the written permission of the other Party no use of the Confidential Information supplied under this Agreement will be made for any purpose, and without limiting the generality of the foregoing, that it:
- 9.4.1 Will treat the Confidential Information as proprietary and confidential to the Disclosing Party and shall protect the Confidential Information as any reasonable prudent businessperson would protect its own confidential information or of like character;
 - 9.4.2 Will not divulge, in whole or in part, the Confidential Information to any third-party without the prior written consent of the Disclosing Party;
 - 9.4.3 Will make no commercial or industrial use, in whole or in part, of any of the Confidential Information without the prior written consent of the Disclosing Party; and

Contract Number:

9.4.4 Will limit disclosure of the Confidential Information within the undersigned's company or organization to those persons having a need to know the Confidential Information to accomplish the purpose of this Agreement.

9.5 Subject to applicable law, including the Minnesota Government Data Practices Act, confidential Information supplied by the Disclosing Party shall not be reproduced in any form except as required to accomplish the purpose of this Agreement. Upon request by the disclosing party, the receiving party shall destroy or return the Confidential Information to the producing party.

9.6 All Confidential Information, unless otherwise specified in writing, shall remain the property of the Disclosing Party, and shall be returned (together with any reproductions and summaries made by the undersigned) to the Disclosing Party upon completion of the purpose of this Agreement or upon the request of the Disclosing Party at any time.

9.7 Neither the execution of this Agreement nor the disclosure of Confidential Information constitutes a license under the Confidential Information, or any intellectual property now or hereafter obtained.

9.8 Any dispute about this Agreement shall be governed by Minnesota law and venued exclusively in the state courts located in Winona County, Minnesota.

9.9 The provisions of this section shall survive the termination of this Agreement for a period of one year.

10. Termination

10.1 The agreement may be cancelled by either party at any time, with or without cause, upon thirty (30) days written notice to the other party.

10.2 If a class is cancelled, no payment will be made to the Contractor.

10.3 Agency may terminate this Agreement for cause: (i) upon ten (10) days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if Contractor becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

11. Ownership of Ideas

11.1 All copyrights, trademarks, patents, and other Agency proprietary rights in the work shall be owned exclusively by Agency.

11.2 For purposes of this section, "work" includes creative writings, research data and reports, writings, sound recordings, pictorial reproductions, drawings, film and video recordings, and other graphical representations, software, source

Contract Number:

Innovations for Aging, LLC | 1265 Grey Fox Road, Suite 2 | Arden Hills, MN 55112 | www.yourjuniper.org

Page | 8

code, business methods, inventions, improvements, and discoveries, and works of any similar nature created or produced by Agency (whether or not eligible for copyright, trademark, patent or other proprietary rights).

12. Advertising and Public Relations

Neither party shall otherwise use the name of the other party in any promotional or advertising materials unless review and approval of the intended material is first obtained from the party whose name is to be used.

13. No Inducement

It is not the purpose of this Agreement or the intent of the parties to induce, encourage, or otherwise arrange for referrals.

14. Entire Agreement

This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether written or oral. This Agreement supersedes any prior written or oral agreement between the parties.

15. Severability

If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed and enforced as so limited.

16. Waiver of Contractual Right

The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's rights to subsequently enforce and compel strict compliance with every provision of this Agreement.

17. Amendment

This Agreement may be modified or amended if the amendment is made in writing and is signed by both parties.

18. Assignment

18.1 Neither party may: assign its rights; delegate its responsibilities, or subcontract under this agreement without written consent of the other party.

18.2 Agency shall only make payments to Contractor, and not the subcontractor.

Contract Number:

Innovations for Aging, LLC | 1265 Grey Fox Road, Suite 2 | Arden Hills, MN 55112 | www.yourjuniper.org

Page | 9

19. Applicable Law

- 19.1 This Agreement will be governed by laws of the state of Minnesota and any dispute about this Agreement shall be governed by Minnesota law and venued exclusively in the state or federal courts located in Winona, Minnesota. Agency shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Agreement or to the facilities, programs and staff for which Agency is responsible.
- 19.2 Data Practices. The Parties acknowledge that this Agreement is subject to the requirements of Minnesota's Government Data Practices Act (Act), Minnesota Statutes, Section 13.01 et seq. Agency agrees to abide by the applicable provisions of the Act, HIPAA requirements and all other applicable state or federal rules, regulations or orders pertaining to privacy or confidentiality and shall indemnify and hold harmless Contractor from any and all claims or causes of action, including reasonable attorney's fees, for violations of the same caused by Agency in performing its obligations under this Agreement. Agency understands that all of the data created, collected, received, stored, used, maintained or disseminated by Agency in performing those functions that the Contractor would perform is subject to the requirements of the Act, and Agency must comply with those requirements as if it were a government entity. This does not create a duty on the part of Agency to provide the public with access to public data if the public data is available from the Contractor, except as required by the terms of this Agreement.
- 19.3 Patented Devices, Materials and Processes. If this Agreement requires, or Agency desires, the use of any design, device, material or process covered by letters, patent or copyright, trademark or trade name, Agency shall provide for such use by suitable legal agreement with the patentee or owner. If no such agreement is made, Agency shall indemnify and hold harmless Contractor from any and all claims for infringement by reason of the use of any such patented designed, device, material or process, or any trademark or trade name or copyright in connection with the services agreed to be performed under the Agreement, and shall indemnify and defend Contractor for any costs, liability, expenses and attorney's fees that result from any such infringement.

20. Binding Effect

This Agreement shall be binding upon and inure to the benefit of Agency and its successors, and Contractor and its successors.

Contract Number:

Innovations for Aging, LLC | 1265 Grey Fox Road, Suite 2 | Arden Hills, MN 55112 | www.yourjuniper.org

Page | 10

21. Notice

Any notice required will be in writing and be delivered or sent to this address:

If to the Contractor:	Scott Sherman	Monica Hennessy Mohan
	Mayor	City Clerk
	Attn: Friendship Center	Attn: Friendship Center
	City of Winona Minnesota	City of Winona Minnesota
	251 Main Street	251 Main Street
	Winona, MN 55987	Winona, MN 55987

If to the Agency:	Mark Cullen
	Vice President of Strategy and Operations
	Innovations for Aging
	1265 Grey Fox Road, Suite 2
	Arden Hills, MN 55112

Contract Number:

Innovations for Aging, LLC | 1265 Grey Fox Road, Suite 2 | Arden Hills, MN 55112 | www.yourjuniper.org

The undersigned agree to the terms of this agreement.

Innovations for Aging, LLC

City of Winona Minnesota

Signature

Mark Cullen

Print Name

Vice President

Title

Date

Signature

Print Name

Title

Date

City of Winona Minnesota

Signature

Print Name

Title

Date

Contract Number:

Innovations for Aging, LLC | 1265 Grey Fox Road, Suite 2 | Arden Hills, MN 55112 | www.yourjuniper.org



Program Descriptions

FALLS PREVENTION

A Matter of Balance

A Matter of Balance emphasizes practical strategies to reduce fear of falling and increase activity levels. Participants learn to view falls and fear of falling as controllable, set realistic goals to increase activity, change their environment to reduce fall risk factors, and exercise to increase strength and balance. Learn more at <http://www.mainehealth.org/mob>.

Stepping On

Stepping On offers people a way of reducing falls and at the same time increasing self confidence in situations where they are at risk of falling. It covers a range of issues, including falls and risk, strength and balance exercises, home hazards, safe footwear, vision and falls, safety in public places, community mobility, coping after a fall, and how to initiate a medication review. Learn more at <http://www.steppingon.com/>.

All Falls Prevention classes can be offered in-person only.

LIVING WELL

Aging Mastery Program

This program is a series of classes designed to help adults age 50 and older to set goals, engage in beneficial daily practices, and seek peer support to make meaningful changes in their lives that cultivate health and longevity. Learn more at <https://www.ncoa.org/healthy-aging/aging-mastery-program/>

Living well with Chronic Conditions and Tomando Control de su Salud (Spanish version)

This program is designed to help participants deal with chronic conditions. Topics include: techniques to deal with frustration, fatigue, pain and isolation, appropriate exercise for maintaining and improving strength, flexibility, and endurance, appropriate use of medications, communicating effectively with family, friends, and health professionals, nutrition, and how to evaluate new treatments. Learn more at <https://www.selfmanagementresource.com/>

Social Connect

Social Connect is a facilitated, small group gathering that you join by video conferencing or phone. Participants do gentle movement, learn about ways to reduce stress and feel their best, and connect with peers. It meets for 45 minutes, twice a week for three weeks. The class combines gentle movement, relaxation techniques, and group interaction. Learn more at <https://resources.yourjuniper.org/online-class-social-connect/>

CHRONIC DISEASE MANAGEMENT

Arthritis Foundation Exercise Program (AFEP)

AFEP is a community-based recreational exercise program developed by the Arthritis Foundation. Trained AFEP instructors cover a variety of range-of-motion and endurance-building activities, relaxation techniques, and health education topics. The program's demonstrated benefits include improved functional ability, decreased depression, and increased confidence. Classes typically meet two or three times per week for an hour. To find out about availability in your area, locate your state arthritis program. Learn more at <http://www.cdc.gov/arthritis/partners/funded-states.htm>

Living well with Diabetes and Programa de Manejo Personal de la Diabetes (Spanish Version)

This program is designed for people with type 2 diabetes and how to live well. Topics include: techniques to deal with the symptoms of diabetes, fatigue, pain, hyper/hypoglycemia, stress, depression, anger, fear and frustration; appropriate exercise for maintaining and improving strength and endurance; healthy eating, appropriate use of medication; and working with health care providers. Learn more at <https://www.selfmanagementresource.com/>

Diabetes Prevention Program (DPP)

Diabetes Prevention Program is a collaborative, community-based, lifestyle change program designed for people with pre-diabetes. The topics include tips on eating healthier, reducing stress, and getting more physical activity to become a healthier you. Learn more at <https://www.cdc.gov/diabetes/prevention/index.html>

Living Well with Chronic Pain

Living Well with Chronic Pain is designed for people who have a diagnosis of chronic pain and ideas for how to deal with their symptoms. Topics include: techniques to deal with frustration, fatigue, isolation, and poor sleep, appropriate exercise for maintaining and improving strength, appropriate use of medications, communicating effectively with family, friends, and health professionals, nutrition, pacing activity and rest, and how to evaluate new treatments. Learn more at <https://www.selfmanagementresource.com/>

ATTACHMENT A

All Living Well classes may be held via HIPAA secure telephonic platform. Program materials will be mailed to the participants.

GETTING FIT

Stay Active and Independent for Life (SAIL)

SAIL is a strength, balance and fitness program for adults. This class is designed to reduce the risk of falling by teaching participants how to perform exercises that improve strength, balance and fitness. Learn more at <http://1.usa.gov/1FOILLJ>.

Tai Ji Quan: Moving for Better Balance

This program aims to help older adults improve their balance and reduce the likelihood of falling. Participants learn balance skills, good body alignment, and coordinated Tai Ji movements. Learn more at <http://tjqmbb.org/>.

Walk with Ease

Walk with Ease is a program that is proven to reduce the pain of arthritis and improve overall health. This six-week program teaches participants how to safely make physical activity a part of their everyday lives. Included is a guidebook and a walking schedule to get participants safely moving toward better health. <https://www.cdc.gov/arthritis/interventions/programs/wwe-individual.htm>

Additional evidence-based health promotion program course offerings may be added as mutually agreed upon by Agency and Contractor.

All Living Well classes may be held via HIPAA secure telephonic platform. Program materials will be mailed to the participants.

Contract Number:

Innovations for Aging, LLC | 1265 Grey Fox Road, Suite 2 | Arden Hills, MN 55112 | www.yourjuniper.org

Page | 15

ATTACHMENT B

Class Completion Qualifications		
Program	Number to qualify as a completer	Total number of sessions
A Matter of Balance	5	8
Stay Active and Independent for Life (SAIL)	16	24
Stepping On	5	7
Tai Ji Quan: Moving for Better Balance	16	24
Living Well with Chronic Conditions (English and Spanish)	4	6
Arthritis Foundation Exercise Program	11	16
Living Well with Chronic Pain	4	6
Living Well with Diabetes (English and Spanish)	4	6
Diabetes Prevention Program	11	16
Aging Mastery Program	7	10
Walk With Ease	12	18
Social Connect	4	6
Other evidence-based course offerings	TBD	TBD

Contract Number:

Innovations for Aging, LLC | 1265 Grey Fox Road, Suite 2 | Arden Hills, MN 55112 | www.yourjuniper.org

ATTACHMENT C

Fee Schedule		
Program	Description of Payment Amount	Payment Distribution
Aging Mastery Program	<p>Upon fulfillment of the activities, deliverables, and other requirements of this Agreement, Agency will pay Contractor:</p> <ol style="list-style-type: none">Forty dollars (\$40) for each participant who registers and attends at least one session and an additional sixty dollars (\$60) for that participant if he/she completes the class. Completion is defined as attending seven (7) out of ten (10) sessions;Upon fulfillment of the activities, deliverables, and other requirements of this Agreement, Agency will pay Contractor \$125 for each participant whose participation is covered by BlueCross and BlueShield of Minnesota's Minnesota Senior Health Options (MSHO) health plan benefit, and who completes the class series according to evidence-based program fidelity as prescribed.	<p>Agency will pay Contractor up to a maximum of forty-five (45) completers (funding based on non MSHO amount) that finish a class before December 31, 2021.</p>

Contract Number:

Innovations for Aging, LLC | 1265 Grey Fox Road, Suite 2 | Arden Hills, MN 55112 | www.yourjuniper.org

<p>A Matter of Balance</p> <p>Stay Active and Independent for Life (SAIL)</p> <p>SteppingOn</p> <p>Tai Ji Quan: Moving for Better Balance</p> <p>Living Well with Chronic Conditions (English and Spanish)</p> <p>Arthritis Foundation Exercise Program</p> <p>Living Well with Chronic Pain</p> <p>Living Well with Diabetes (English and Spanish)</p> <p>Diabetes Prevention Program</p> <p>Walk With Ease</p> <p>Social Connect</p>	<p>Upon fulfillment of the activities, deliverables, and other requirements of this Agreement, Agency will pay Contractor:</p> <ol style="list-style-type: none"> 1. One-hundred and ten dollars (\$110) for each participant whose participation is not covered by BlueCross and BlueShield of Minnesota's Minnesota Senior Health Options (MSHO) health plan benefit, and who completes the class series according to evidence-based program fidelity as prescribed; or 2. Upon fulfillment of the activities, deliverables, and other requirements of this Agreement, Agency will pay Contractor \$125 for each participant whose participation is covered by BlueCross and BlueShield of Minnesota's Minnesota Senior Health Options (MSHO) health plan benefit, and who completes the class series according to evidence-based program fidelity as prescribed. 	<p>Agency will pay Contractor up to a maximum of fifty (50) completers, (funding based on non MSHO amount), that finish a class before December 31, 2021.</p>
Other evidence-based course offerings	TBD	TBD

Contract Number:

Innovations for Aging, LLC | 1265 Grey Fox Road, Suite 2 | Arden Hills, MN 55112 | www.yourjuniper.org

ATTACHMENT D

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("BAA") is by and between City of Winona, Minnesota, a municipal corporation under the laws of the State of Minnesota, 207 Lafayette Street, Winona MN 55987 ("City"), by and through the City of Winona Friendship Center facility located at 251 Main Street, Winona, MN 55987 ("Business Associate Subcontractor") and Innovations for Aging, LLC ("IFA") with Business Associate Subcontractor and IFA, collectively, the "Parties," in order to comply with the Health Insurance Portability and Accountability Act of 1996 and its related regulations ("HIPAA"), as modified by the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"). IFA is a Business Associate for certain Minnesota Health Plan products offered by Minnesota Health Plans ("Covered Entity"), and IFA subcontracts some of its performance obligations with such Health Plans on to Business Associate Subcontractor. IFA and Business Associate Subcontractor have entered into a Services Agreement ("Underlying Agreement") a portion of which relates to such subcontracted obligations. This BAA applies to the following services that Business Associate Subcontractor will perform for or on behalf of Covered Entity, and only to the extent that IFA is acting as a Business Associate to a Health Plan (collectively deemed the "Underlying Services"): collection and transfer of PHI (as defined below) regarding the Health Plan members participating in Juniper program classes pursuant to the terms and conditions of the Underlying Agreement.

I. Definitions

- a. Catch-all definition: Except as modified by this BAA, each capitalized term in this BAA has the meaning of that term as set forth in 45 C.F.R. Parts 160, 162 and 164.
- b. Specific definitions:
 - a. HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
 - b. Electronic Protected Health Information or "EPHI". Electronic Protected Health Information or EPHI shall have the same meaning as the term "electronic protected health information" in 45 C.F.R. § 160.103, limited to information that Business Associate Subcontractor creates, accesses, receives, maintains or transmits on behalf of IFA pursuant to the Underlying Agreements.
- c. Event. Event means any Use or Disclosure of PHI (defined below) not provided for within this BAA or otherwise not permitted under HIPAA or other applicable

Contract Number:

Innovations for Aging, LLC | 1265 Grey Fox Road, Suite 2 | Arden Hills, MN 55112 | www.yourjuniper.org

federal or state laws, including, without limitation, a Breach of Unsecured PHI or a Security Incident.

- a. Privacy Rule. Privacy Rule means the Standards for Privacy of Individually Identifiable Health Information, codified at 45 C.F.R. parts 160 and 164, Subparts A and E, as currently in effect.
- b. Protected Health Information or "PHI". Protected Health Information or PHI has the meaning set forth in 45 C.F.R. §160.103, but limited to information Used, Disclosed, received, created, maintained, or transmitted by Business Associate Subcontractor on behalf of IFA pursuant to the Underlying Services. PHI Includes EPHI. For avoidance of doubt, the obligations under this BAA apply only to the PHI of Covered Entity members participating in Juniper classes offered by Business Associate Subcontractor pursuant to the terms and conditions of the Underlying Agreement.
- c. Security Rule. Security Rule means the Standards for Security for the Protection of Electronic Protected Health Information, codified at 45 C.F.R. parts 160 and 164, Subpart C, as currently in effect.

II. Obligations and Activities of Business Associate Subcontractor

- a. Acknowledgement of HIPAA Obligations. Business Associate Subcontractor acknowledges and agrees that it (i) is a "Business Associate" as defined by HIPAA and, (ii) as a Business Associate, has direct obligations under HIPAA with respect to its Use and Disclosure of PHI, in addition to those contractual obligations set forth in this BAA.
- b. Use and Disclosure of PHI. Business Associate Subcontractor shall not use or disclose PHI other than: as permitted or required by this BAA; as required to perform the Underlying Services; or as Required by Law. Business Associate Subcontractor shall not use or disclose PHI in any fashion that would constitute a violation of HIPAA if IFA were to use or disclose the PHI in the same fashion. In using and disclosing PHI, Business Associate Subcontractor also shall comply with all federal and state laws that apply to the Use and Disclosure of PHI, including, without limitation, 42 CFR Part 2, governing confidentiality for people seeking treatment for substance abuse disorders from federally assisted programs and any applicable federal or state laws that are more restrictive than HIPAA.

Contract Number:

Innovations for Aging, LLC | 1265 Grey Fox Road, Suite 2 | Arden Hills, MN 55112 | www.yourjuniper.org

Page | 20

- c. Privacy Rule Safeguards. To develop, implement, maintain and use administrative, technical and physical safeguards that are appropriate and sufficient to prevent Use or Disclosure of PHI other than as permitted or required by this BAA.
- d. Security Rule Compliance. Business Associate Subcontractor represents and warrants that it is, and for purposes of this BAA, shall be at all times, fully compliant with all aspects of the Security Rule and has fully implemented Administrative Safeguards, Technical Safeguards and Physical Safeguards that reasonably and appropriately preserve the confidentiality, integrity and availability of EPHI, including, without limitation, maintaining documentation of a current and completed security risk assessment and written security policies and procedures. Business Associate Subcontractor also shall comply with any and all applicable state data security laws.
- e. Minimum Necessary. In requesting, using, and disclosing PHI to perform the Services or when doing so in accordance with the Privacy Rule for Business Associate Subcontractor 'sproper management and administration or to carry out its legal obligations, Business Associate Subcontractor shall comply with the minimum necessary requirements of the Privacy Rule.
- f. Sale of PHI. Business Associate Subcontractor shall not receive direct or indirect payment in exchange for any PHI.
- g. Marketing. Unless authorized by the Underlying Agreement in order to perform Services on behalf of IFA, Business Associate Subcontractor shall not use or disclose PHI for any marketing purpose.
- h. De-Identifying. Use and disclosure of de-identified health information is permitted, but only if (i) the precise use is disclosed to IFA and permitted by IFA in its sole discretion and (ii) the de-identification is in compliance with 45 CFR §164.502(d), and any such de-identified health information meets the standard and implementation specifications for de-identification under 45 CFR §164.514(a) and (b).
- i. Required Disclosures. If Business Associate Subcontractor is confronted with legal action to disclose any PHI, Business Associate Subcontractor shall promptly notify IFA and assist IFA, as reasonably requested, in obtaining a protective order or other similar order, and shall thereafter disclose only the minimum amount of

Contract Number:

PHI that is required to be disclosed to comply with the legal action, whether or not a protective order or other similar order has been obtained.

- j. Other Permitted Disclosures. Business Associate Subcontractor may use or disclose PHI for the proper management and administration of Business Associate Subcontractor or to carry out the legal responsibilities of the Business Associate Subcontractor, provided the disclosures are Required by Law, or Business Associate Subcontractor obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate Subcontractor of any instances of which it is aware in which the confidentiality of the information has been breached.
- k. Agents and Subcontractors. Business Associate Subcontractor shall ensure that any and all of its agents and Subcontractors to whom it provides PHI in connection with the Underlying Services, or that create, access, receive, maintain or transmit PHI on behalf of Business Associate Subcontractor, agree, in writing, prior to the receipt of PHI, to the same restrictions and conditions that apply to Business Associate Subcontractor under this BAA and any additional restrictions or conditions necessary to permit Business Associate Subcontractor to comply with its obligations under this BAA, including, without limitation, its Event reporting obligations set forth in section III. Business Associate Subcontractor also shall ensure that all of its agents and Subcontractors to whom it provides PHI in connection with the Services, or that create, access, receive, maintain or transmit PHI on behalf of Business Associate Subcontractor, agree to comply with the terms of the audit and record keeping provisions set forth in this BAA. Business Associate Subcontractor shall maintain, and provide to IFA upon request, a list of all agents or Subcontractors that access, create, receive, maintain or transmit PHI and a description of the PHI being accessed, created, received, maintained or transmitted by each such agent or Subcontractor.
- l. Audit. For purposes of determining Business Associate Subcontractor's, the Covered Entity's, or IFA's compliance with HIPAA, upon request of IFA or the Secretary of Health and Human Services, Business Associate Subcontractor shall:
 - (i) make its HIPAA policies and procedures, related documentation, records maintained in accordance with this BAA, and any other relevant internal practices, books and records relating to the Use and Disclosure of PHI, available

Contract Number:

Innovations for Aging, LLC | 1265 Grey Fox Road, Suite 2 | Arden Hills, MN 55112 | www.yourjuniper.org

Page | 22

to the Secretary of Health and Human Services, to IFA, or to Covered Entity and (ii) provide reasonable access to Business Associate Subcontractor's facilities, equipment, hardware and software used for the maintenance or processing of PHI.

- m. **Record Keeping.** Business Associate Subcontractor agrees to implement appropriate record keeping processes to enable it to comply, and to adequately evidence such compliance, with the requirements of this BAA, including, without limitation, the documentation required regarding agents and Subcontractors, documentation related to any Event, the written assurance of third parties with whom Business Associate Subcontractor discloses PHI for Business Associate Subcontractor's proper management and administration or as Required by Law.
- n. **Training.** Business Associate Subcontractor will ensure that members of Business Associate Subcontractor's workforce will complete all HIPAA and compliance training required by IFA.

III. Event Reporting

- a. **Unpermitted Use or Disclosure of PHI; Breach of Unsecured PHI.** Except as provided in section III(b) below, Business Associate Subcontractor agrees to notify IFA of any Event of which it has reasonable suspicion of, or discovers, including any Breach of Unsecured PHI as required by 45 C.F.R. § 164.410. Business Associate Subcontractor shall furnish initial written notice to IFA within two (2) business days from when the Business Associate Subcontractor has a reasonable suspicion of, or discovers, that an Event has occurred. This initial notice shall identify one contact person of Business Associate Subcontractor with whom IFA may correspond regarding the Event. Within five (5) business days from the date of the aforementioned initial notice, Business Associate Subcontractor shall provide IFA a written report containing a summary of the Event, which report shall include: a complete description of the Event, the date of the Event and the date of discovery; the names of the Individuals affected and any identifying account number, medical record number or date of birth; a description of the types of PHI involved in the Event; and a description of Business Associate Subcontractor's investigation and efforts to mitigate harm and protect against further Events.
- b. **Special Reporting Requirements for Security Incidents.** Business Associate Subcontractor agrees to provide notice to IFA in the manner and within the

Contract Number:

Innovations for Aging, LLC | 1265 Grey Fox Road, Suite 2 | Arden Hills, MN 55112 | www.yourjuniper.org

timeframes set forth in section III(a) above of all Security Incidents that: [a] result in unauthorized access, Use, Disclosure, modification or destruction of EPHI or interference with system operations; or [b] do not result in unauthorized access, Use, Disclosure, modification or destruction of EPHI or interference with system operations ("Unsuccessful Security Incidents") but which Business Associate Subcontractor reasonably determines are of a type or pattern that warrant further action.

- c. Event Mitigation. Business Associate Subcontractor shall mitigate promptly, to the extent practicable, any harmful effect that is known to Business Associate Subcontractor of an Event. Business Associate Subcontractor shall document all mitigation efforts undertaken pursuant to this section.

IV. Individual Rights

- a. Individual Right to Access. Within five (5) business days of receipt of IFA's notice to Business Associate Subcontractor of a request from an Individual to access his or her PHI, Business Associate Subcontractor shall make such PHI available directly to that Individual and provide to IFA a written report detailing its handling of such request. If Business Associate Subcontractor receives an access request from an Individual, Business Associate Subcontractor shall, within two (2) business days, notify IFA of the details of such request. Following receipt of such notice, IFA shall handle the request, unless Business Associate Subcontractor maintains a designated record set, in which case, at the option and request of IFA, Business Associate Subcontractor shall, within five (5) business days of IFA's request, make such PHI available directly to that Individual and provide to IFA a written report detailing its handling of such request.
- b. Individual Right to Amend. Within five (5) business days of receipt of IFA's notice to Business Associate Subcontractor of a request from an Individual to amend his or her PHI, Business Associate Subcontractor shall amend such PHI as directed by IFA and provide to IFA a written report detailing its handling of such request. If Business Associate Subcontractor receives an amendment request from an Individual, Business Associate Subcontractor shall, within two (2) business days, notify IFA of the details of such request. Following receipt of such notice, IFA shall handle such request, unless Business Associate Subcontractor maintains a designated record set, in which case, at the option and request of IFA, Business

Associate Subcontractor shall, within five (5) business days of IFA's request, amend such PHI as directed by IFA and provide to IFA a written report detailing its handling of such request.

- c. Individual Right to Request Accounting. Within five (5) business days of IFA's notice to Business Associate Subcontractor of a request from an Individual for an accounting of Disclosures of his or her PHI, Business Associate Subcontractor shall make available to IFA such information as is in Business Associate Subcontractor's possession and is required for IFA to make the accounting required by 45 C.F.R. § 164.528, which includes, at a minimum, the following information:
 - i. The date of the Disclosure;
 - ii. The name of the entity or person who received the PHI, and, if known, the address of such entity or person;
 - iii. A brief description of the PHI disclosed; and
 - iv. A brief statement of the purpose of such Disclosure that includes an explanation of the basis for such Disclosure.

If Business Associate Subcontractor receives a request for an accounting from an Individual, Business Associate Subcontractor shall, within two (2) business days, notify IFA the details of such request. Following receipt of such notice, IFA shall handle such request, except that, at the option and request of IFA, Business Associate Subcontractor shall, within five (5) business days of IFA's request, respond directly to the Individual for purposes of providing the accounting, as directed by IFA, and provide to IFA a written report of the details of its handling of such requests. To the extent that Business Associate Subcontractor maintains or operates an electronic health record system on behalf of IFA, Business Associate Subcontractor also shall maintain information for the preceding three (3) year period (but no earlier than the applicable Effective Date) sufficient to enable IFA to make an accounting of Disclosures for treatment, payment and health care operations.

V. IFA Obligations

- a. Requests. IFA Entity shall not request Business Associate Subcontractor to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if used or disclosed by IFA.

Contract Number:

Innovations for Aging, LLC | 1265 Grey Fox Road, Suite 2 | Arden Hills, MN 55112 | www.yourjuniper.org

Page | 25

- b. Restrictions. IFA shall notify Business Associate Subcontractor of any restriction in the Use or Disclosure of PHI to which IFA has agreed, to the extent such restriction affects Business Associate Subcontractor's permitted Uses or Disclosures.

VI. Term and Termination

- a. Term. The Term of this BAA shall be effective as of January 1, 2021, shall continue until the Underlying Services terminate unless this BAA is terminated earlier as provided below.
- b. Termination for Cause. Business Associate Subcontractor authorizes termination of THIS BAA IFA, if IFA determines Business Associate Subcontractor has violated a material term of this BAA and Business Associate Subcontractor has not cured the breach or ended the violation for a period of (10) days after notice reasonably specifying the nature of the breach.
- c. Immediate Termination. In the event Business Associate Subcontractor has breached a material term of this BAA and the Parties agree that cure is not possible, IFA may immediately terminate this BAA. IFA may report such violation to the Secretary.
- d. Obligations of Business Associate Subcontractor Upon Termination.
 - i. Upon termination of this Agreement BAA for any reason, Business Associate Subcontractor, with respect to PHI received from IFA, or created, maintained, or received by Business Associate Subcontractor on behalf of IFA, shall:
 - 1. Return or destroy all, PHI or de-identified PHI that the Business Associate Subcontractor still maintains in any form.
 - 2. If in the event the parties mutually determine that returning or destroying the PHI or de-identified PHI is infeasible, Business Associate Subcontractor shall retain such PHI or de-identified PHI and extend the protections of this BAA to such PHI or de-identified PHI until such time that Business Associate Subcontractor returns or destroys it.
- e. Continuing Privacy and Security Obligation. Business Associate Subcontractor's obligation to protect the privacy and safeguard the security of IFA's PHI as specified in this BAA will be continuous and survive termination or other conclusion of this BAA.

VII. Miscellaneous

Contract Number:

Innovations for Aging, LLC | 1265 Grey Fox Road, Suite 2 | Arden Hills, MN 55112 | www.yourjuniper.org

- a. Regulatory References. A reference in this BAA to a section in the Privacy Rule or Security Rule means the section as in effect or as amended.
- b. Amendment. This BAA may not be amended except by the mutual written agreement of the Parties. Notwithstanding the foregoing, the Parties agree to work together in good faith to take such action as is necessary to make technical amendments to this BAA from time to time if necessary for IFA and/or Business Associate Subcontractor to comply with the requirements of HIPAA, the Privacy Rule and the Security Rule, or any applicable provisions of any other federal or state law, as such laws or regulations may be amended from time to time. However, should any state or federal law or regulation now existing or enacted after the Effective Date of this BAA, including without limitation HIPAA, the Privacy Rule and the Security Rule, be amended or interpreted by judicial decision or a regulatory body in such a manner that either Party reasonably determines renders any provision of this BAA in violation of such law or regulation or adversely affects the Parties' abilities to perform their obligations under this BAA, the Parties agree to negotiate in good faith to amend this BAA so as to comply with such law or regulation and to preserve the viability of this BAA. If, after negotiating in good faith, the Parties are unable to reach agreement as to any necessary amendments, either Party may terminate this BAA without penalty.
- c. Survival. The respective rights and obligations of Business Associate Subcontractor under this Section shall survive the termination of this BAA..
- d. Interpretation. Any ambiguity in this BAA shall be resolved to permit IFA to comply with the Privacy Rule.
- e. Conflicts. In the event of any conflict between the terms and conditions of this BAA and the Underlying Agreement, the terms and conditions of this BAA will override and control.
- f. Third Party Beneficiaries. Business Associate Subcontractor and IFA agree that Individuals whose PHI is used or disclosed to Business Associates Subcontractor or its Subcontractors under this BAA are not third-party beneficiaries of this BAA or the Underlying Agreement.
- g. Correspondence. The Parties will send any reports or notices required under this BAA to the addresses set forth in the notice provision of the Underlying Agreement.
- h. Indemnity. Business Associate Subcontractor shall indemnify and hold harmless IFA and any affiliate, officer, trustee, director, employee or agent from and against any demand, claim, cause of action, liability, damage, fines, penalties,

Contract Number:

cost or expense, including attorneys' fees and court or proceeding costs, arising out of or in connection with (i) Business Associate Subcontractor's breach of this BAA, including, without limitation, the failure of Business Associate to fulfill any of its obligations with respect to PHI under section II or (ii) any Use or Disclosure of PHI by Business Associate Subcontractor, its employees, agents, Subcontractors or independent contractors that is not permitted under this BAA or that otherwise violates HIPAA. IFA shall indemnify and hold harmless Business Associate Subcontractor and any affiliate, officer, trustee, director, employee or agent from and against any demand, claim, cause of action, liability, damage, fines, penalties, cost or expense, including attorneys' fees and court or proceeding costs, arising out of or in connection with (i) IFA's breach of this BAA, including, without limitation, the failure of IFA to fulfill any of its obligations with respect to PHI or (ii) any Use or Disclosure of PHI by IFA, its employees, agents, Subcontractors or independent contractors that is not permitted under this BAA or that otherwise violates HIPAA.

REQUEST FOR COUNCIL ACTION

<i>Agenda Section:</i> New Business	<i>Originating Department:</i>	<i>Date</i>
<i>No:</i> 5	Planning	1/19/21
<i>Item:</i> Plat Review – Cedar Brook Final Plat		
<i>No.</i> 5. 2		

SUMMARY OF REQUESTED ACTION:

Staff requests Council review the final plat and development agreement for the Cedar Brook Subdivision. The final plat will facilitate development of a 28 unit age 62+ senior co-op at 22839 County Road 17. The development agreement contains provisions for the construction of public utilities and the public street in the subdivision (Cedar Brook Road) and stipulates applicable park dedication and sewer and water access fees per City Code.

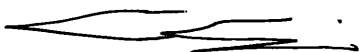
Council reviewed and unanimously approved the preliminary plat for this subdivision on December 7, 2020. Staff has reviewed the final plat and found it to be consistent with the preliminary plat and City Code. As such, staff would recommend approval.

Should Council concur with the final plat and agreement, a motion to approve the attached Final Plat Resolution and Development Agreement Resolution would be in order.

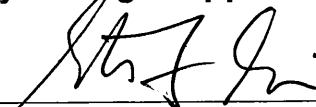
Attachments:

- i. Final Plat Resolution
- ii. Development Agreement Resolution and Development Agreement
- iii. Cedar Brook Subdivision Public Improvements

Department Approval:



City Manager Approval:



RESOLUTION

APPROVAL OF THE FINAL PLAT OF THE CEDAR BROOK SUBDIVISION

WHEREAS, Mitchell and Jan Bublitz (the "Property Owners"), and Bradford Development, LLC (the "Developer") (collectively the Property Owners and Developer are referred to herein as the "Petitioner" or "Applicant"), have jointly submitted an application for Final Plat approval of the proposed Cedar Brook Subdivision ("Final Plat" or "Plat"), legally described in Exhibit A and depicted in Exhibit B, which are attached hereto and incorporated herein by reference; and

WHEREAS, following its full review and consideration of all information, City staff has found that the Plat for the proposed Cedar Brook Subdivision is consistent and in compliance with the City of Winona ("City) Unified Development Code ("City Code"); and

WHEREAS, the City Council of the City of Winona may hear requests for Final Plat approval pursuant to City Code, Chapter 43, Sec. 43.06.33; and

WHEREAS, the Planning Commission in accordance with provisions of City Code, Section 43.06.32, considered the Applicant's request for a Preliminary Plat at a duly noticed Public Hearing, which took place on September 28, 2020, and recommended approval to the City Council with conditions; and

WHEREAS, the City Council of the City of Winona considered and approved the Preliminary Plat of the Cedar Brook Subdivision with conditions at its regular City Council meeting held on December 7, 2020, Resolution No. 2020-96, which resolution is incorporated herein by reference; and

WHEREAS, condition number 1 in the Resolution for Preliminary Plat approval required as follows:

1. The Applicant shall install an 8 foot wide paved shoulder demarcated by a 1 foot wide fog line along Cedar Brook Road and into the proposed development on Lot 1, Block 1 as shown in Exhibit C, which is attached hereto and incorporated herein by reference. Within the Development Property on Lot 1, Block 1, a sidewalk shall connect to the shoulder as shown in Exhibit C.

WHEREAS, condition number 3 of the Resolution for Preliminary Plat approval required as follows:

3. Prior to the City's execution of a Final Plat for any phase of the approved Preliminary Plat, the Applicant must enter into an agreement with the City for the installation of all required improvements, which shall be referred to as the

"Development Agreement," as well as a Declaration of Covenants and Agreement for Maintenance of Stormwater Facilities on forms required by the City, unless the same is/are not otherwise required as a condition in the City Council resolution approving a respective final plat; and

WHEREAS, City staff have determined that an Agreement for Maintenance of Stormwater Facilities is not necessary for this proposed development and therefore is not included as a condition of Final Plat approval; and

WHEREAS, a Development Agreement has been prepared between the City of Winona and the Applicant, which outlines the responsibilities of the Applicant to install the required street and infrastructure improvements necessary to support development of the Plat; and

WHEREAS, the City Council has reviewed the Final Plat for compliance with the City Code and applicable State statutes.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL THAT; the City Council hereby approves the Final Plat for the Cedar Brook Subdivision subject to the following conditions:

1. The Final Plat shall comply with the provisions of all applicable State statutes and standard procedures for platting in Winona County.
2. The Applicant shall install an 8 foot wide paved shoulder demarcated by a 1 foot wide fog line along Cedar Brook Road and into the proposed development on Lot 1, Block 1 as shown in Exhibit C, which is attached hereto and incorporated herein by reference. Within the Development Property on Lot 1, Block 1, a sidewalk shall connect to the shoulder as shown in Exhibit C.
3. Prior to the City's execution of the Final Plat, the Applicant must enter into an agreement with the City for the installation of all required improvements, which shall be referred to as the "Development Agreement" and the Applicant shall provide the required security.
4. The requirements and conditions of the Development Agreement shall be incorporated as conditions of the City's execution of the Final Plat.
5. The fully executed Development Agreement shall be filed with the City Clerk and recorded with the Winona County Recorder's Office.
6. The Final Plat shall be recorded within 180 days of City Council approval or the City's approval shall be deemed null and void.
7. The Applicant shall be responsible for and pay all fees, including recording fees.

Passed by the City Council of the City of Winona on this 19th day of January, 2021.

Scott D. Sherman
Mayor

Attest:

Monica Hennessy Mohan
City Clerk

EXHIBIT A

Legal Description of Development Property Being Final Platted as Cedar Brook Subdivision

That part of the Southwest Quarter of the Southeast Quarter and that part of the Southeast Quarter of the Southwest Quarter of Section 1; also that part of the Northwest Quarter of the Northeast Quarter and that part of the Northeast Quarter of the Northwest Quarter of Section 12; all in Township 106, Range 7, Winona County, Minnesota, and all described as follows:

Commencing at the southeast corner of said Section 1; thence South 89 degrees 10 minutes 09 seconds West, oriented with the Winona County Coordinate System, NAD 1983 (1996 adjustment), along the south line of the Southeast Quarter of said Section 1, a distance of 2515.00 feet; thence South 26 degrees 24 minutes 51 seconds East, 55.50 feet to the point of beginning of the land to be described; thence North 73 degrees 35 minutes 09 seconds East, 224.32 feet; thence North 20 degrees 12 minutes 51 seconds West, 197.28 feet; thence South 74 degrees 00 minutes 09 seconds West, 19.22 feet; thence North 19 degrees 59 minutes 51 seconds West, 250.00 feet; thence North 74 degrees 00 minutes 09 seconds East, 232.85 feet to the westerly line of Winona County Highway Right of Way Plat No. 1017, according to the recorded plat thereof, said Winona County; thence northerly along said westerly line, 290.14 feet along the arc of a non-tangential curve, concave easterly, having a radius of 17238.73 feet and a central angle of 00 degrees 57 minutes 52 seconds, the chord of said curve bears North 27 degrees 40 minutes 42 seconds West and measures 290.13 feet; thence South 62 degrees 38 minutes 58 seconds West, 36.73 feet; thence South 74 degrees 50 minutes 42 seconds West, 509.19 feet; thence South 15 degrees 09 minutes 18 seconds East, 66.00 feet; thence South 74 degrees 47 minutes 22 seconds West, 228.82 feet; thence South 15 degrees 09 minutes 01 seconds East, 305.02 feet; thence South 72 degrees 55 minutes 12 seconds East, 402.31 feet; thence South 19 degrees 10 minutes 00 seconds East, 145.60 feet; thence North 73 degrees 35 minutes 09 seconds East, 87.00 feet to the point of beginning.

EXHIBIT B

Final Plat of Cedar Brook Subdivision

CEDAR BROOK SUBDIVISION

KNOW ALL PERSONS BY THESE PRESENTS: Mitchell M. Bublitz, and Jan D. Bublitz, husband and wife, fee owners of the following described property located in the City of Winona, County of Winona, State of Minnesota, to wit:

That part of the Southwest Quarter of the Southeast Quarter and that part of the Southeast Quarter of the Southwest Quarter of Section 1; also that part of the Northwest Quarter of the Northeast Quarter and that part of the Northeast Quarter of the Northwest Quarter of Section 12; all in Township 106, Range 7, Winona County, Minnesota, and all described as follows:

Commencing at the southeast corner of said Section 1; thence South 89 degrees 10 minutes 09 seconds West, oriented with the Winona County Coordinate System, NAD 1983 (1996 adjustment), along the south line of the Southeast Quarter of said Section 1, a distance of 2515.00 feet; thence South 26 degrees 24 minutes 51 seconds East, 55.50 feet to the point of beginning of the land to be described; thence North 73 degrees 35 minutes 09 seconds East, 224.32 feet; thence North 20 degrees 12 minutes 51 seconds West, 197.28 feet; thence South 74 degrees 00 minutes 09 seconds West, 19.22 feet; thence North 19 degrees 59 minutes 51 seconds West, 250.00 feet; thence North 74 degrees 00 minutes 09 seconds East, 232.85 feet to the westerly line of Winona County Highway Right of Way Plat No. 1017, according to the recorded plat thereof, said Winona County; thence northerly along said westerly line, 290.14 feet along the arc of a non-tangential curve, concave easterly, having a radius of 17238.73 feet and a central angle of 00 degrees 57 minutes 52 seconds, the chord of said curve bears North 27 degrees 40 minutes 42 seconds West and measures 290.13 feet; thence South 62 degrees 38 minutes 58 seconds West, 36.73 feet; thence South 74 degrees 50 minutes 42 seconds West, 509.19 feet; thence South 15 degrees 09 minutes 01 seconds East, 305.02 feet; thence South 72 degrees 55 minutes 12 seconds East, 402.31 feet; thence South 19 degrees 10 minutes 00 seconds East, 145.60 feet; thence North 73 degrees 35 minutes 09 seconds East, 87.00 feet to the point of beginning.

Have caused the same to be surveyed and platted as CEDAR BROOK SUBDIVISION and do hereby dedicate to the public for public use the public way as created by this plat.

In witness whereof said Mitchell M. Bublitz & Jan D. Bublitz, have hereunto set their hand this _____ day of _____, 20____.

Mitchell M. Bublitz Jan D. Bublitz

STATE OF _____, COUNTY OF _____

This instrument was acknowledged before me on _____ by Mitchell M. Bublitz & Jan D. Bublitz.

Notary Public, _____ County, Minnesota

My Commission Expires _____

I, Brian Wodele, do hereby certify that this plat was prepared by me or under my direct supervision; that I am a duly Licensed Land Surveyor in the State of Minnesota; that this plat is a correct representation of the boundary survey; that all mathematical data and labels are correctly designated on this plat; that all monuments depicted on this plat have been correctly set; that all water boundaries and wet lands, as defined in Minnesota Statutes, Section 505.01, Subd. 3, as of the date of this certificate are shown and labeled on this plat; and all public ways are shown and labeled on this plat.

Dated this _____ day of _____, 20____.

Brian Wodele, Licensed Land Surveyor
Minnesota License Number 46559

STATE OF _____, COUNTY OF _____

This instrument was acknowledged before me on _____ by Brian Wodele, Licensed Land Surveyor, Minnesota License Number 46559.

Notary Public, _____ County, Minnesota

My Commission Expires: _____

CITY COUNCIL, CITY OF WINONA, MINNESOTA

This Plat of CEDAR BROOK SUBDIVISION was approved and accepted by the City Council of the City of Winona, Minnesota at a regular meeting thereof held this

_____ day of _____, 20____, and said plat is in compliance with the provisions of Minnesota Statutes, Section 505.03.

By: _____, City Clerk

COUNTY SURVEYOR

I hereby certify that in accordance with Minnesota Statutes, Section 505.021, Subd. 11, this plat has been reviewed and approved this _____ day of _____, 20____.

Brian Wodele, Winona County Surveyor
Minnesota License No. 46559

COUNTY AUDITOR/TREASURER, WINONA COUNTY, MINNESOTA

Pursuant to Minnesota Statutes, Section 505.021, Subd. 9, taxes payable in the year 20____ on the land hereinbefore described have been paid. Also, pursuant to Minnesota Statutes,

Section 272.12, there are no delinquent taxes and transfer entered this _____ day of _____, 20____.

Sandra J. Suchla, Winona County Auditor/Treasurer

COUNTY RECORDER, COUNTY OF WINONA, STATE OF MINNESOTA

I hereby certify that this plat of CEDAR BROOK SUBDIVISION was filed in the office of the County Recorder for public record on this _____ day of _____, 20____, at

____ o'clock ____ M. and was duly filed as Document No. _____.

Robert J. Bambenek, Winona County Recorder

By _____, Deputy

JOHNSON & SCOFIELD INC.
SURVEYING AND ENGINEERING
4240 West 5th Street, Winona, MN 55987
(507)454-4134, FAX(507)454-2544
brianw@jlsmail.com



The bearings and coordinates shown hereon are based on the Winona County Coordinate System, NAD83, 1996 adjustment (HARN).

0 60 120 180

1"=60'

Scale in Feet

- Denotes a placed 1" by 18" iron pipe having a plastic cap bearing land surveyor license no. 46559.
- Denotes a found 1/2" iron pipe, unless otherwise noted.
- Denotes a bearing and/or distance of record.

(N21°45'20"E 342.74)

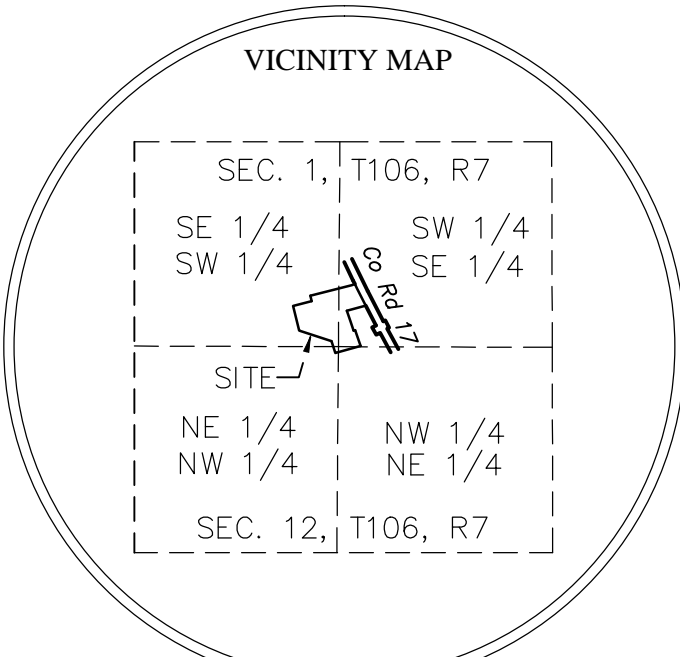
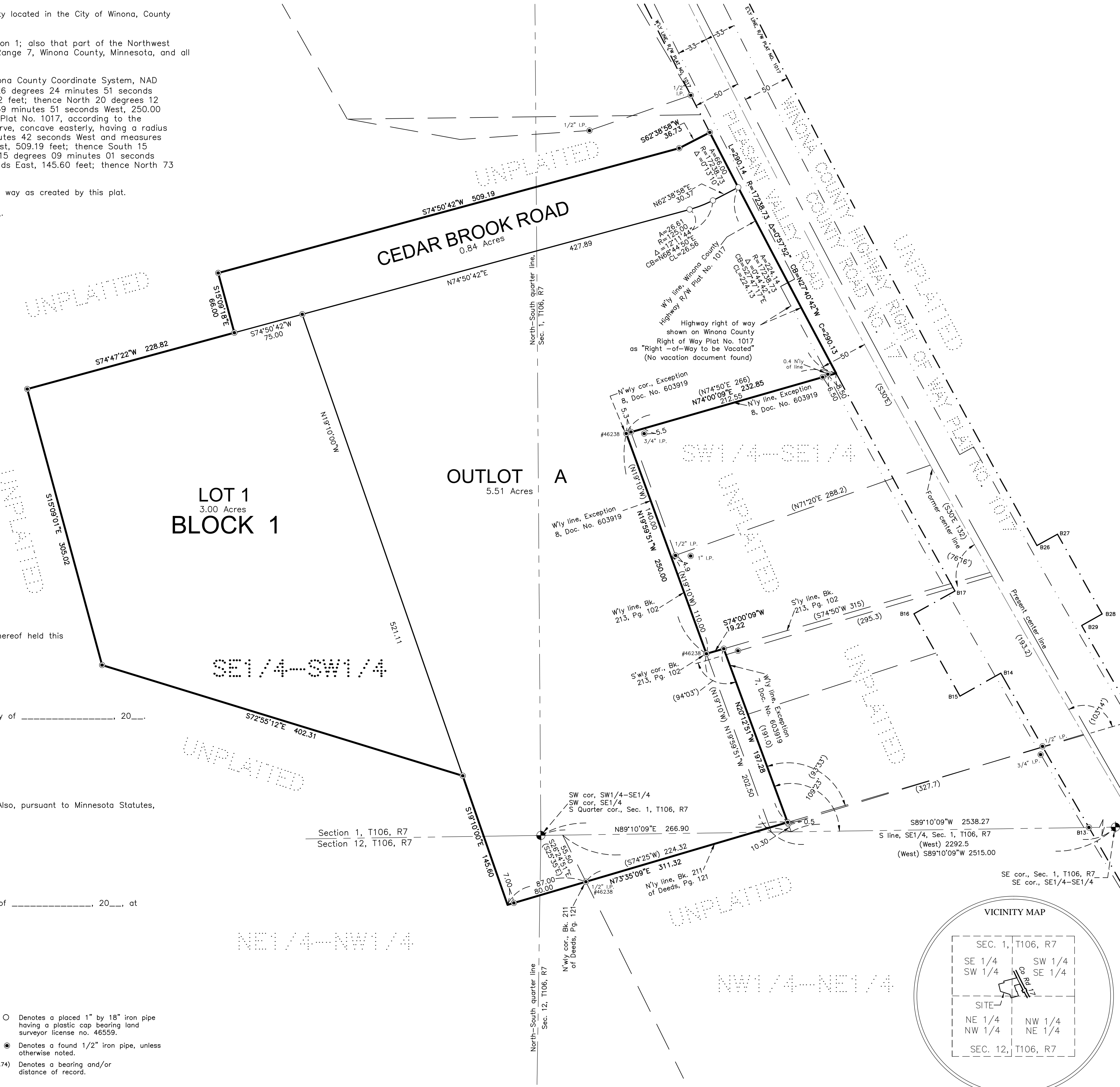


EXHIBIT C

Site Plan Showing Pedestrian Improvements



STRIPING SUMMARY
629 LF 4" SOLID LINE - WHITE EPOXY
(TYPICAL STALLS)
4 EA HANDICAP SYMBOL
4 EA HANDICAP STRIPING

STALL COUNT
38 STANDARD STALLS
4 ADA STALLS
42 TOTAL STALLS

BUILDING SIGN, SEE
ARCHITECTURAL PLAN

RETAINING WALL

CONSTRUCT ADA COMPLIANT RAMP
10 SF TRUNCATED DOMES

CONSTRUCT ADA COMPLIANT RAMP
8 SF TRUNCATED DOMES

CONSTRUCT ADA COMPLIANT RAMP
8 SF TRUNCATED DOMES

CONSTRUCT ADA COMPLIANT RAMP
12 SF TRUNCATED DOMES

PROPOSED BUILDING
FFE=760.7
GFE=751.0

HANDICAP STRIPING, TYP

NOTE:
CONSTRUCT 6" DEPTH CONCRETE
WALK FOR ADA RAMPS

HANDICAP SYMBOL, TYP

6' CONCRETE WALK

5' CONCRETE WALK

5' CONCRETE WALK

5' CONCRETE WALK

5' CONCRETE WALK

5' CONCRETE WALK

5' CONCRETE WALK

5' CONCRETE WALK

5' CONCRETE WALK

EP: 3+50.00

BP: 4+00.00

6" CLEANOUT STA 6+25

13' DRIVING LANE

12' DRIVING LANE

8' MULTI-USE PEDESTRIAN ACCESS

1' WIDE FOG LINE

185 LF 6" UNDERDRAIN

CONSTRUCT VALLEY GUTTER

PAVEMENT & CURB GRADES TO
BE DETERMINED IN THE FIELD

CONCRETE FLUME

COORDINATE WITH HOMEOWNER
TO REESTABLISH DRIVEWAY ACCESS

CROSSWALK STRIPING

5' WALK

5' CONCRETE WALK

5' CONCRETE WALK

5' CONCRETE WALK

5' CONCRETE WALK

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LEGEND

- PROPOSED B618 CURB & GUTTER
- BITUMINOUS PAVEMENT
- GRAVEL DRIVEWAY
- 4" CONCRETE WALK
- 6" CONCRETE DRIVEWAY

0 25 50
HORIZ. SCALE FEET

I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION, OR REPORT WAS PREPARED
BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED
PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.
90% DESIGN
JASON L. FEMRITE, P.E.
LIC. NO. 43869 DATE MM/DD/YYYY



1960 PREMIER DRIVE
MANKATO, MINNESOTA 56001
Phone: (507) 625-4171
Email: Mankato@bolton-menk.com
www.bolton-menk.com

DESIGNED	NO.	ISSUED FOR	DATE
AWP			
DRAWN	NO.	ISSUED FOR	DATE
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CHECKED	NO.	ISSUED FOR	DATE
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CLIENT PROJ. NO.	NO.	ISSUED FOR	DATE
M15.120598			

BRADFORD DEVELOPMENT GROUP, INC.
CEDAR BROOK HOMES
SITE PLAN

SHEET
C6.01

RESOLUTION

APPROVING THE DEVELOPMENT AGREEMENT FOR CEDAR BROOK SUBDIVISION

WHEREAS, Mitchell and Jan Bublitz (the "Property Owners"), and Bradford Development, LLC (the "Developer") (collectively the Property Owners and Developer are referred to herein as the "Petitioner" or "Applicant"), have received approval (City of Winona Resolution No. _____) of their joint application for Final Plat approval of the proposed Cedar Brook Subdivision ("Final Plat" or "Plat"); and

WHEREAS, the Applicant is now seeking approval of a Development Agreement (the "Development Agreement") related to and which was a condition of approval of the above-referenced Final Plat for the development of that certain property legally described therein and on Exhibit A attached hereto (the "Development Property"); and

WHEREAS, a Development Agreement has been prepared for the Cedar Brook Subdivision pursuant to Winona City Code, Section 43.06.32 B)6) and is attached hereto as Exhibit B; and

WHEREAS, the Developer, as a condition of Final Plat approval and as provided in the attached Development Agreement, will provide financial security in one of the forms, which are attached as part of the Development Agreement in Exhibit B, insuring the installation of the required public improvements, and the Developer will also to pay to the City the required fees and charges contained in the Development Agreement associated with the development of the Plat upon the Development Property; and

WHEREAS, the City Council reviewed the Development Agreement and the exhibits thereto at its meeting on January 19, 2021.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL THAT; the Development Agreement and the exhibits thereto between the City of Winona and Bradford Development LLC are hereby approved as to form, allowing for any minor or technical changes as necessary approved by the City Attorney and City Manager to complete the documents substantially in the form hereby approved.

BE IT FURTHER RESOLVED BY THE CITY COUNCIL THAT: the Mayor and City Clerk of the City of Winona, respectively, are authorized and directed to execute the Development Agreement and such other documents as are necessary to effectuate the required security, provided that Bradford Development LLC has first properly executed such Development Agreement, recorded the above-referenced Final Plat by no later than 180 days after City Council approval of the Final Plat, provided the required financing and security, and obtained all consents as applicable for execution of the Development Agreement from the property owners, mortgagees or otherwise, as

applicable. The Applicant shall be responsible for and pay all fees, including recording fees.

Passed by the City Council of the City of Winona this 19th day of January, 2021.

Scott D. Sherman
Mayor

Attest:

Monica Hennessy Mohan
City Clerk

EXHIBIT A

Legal Description of Property Being Final Platted as Cedar Brook Subdivision

That part of the Southwest Quarter of the Southeast Quarter and that part of the Southeast Quarter of the Southwest Quarter of Section 1; also that part of the Northwest Quarter of the Northeast Quarter and that part of the Northeast Quarter of the Northwest Quarter of Section 12; all in Township 106, Range 7, Winona County, Minnesota, and all described as follows:

Commencing at the southeast corner of said Section 1; thence South 89 degrees 10 minutes 09 seconds West, oriented with the Winona County Coordinate System, NAD 1983 (1996 adjustment), along the south line of the Southeast Quarter of said Section 1, a distance of 2515.00 feet; thence South 26 degrees 24 minutes 51 seconds East, 55.50 feet to the point of beginning of the land to be described; thence North 73 degrees 35 minutes 09 seconds East, 224.32 feet; thence North 20 degrees 12 minutes 51 seconds West, 197.28 feet; thence South 74 degrees 00 minutes 09 seconds West, 19.22 feet; thence North 19 degrees 59 minutes 51 seconds West, 250.00 feet; thence North 74 degrees 00 minutes 09 seconds East, 232.85 feet to the westerly line of Winona County Highway Right of Way Plat No. 1017, according to the recorded plat thereof, said Winona County; thence northerly along said westerly line, 290.14 feet along the arc of a non-tangential curve, concave easterly, having a radius of 17238.73 feet and a central angle of 00 degrees 57 minutes 52 seconds, the chord of said curve bears North 27 degrees 40 minutes 42 seconds West and measures 290.13 feet; thence South 62 degrees 38 minutes 58 seconds West, 36.73 feet; thence South 74 degrees 50 minutes 42 seconds West, 509.19 feet; thence South 15 degrees 09 minutes 18 seconds East, 66.00 feet; thence South 74 degrees 47 minutes 22 seconds West, 228.82 feet; thence South 15 degrees 09 minutes 01 seconds East, 305.02 feet; thence South 72 degrees 55 minutes 12 seconds East, 402.31 feet; thence South 19 degrees 10 minutes 00 seconds East, 145.60 feet; thence North 73 degrees 35 minutes 09 seconds East, 87.00 feet to the point of beginning.

EXHIBIT B

Development Agreement

(reserved for recording information)

DEVELOPMENT AGREEMENT

(Developer Installed Improvements)

CEDAR BROOK SUBDIVISION

AGREEMENT (the “Agreement”) dated _____, 2021, by and between the **CITY OF WINONA**, a municipal corporation under the laws of the State of Minnesota, with its principal office located at 207 Lafayette Street, Winona, MN 55987 (the “City”); and Bradford Development, LLC, a limited liability company under the laws of the State of Minnesota with its principal office located at 501 N. Riverfront Drive, Mankato, MN 56001 (the “Developer”); (collectively the “parties”).

RECITALS

WHEREAS, the Developer intends to develop a parcel of real property located in the City of Winona, Winona County, Minnesota, which is legally described in Exhibit A, which is attached hereto and incorporated herein by reference, (the “Development Property”); and

WHEREAS, the Developer has requested and received approval by the City of a Final Plat for Cedar Brook Subdivision (referred to herein as the “plat”); and

WHEREAS, the Developer proposes a project consisting of a senior CO-OP multi-family housing development (ages 62+) and associated public improvements on the Development Property, including but

not limited to street improvements, sanitary sewer, water main, stormwater management facilities, sidewalks, grading and erosion control facilities, and other improvements (the “Project”); and

WHEREAS, the Developer and the City, desire to enter into this Agreement in satisfaction of applicable City requirements and to set out the undertakings and obligations of each party from this point forward with respect to the Project and with respect to the City Approval Process, all as required by the City’s Code of Ordinances (the “Code”).

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

1. **REQUEST FOR PLAT APPROVAL.** The Developer has sought and received Final Plat approval for the Cedar Brook Subdivision (referred to in this Agreement as the “plat”). The platted land is situated in the County of Winona, State of Minnesota. The Developer is seeking to develop a portion of the plat, the Development Property, for the purpose stated above.
2. **CONDITIONS OF PLAT APPROVAL.** The City has approved the plat on the condition that the Developer enter into this Agreement, furnishes the security required by it, records the plat with the County Recorder or Registrar of Titles within 180 days after the City Council approves the Final Plat, and submits evidence of recording the plat to the City within 180 days after the date of recording.
3. **RIGHT TO PROCEED/CONDITIONS PRECEDENT.** Unless separate written approval has been given by the City, within the Development Property, the Developer may not grade or otherwise disturb the earth, remove trees, construct sewer lines, water lines, streets, utilities, public or private improvements, or any buildings within the Development Property until all of the following conditions have been satisfied:
 - a. This Agreement has been fully executed by both parties and filed with the City Clerk. This Agreement shall be recorded by the Developer within 180 days following execution hereof;
 - b. The necessary security has been received by the City;
 - c. The plat has been recorded with the County Recorder's Office;

- d. The site plan for the project on the Development Property and the plans and specifications for the Improvements related thereto have been approved and signed by the City Engineer with such conditions as required by the City Code;
- e. The construction plans and other such plans as required by the City have been approved and signed by the City Engineer;
- f. A certificate of public liability and property damage insurance as described in this Agreement has been filed with the City Clerk; and
- g. The City Engineer has issued a letter that all conditions have been satisfied and that the Developer may proceed.

4. **FURTHER SUBDIVISION.** The City may refuse to approve further subdivision within the plat if the Developer has breached this Agreement and the breach has not been remedied. If the plat is a phase of a multi-phased preliminary plat, the City may refuse to approve final plats of subsequent phases if the Developer has breached this Agreement and the breach has not been remedied. Development of subsequent phases may not proceed until Development Agreements for such phases are approved by the City and executed by the parties. Sanitary sewer and water area charges referred to in this Agreement are not being imposed on outlots in the plat that are designated in an approved preliminary plat for future subdivision into lots and blocks. Such charges will be calculated and imposed when the outlots are final platted into lots and blocks.
5. **CHANGES IN OFFICIAL CONTROLS.** For two (2) years from the date of this Agreement, no amendments to the City's Comprehensive Plan or official controls shall apply to or affect the use, development density, lot size, lot layout or dedications of the approved final plat unless required by state or federal law or agreed to in writing by the City and the Developer. Thereafter, notwithstanding anything in this Agreement to the contrary, to the full extent permitted by state law, the City may require that any future development of the Development Property comply with any amendments to the City's Comprehensive Plan, official controls, platting or dedication requirements enacted after the date of this Agreement.

6. **DEVELOPMENT PLANS.** The plat shall be developed in accordance with the following plans where applicable. The plans shall not be attached to this Agreement. If the plans vary from the written terms of this Agreement, the written terms shall control. The plans include:

- a. Plan A - Plat
- b. Plan B - Final Grading, Drainage and Erosion Control Plan
- c. Plan C - Final Construction Plans and Specifications for Public Improvements
- d. Plan D - Traffic Signing and Control Plan (for construction and final development)
- e. Plan E - Stormwater Pollution Prevention Plan
- f. Plan H - Utility Plan

The foregoing plans and specifications shall be prepared by a competent registered professional engineer engaged by the Developer and shall be subject to the City's review and approval. The required Improvements below shall be installed in accordance with the City approved plans for such improvements and the policies, rules, regulations, standards and ordinances of the City. No work shall commence on the Project or the required Improvements until the Developer obtains a building permit for the Project and the Improvements and pays all costs and fees required in connection with the procurement of the building permit.

7. **IMPROVEMENTS.**

- a. The Developer shall construct and install, at its sole cost and expense and subject to the terms and conditions contained herein, the following public or private improvements (the "public improvements" or "Improvements") in compliance with City approved plans and specifications prepared in accordance with all policies, rules, regulations, standards, specifications and ordinances of the City and as shown on the final construction plans and summarized below:

- i. Streets
- ii. Sanitary Sewer
- iii. Watermain

- iv. Surface Water Facilities (pipe, ponds, rain gardens, and similar improvements)
 - v. Grading, Drainage and Erosion Control
 - vi. Sidewalks/Trails
 - vii. Street Lighting
 - viii. Utilities (gas, electric, cable, telephone, etc.)
 - ix. Street Signs and Traffic Control Signs
 - x. Surveying and Monuments Required by Minnesota Statutes
 - xi. Miscellaneous Facilities or other elements defined by the guiding documents.
- b. The Improvements shall be constructed and installed in accordance with the latest versions in place at the time of this Agreement of the City Code, zoning ordinance and subdivision regulations, City standard specifications for utilities and street construction, and the City's engineering guidelines and standard detail plates, as applicable. The Developer shall submit plans and specifications that have been prepared by a competent registered professional engineer to the City for approval by the City Engineer. The City will be available for consultation to assure an acceptable level of quality control for the construction of all public improvements and certify that the construction work meets the City's requirements, specifications, standards and approved plans. In addition, the Developer's engineer will be required to certify that the construction work meets the approved City requirements, specifications, and standards as a condition of City acceptance and provide record drawings for all Improvements. The Developer, its contractors and subcontractors, shall follow all instructions received from the City's inspectors and City Engineer to the extent applicable to comply with the approved plans and specifications, or applicable City Code or statutes for which the City inspectors have jurisdiction. The Developer's engineer shall provide for on-site project management. The Developer's engineer is responsible for design changes and contract administration between the Developer and the Developer's contractor. As required by the City, the

Developer or its engineer shall schedule a pre-construction meeting at a mutually agreeable time at City Hall, or another location acceptable to the City, with all parties concerned, including the City staff, to review the program for the construction work.

- c. All labor and work shall be done and performed in the best and most workmanlike manner and in strict conformance with the approved plans and specifications. No deviations from the approved plans and specifications will be permitted unless approved in writing by the City Engineer, which approval shall not be unreasonably withheld. The Developer shall not do any work or furnish any materials not covered by the plans and specifications and special conditions of this Agreement, for which reimbursement is expected from the City, unless such work is first ordered in writing by the City Engineer as provided in the plans and specifications.
- d. The Developer shall replace or repair any damage or destruction to any property or improvements located on County or City land or in County or City streets, boulevards and rights-of-way, or adjacent private property not owned by Developer, caused by Developer, or its contractors and subcontractors, during the construction of the required Improvements and the Project. Any contaminated soils encountered during the construction of the Improvements and development on the Development Property shall be addressed as set forth in a Response Action Plan to be approved by the Minnesota Pollution Control Agency (MPCA) or other applicable agency having jurisdiction.
- e. The Developer shall be solely responsible for the costs of constructing the required Improvements. The costs of constructing the Improvements shall include the actual construction costs, the actual engineering, administration and any legal costs related thereto, and all other costs relating to the construction of the Improvements. The engineering, administration and legal costs shall include the actual outside construction engineering assistance costs and the legal costs.

f. If this Agreement is terminated for any reason the City shall have no obligation to construct the Project or Improvements.

8. **CONTRACTORS/SUBCONTRACTORS.** City Council members, City employees, and City Planning Commission members, and corporations, partnerships, and other entities in which such individuals have greater than a 25% ownership interest or in which they are an officer or director may not act as contractors or subcontractors for the public improvements identified in this Agreement.
9. **PERMITS.** The Developer shall obtain or require its contractors and subcontractors to obtain all necessary and required permits for the Project from the Minnesota Pollution Control Agency (MPCA), Minnesota Department of Health (MDOH), and all other agencies and governmental authorities with jurisdiction over the Project and the Improvements before proceeding with construction of the Project and the Improvements. Copies of these permits shall be provided to the City Engineer, and may include but are not limited to the following:
- Minnesota Department of Health for Watermains
 - County Road Access and Work in County Road Right-of-Way
 - NPDES Permit for Stormwater Management
 - MPCA for Sanitary Sewer Extensions/Connections and Hazardous Material Removal and Disposal
 - City of Winona for Building Permits

The Developer or its engineer shall schedule a pre-construction meeting for the required Improvements with all the parties concerned, including City staff, to review the program for the construction work.

10. **TIME OF PERFORMANCE.** Except as otherwise provided in this Agreement, the Developer shall install all required improvements and other work required by this Agreement by December 31, 2022, with the exception of the final wear course of asphalt on streets. The final wear course on streets shall be installed between May 15th and October 1st the first summer after the base layer of asphalt has been in place one freeze thaw cycle. Any deficiencies in the base, asphalt, curb or other improvements in the judgment of the City Engineer must be repaired by the Developer at its own

cost prior to final paving. The Developer may, however, request an extension of time from the City. If an extension is granted, it shall be conditioned upon updating the security posted by the Developer to reflect cost increases and the extended completion date. Final wear course placement outside of this time frame must have the written approval of the City Engineer.

11. **LICENSE.** The Developer hereby grants the City, its agents, employees, officers and contractors a license to enter the Property to perform all work and inspections deemed appropriate by the City in conjunction with this Agreement, the Project and Improvements and plat development, as applicable. The license shall expire upon the acceptance by the City of the Improvements. The City shall thereafter have the right to enter the Property to perform inspections as authorized by City Code.
12. **CONSTRUCTION ACCESS.** Construction traffic access and egress for grading, public utility construction, and street construction is restricted to access the subdivision via Cedar Brook Road. No construction traffic is permitted on the adjacent local streets other than identified herein.
13. **GRADING PLAN.** The Development Property shall be graded in accordance with the approved grading development and erosion control plan. The plan shall conform to City of Winona requirements and specifications, City Code and applicable law. Within thirty (30) days after completion of the grading, the Developer shall provide the City with a certificate of survey/"record" grading plan certified by a registered land surveyor or engineer that all ponds, swales, and ditches have been constructed on public easements or land owned by the City. The certificate of survey/"record" plan shall include field verified elevations of the following: a) cross sections of ponds; b) location and elevations along all swales, ditches, locations and dimensions of borrow areas/stockpiles; c) lot corner elevations and building pads, and d) top and bottom of retaining walls. The Developer shall furnish the City Engineer satisfactory proof of payment for the site grading work and shall submit a certificate of survey (as constructed survey) of the Development Property after site grading is complete. Final lot grades shall be shown on the as constructed survey. Final grading shall substantially comply with the approved grading plan.

14. EROSION AND SEDIMENT CONTROL. Prior to initiating site grading, the erosion and sediment control plan shall be implemented by the Developer and inspected and approved by the City Engineer. The Erosion Control Plan and Storm Water Pollution Prevention Plan (SWPPP) shall be implemented by the Developer and inspected and approved by the City Engineer. Erosion and sediment control practices must comply with the Minnesota Pollution Control Agency's (MPCA) Best Management Practices and applicable MPCA NPDES permit requirements for construction activities and the Developer's SWPPP. The City may impose additional erosion and sediment control requirements if they would be beneficial in the City's judgment. All areas disturbed by the excavation and backfilling operations shall be reseeded within 48 hours after the completion of the work or in an area that is inactive for more than fourteen (14) days unless authorized and approved by the City Engineer. Except as otherwise provided in the erosion and sediment control plan, seed shall be in accordance with the City's current seeding specifications, if any, which may include certified oat seed to provide a temporary ground cover as rapidly as possible. All seeded areas shall be fertilized, mulched, and disc anchored, and watered as necessary for seed retention. The parties recognize that time is of the essence in controlling erosion. If the Developer does not comply with the erosion control plan and schedule or supplementary instructions received from the City Engineer, the City may take such action as it deems appropriate to control erosion. The City will endeavor to notify the Developer in advance of any proposed action, but failure of the City to do so will not affect the Developer's and City's rights or obligations hereunder. If the Developer does not reimburse the City for any cost the City incurred for such work, the City may draw down the letter of credit or any other security required herein to pay any costs. No development, utility or street construction will be allowed and no building permits will be issued unless the plat and Project plans for the Development Property, as applicable, are in full compliance with the approved erosion control plan.

15. STREET MAINTENANCE DURING CONSTRUCTION AND SIDEWALKS. The Developer shall be responsible for all street maintenance until the street is accepted by the City.

Warning signs shall be placed when hazards develop in streets to prevent the public from traveling on same. If and when streets become impassable, such streets shall be barricaded and closed. In the event residences are occupied prior to completing streets, the Developer shall maintain a smooth surface and provide proper surface drainage. The Developer shall be responsible for keeping streets within and without the subdivision swept clean of dirt and debris that may spill or wash onto the street from Developer's operation. The Developer may request, in writing, that the City keep the streets open during the winter months by plowing snow from the streets prior to final acceptance of said streets. The City shall not be responsible for repairing the streets because of snow plowing operations. Providing snow plowing service does not constitute final acceptance of the streets by the City. The Developer shall contract for street cleaning as necessary to sweep within and immediately adjacent to the development. The streets shall include County Road 17. A copy of this contract shall be approved by the City before grading is started, and shall remain in full force and effect until all construction within the Project is completed. When directed to do so by the City, the Developer shall have all streets cleaned of accumulated debris, dirt, and mud. Concrete sidewalks shall be constructed at the end of Cedar Brook Road after the concrete curb and gutter and bituminous base course have been placed.

16. **OWNERSHIP OF IMPROVEMENTS.** Upon completion of the work and construction required by this Agreement and acceptance of Improvements by the City, the Improvements lying within public easements and public rights-of-way shall become City property without further notice or action upon completion and City acceptance thereof. Prior to acceptance of the Improvements by the City, the Developer must furnish the following affidavits:

- a. Contractor's Certificate;
- b. Engineer's Certificate;
- c. Land Surveyor's Certificate; and
- d. Developer's Certificate;

certifying that all construction has been completed in accordance with the terms of this Agreement. The requisite forms will be furnished by the City of Winona and are attached hereto as Exhibit B. Upon receipt of the required affidavits, the City Engineer will accept the completed public improvements. Within thirty (30) days after the completion of the Improvements, the Developer shall supply the City with a complete set of reproducible "record" plans, an electronic file of the "record" plans in a format acceptable to the City Engineer (e.g., AutoCAD format, DWG or a .DXF file), and two complete sets of hard copy "record" plans, all prepared in accordance with City standards. Upon receipt of these documents, and the warranty documents specified in this Agreement, the City Engineer will certify acceptance of the completed public improvements.

17. **PARK DEDICATION.** The Developer shall dedicate pay a cash contribution of \$17,500 in satisfaction of the City's park dedication requirements. The park dedication fee is calculated per City Code Chapter 51 and is \$625 x the number of dwelling units in the development (28).

18. **SANITARY SEWER AND WATER TRUNK UTILITYFEE.** The Developer is subject to sanitary sewer and water access fee for the Development Property. The sanitary sewer and water access fee is as follows:

- a. Sanitary Sewer and Water Access Fee: The developer shall pay a sanitary sewer and water access fee of \$65,280. The fee is based on the number of units in the final plat and is calculated as follows: 3.84 final plat developable acres x \$17,000 = \$65,280.

The Developer shall pay the above sanitary sewer and water access fee after approval, but prior to recording of final plat.

19. **SANITARY SEWER, STORM SEWER AND WATERMAIN.** The Developer shall install or contract for the installation of all public improvements in the Project related to sanitary sewer, storm sewer and watermains, as required by the City in accordance with those plans approved by the City Engineer.

20. TRAFFIC CONTROL AND STREET NAME SIGNS. Any street name signs, stop signs, or other directional and safety signs required by the City shall be purchased and installed by the Developer per City standards at the Developer's expense.

21. BUILDING PERMITS/CERTIFICATES OF OCCUPANCY.

- a. Grading, curb and gutter, sidewalk and one lift of asphalt shall be installed on all public and private streets and drives prior to issuance of any building permits, adjacent to these lots. No Certificate of Occupancy will be issued until the grading, curbing, sidewalk and one lift of asphalt is installed in accordance with approved plans on all public streets and private drives. In addition, no Certificates of Occupancy shall be issued for any buildings until the sewer and water has been installed and tested to the satisfaction of the City Engineer, which shall not constitute final acceptance of the sewer and water utilities.
 - i. In lieu of the foregoing provision, if the proposed public improvements are under construction but not yet completed and accepted by the City, the Developer shall provide a cross section depicting the entire right-of-way of Cedar Brook Road extending through the first floor elevation of the building for which a building permit is requested. This first floor elevation shall be considered official for building construction purposes. Any deviation from this elevation shall first be reviewed and approved by the Building Official and the City Engineer prior to commencing construction of applied building permit.
- b. Breach of the terms of this Agreement by the Developer, including nonpayment of billings from the City within 30 days of the date of an invoice from the City to the Developer, shall be grounds for denial of building permits or certificates of occupancy, including lots sold to third parties, and/or the halting of all work in the plat or on the Development Property or related to the Project.
- c. If building permits are issued prior to the acceptance of public improvements, the Developer assumes all liability and costs resulting in delays in completion of public

improvements and damage to public improvements caused by the City, Developer, their contractors, subcontractors, materialmen, employees, agents, or third parties. No certificates of occupancy and no sewer and water connection permits may be issued and no one may occupy a building for which a building permit is issued on either a temporary or permanent basis until the streets and sidewalks needed for access have been paved with a bituminous surface and the utilities are accepted by the City Engineer.

22. UNDERGROUND UTILITIES – PRIVATE. This section covers those smaller private utilities such as gas, electric, phone, cable, etc.

- a. The Developer is responsible for the cost of installing all private utilities of any nature or kind whatsoever.
- b. The Developer shall contact the utility companies to coordinate the installation of the utilities. Private utilities shall not be installed until the curb and gutter are completed and backfilled, as applicable. All utilities shall be installed underground or as otherwise approved in writing by the City Engineer.
- c. The City Engineer must approve of the final location for all private utilities. Joint trenching of the utilities is strongly encouraged. All utilities must be located in public rights-of-way or within drainage and utility easements.
- d. If any conditions set forth in this Agreement conflict with the City's utility franchise agreements, the franchise agreements shall in all cases prevail.

23. RESPONSIBILITY FOR COSTS.

- a. Except as otherwise specified herein, the Developer shall pay all costs incurred by it and the City in conjunction with this Agreement, the approval of the Plat, the grading and development of the Development Property and the construction of the Improvements required by this Agreement, including but not limited to, all costs of persons and entities doing work or furnishing skills, tools, machinery, equipment and materials; insurance premiums; legal, planning and engineering fees; the preparation and recording of this

Agreement and all easements and other documents relating to the Plat and the Development Property, as applicable; and the construction of the Improvements and the other work done and improvements constructed on the Development Property or otherwise related to the Project.

- b. The City shall not be obligated to pay Developer or any of its agents or contractors for any costs incurred in connection with the construction of the Improvements or the development of the Development Property. Developer agrees to defend, indemnify, and hold the City and its mayor, council members, employees, agents and contractors harmless from any and all claims of whatever kind or nature and for all costs, damages or expenses which the City may pay or incur in consequence of such claims, including reasonable attorneys' fees, which may arise as a result of Plat approval, the Project, this Agreement, the construction of the Improvements (except for the negligence or intentional misconduct of the City with respect to the construction of the Improvements), the development of the Development Property or the acts of Developer, and its employees, agents, contractors or subcontractors, in relationship thereto.
- c. The Developer hereby covenants and agrees that Developer will not permit or allow any mechanic's or materialman's liens to be placed on the City's interest in any property that is the subject of the Project or this Agreement during the term hereof. Notwithstanding the previous sentence, however, in the event any such lien shall be so placed on the City's interest, the Developer shall take all steps necessary to see that it is removed within thirty (30) business days of its being filed; provided, however, that the Developer may contest any such lien provided the Developer first posts a surety bond, in favor of and insuring the City, in an amount equal to 125% of the amount of any such lien.
- d. The Developer shall reimburse the City for reasonable costs incurred in the enforcement of this Agreement, including engineering and attorneys' fees.

- e. The Developer shall pay, or cause to be paid when due, and in any event before any penalty is attached, all special assessments referred to in this Agreement. This is a personal obligation of the Developer and shall continue in full force and effect even if the Developer sells one or more lots, the entire plat, or any part of it.
- f. The Developer shall pay in full all bills submitted to it by the City for obligations incurred under this Agreement within 30 days of the date of the City's invoice to Developer. If Developer fails to pay a required bill, then after providing the Developer with at least fifteen (15) days prior written notice, the City may draw on the Security or alternatively declare the same an event of default, and the City may thereafter assess and certify such unpaid charges to the County Auditor for collection in like manner with property taxes on the Development Property, or the City may take any other actions as may be available under this Agreement, at law, or in equity. Bills not paid within sixty (60) days shall accrue interest at the rate of eight percent (8%) per year.
- g. In addition to the charges and special assessments referred to herein, other charges and special assessments may be imposed such as but not limited to the sanitary sewer and water access fee, the park dedication fee, the site plan fee, and building permit fees, which shall be paid by Developer.

24. **SPECIAL PROVISIONS.** The following special provision shall apply:

- a. Implementation of any other recommendations listed by the City Council or City Engineer as follows:
 - i. The Developer shall have all required MPCA stormwater permits approved prior to beginning any installation of public improvements.
- b. The Developer shall place interior subdivision iron monuments at property corners. In addition, the certificate of survey must also include a certification that all irons for a specific lot have either been found or set prior to the issuance of a building permit for that lot.

- c. The Developer shall be responsible for the cost of street light installation consistent with a street lighting plan approved by the City Engineer. The estimated amount for this street light installation is \$5,000 and consists of a single street light at the intersection of Cedar Brook Road and County Road 17.
- d. The Developer must obtain a sign permit from the City Planner prior to installation of any subdivision identification signs.
- e. Utility hook-ups are subject to review and approval by the City Engineer.
- f. The Developer must obtain approval of a Site Plan as provided by current City Code and complete the required plan review and approval thereof, as applicable.

25. MISCELLANEOUS.

- a. The Developer may not assign this Agreement without the written permission of the City Council. The Developer's obligation hereunder shall continue in full force and effect even if the Developer sells one or more lots, the entire plat, or any part of the Development Property.
- b. As applicable, the Developer shall remove and properly dispose of any environmental contamination within the Development Property.
- c. Retaining walls that require a building permit shall be constructed in accordance with plans and specifications prepared by a structural or geotechnical engineer licensed by the State of Minnesota. Following construction, a certification signed by the design engineer shall be filed with the City Engineer evidencing that the retaining wall was constructed in accordance with the approved plans and specifications.
- d. Appropriate legal documents regarding Homeowner Association documents, covenants and restrictions, as applicable, shall be filed with the City Clerk with the Final Plat.
- e. Developer shall take out and maintain or cause to be taken out and maintained until six (6) months after the Project is completed and the City has accepted the public improvements, liability and property damage insurance covering bodily injury, including death, and claims

for property damage which may arise out of Developer's work or the work of its subcontractors or by one directly or indirectly employed by any of them. Limits for bodily injury and death shall be not less than \$500,000 for one person and \$1,500,000 for each occurrence; limits for property damage shall be not less than \$1,000,000 for each occurrence. The City shall be named as an additional insured on the policy, and the Developer shall file with the City a certificate evidencing coverage prior to the City authorizing the commencement of work on the public and private improvements specified in this Agreement. The certificate shall provide that the City must be given thirty (30) days advance written notice of the cancellation of the insurance.

- f. Third parties shall have no recourse against the City or Developer under this Agreement.
- g. If any portion, section, subsection, sentence, clause, paragraph, or phrase of this Agreement is for any reason held invalid, such decision shall not affect the validity of the remaining portion of this Agreement.
- h. The action or inaction of the City shall not constitute a waiver or amendment to the provisions of this Agreement. To be binding, amendments or waivers shall be in writing, signed by the parties and approved by written resolution of the City Council. The City's failure to promptly take legal action to enforce this Agreement shall not be a waiver or release.
- i. This Agreement shall run with the land and shall be binding upon Developer and its successors and assigns.
- j. This Agreement will be recorded against the title to the Development Property within 180 days following execution hereof.
- k. The Developer covenants with the City, its successors and assigns, that the Developer is well seized in fee title of the Development Property and/or has obtained consents to this Agreement, in the form attached hereto, from all parties who have an interest in the Development Property; that there are no unrecorded interests in the Development Property;

and that the Developer will indemnify and hold the City harmless for any breach of the foregoing covenants.

- l. Each right, power or remedy herein conferred upon the City is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising, available to City, at law or in equity, or under any other agreement, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the City and shall not be a waiver of the right to exercise at any time thereafter any other right, power or remedy.
- m. The Developer agrees to comply with all local, state and federal laws, ordinances and regulations applicable to the development of the Development Property and Improvements.
- n. The City's approval of the final plat or this Agreement does not include approval of building permits for any structures to be constructed within the Development Property. The Developer must submit and the City approve building plans prior to the issuance of building permits for structures within the Development Property.

26. DEVELOPER'S DEFAULT. In the event of default by the Developer as to any of the work to be performed by it hereunder or the failure to comply with all terms and conditions of this Agreement, the City may, at its option, take one or more of the following actions:

- a. Perform the work and the Developer shall promptly reimburse the City for any expense incurred by the City, provided the Developer, except in an emergency as determined by the City, is first given notice of the work in default, not less than forty-eight (48) hours in advance. When the City does any such work, the City may, in addition to its other remedies, assess the cost in whole or in part for collection with the property taxes on the Development Property;
- b. Obtain an order from a court of competent jurisdiction requiring Developer to perform its obligations pursuant to the terms and provisions of this Agreement;

- c. Obtain an order from a court of competent jurisdiction enjoining the continuation of an event of default;
- d. Halt all development work and construction of improvements until such time as the event of default is cured;
- e. Withhold the issuance of a building permit or permits or certificates of occupancy and/or prohibit the occupancy of any structure(s) for which permits have been issued until the event of default has been cured;
- f. Draw upon and utilize the Security to cover the City's costs to correct the default, the costs to complete any unfinished Project Improvements and/or the costs to enforce this Agreement; or
- g. Exercise any other remedies which may be available to it at law or in equity.

In addition to the remedies and amounts payable set forth or permitted above, upon the occurrence of an event of default by Developer, the Developer shall pay to the City all fees and expenses, including reasonable attorneys fees, incurred by the City as a result of the event of default, whether or not a lawsuit or other action is formally taken.

27. **WARRANTY.** The Developer warrants all Improvements required to be constructed by it pursuant to this Agreement against poor material and faulty workmanship. The warranty period for streets and utilities is two (2) years and shall commence following completion and final written acceptance of the work by the City Engineer. The required warranty period for sod, trees, and landscaping is two growing seasons following installation. The Developer shall post a security, valid for 2 years post construction, in the form of either: a) a warranty/maintenance bond for 100% of the cost of the Improvements; or b) a letter of credit or cash escrow for 25% of the amount of the original cost of the Improvements as warranty for the Improvements prior to the City authorizing the commencement of work on the public and private Improvements specified in this Agreement. The retainage from the Project securities identified in this Agreement may also be used to pay for

warranty work. The City standard specifications for utilities and street construction identify the procedures for final acceptance of streets and utilities.

28. **SUMMARY OF SECURITY REQUIREMENTS.** To guarantee compliance with the terms of this Agreement, payment of special assessments, payment of the costs of all public improvements, and construction of all public improvements, the Developer shall furnish the City, at the time of final plat approval or approval of this Development Agreement, as applicable, with either a letter of credit or cash escrow or a combination of cash escrow and a letter of credit, as determined by the City, for 125% of the estimated Improvement costs, in the form attached hereto as Exhibits C and D, as applicable, or a City approved alternate form, from a bank (the "Security") for **\$462,992.50**. The amount of the Security was calculated as follows:

CONSTRUCTION COSTS:

Streets	\$57,605
Sanitary Sewer	\$86,254
Watermain	\$64,375
Storm Sewer	\$106,720
Grading Erosion Control	\$30,000
Sidewalks	\$4,440
Street Lighting	\$5,000
Street Signs and Traffic Control Signs	\$1,000
Landscaping	\$15,000
TOTAL ESTIMATED CONSTRUCTION COST	\$370,394
SECURITY ADD-ON	x 125%
TOTAL PROJECT SECURITIES REQUIRED:	\$462,992.50

This breakdown is for historical reference; it is not a restriction on the use of the Security. The bank shall be subject to the approval of the City Manager. The Security may be in the form of annually renewable letters of credit. Individual Security instruments may be for shorter terms

provided they are replaced at least thirty (30) days prior to their expiration. The City may draw down the Security, without notice, for any violation of the terms of this Agreement or if the Security is allowed to lapse prior to the end of the required term by presenting the bank/escrow agent with a written demand or an affidavit signed by the City Manager or the City Manager's designee attesting to the City's right to draw down and receive funds under the Security. If the required Improvements are not completed at least thirty (30) days prior to the expiration of the Security, the City may also draw the Security down. If the Security is drawn down, the proceeds shall be used to cure the default. Upon receipt of proof satisfactory to the City Engineer that work has been completed and financial obligations to the City have been satisfied, with City Engineer approval, the Security may be reduced from time to time by ninety percent (90%) of the financial obligations that have been satisfied. Ten percent (10%) of the amounts certified by the Developer's engineer shall be retained as Security until: a) all Improvements have been completed, b) iron monuments for lot corners have been installed, c) all financial obligations to the City have been satisfied, d) the required "record" plans have been received by the City, e) a warranty security is provided as specified herein above, f) the public improvements are accepted by the City Engineer, and g) if required by the City Manager or Code, a title insurance policy indicating that the improvements are free and clear of any and all liens and encumbrances. The City standard specifications for utilities and street construction outline procedures for Security reductions, and reductions in the Letter of Credit, cash escrow or a combination thereof, shall be considered only after underground utilities are tested and found to be satisfactory and again after the base bituminous layer has been placed.

29. SUMMARY OF CASH REQUIREMENTS. The following is a summary of the cash requirements under this Agreement which must be furnished at the time of final plat approval or approval of this Agreement, as applicable. The Developer shall not proceed with any Improvements until these cash requirements have been paid to the City:

Park Dedication

\$17,500

Sanitary Sewer and Water Access Fee

\$65,280

TOTAL CASH REQUIREMENTS

\$82,780

30. **NOTICES.** Required notices to the Developer shall be in writing, and shall be either hand delivered to the Developer, its employees or agents, or mailed to the Developer by certified mail at the following address: 501 N. Riverfront Drive, Mankato, MN 56001. Notices to the City shall be in writing and shall be either hand delivered to the City Manager, or mailed to the City by certified mail in care of the City Manager at the following address: Winona City Hall, 207 Lafayette Street, Winona, MN 55987.

31. **CONSTRUCTION MANAGEMENT.** During construction of the Improvements and the Project, the Developer and its contractors and subcontractors shall minimize impacts from construction on the surrounding neighborhood, as follows:

- a. **Definition of Construction Area.** The limits of the Project Area shall be as shown in the City approved Grading, Drainage and Erosion Control Plan and shall be demarcated with construction fencing approved by the City Engineer. Any grading, construction or other work outside this area requires approval by the City Engineer and the affected property owner.
- b. **Parking and Storage of Materials.** Adequate on-site parking for construction vehicles and workers must be provided or provisions must be made to have workers park off site and be shuttled to the Project Area. No fill, excavating material or construction materials shall be stored in the public right-of-way.
- c. **Hours of Construction.** Hours of construction, including moving of equipment shall be limited to the hours between 6 a.m. and 10 p.m.
- d. **Site Maintenance.** Developer shall ensure that its contractor maintains a clean work site. Measures shall be taken to prevent debris, refuse or other materials from leaving the site. Construction debris and other refuse generated from the Project shall be removed from the site in a timely fashion and/or upon the request by the City Engineer. After Developer has

received at least forty-eight (48) hour verbal notice, the City may complete or contract to complete the site maintenance work at Developer's expense.

- e. Project Identification Signage. Project identification signs shall comply with City Code.

32. EXPIRATION OF AGREEMENT. This Agreement shall remain in effect until such time as the Developer shall have fully performed all of its duties and obligations under this Agreement. Upon the written request of the Developer and upon the adoption of a resolution by the City Council finding that the Developer has fully complied with all the terms of this Agreement and finding that the Developer has completed performance of all Developer's duties mandated by this Agreement, the City shall issue to the Developer on behalf of the City an appropriate Certificate of Compliance/Completion. Upon issuance of the Certificate of Compliance/Completion by the City, this Agreement shall terminate.

33. TERMINATION; CONDITIONS PRECEDENT.

- a. If Developer fails to: a) acquire fee simple title to all of the Development Property, and b) record this Agreement and the Plat in the office of the Winona County Recorder, as applicable and as provided herein, within one (1) year after approval of the Final Plat or this Agreement, as applicable, by the City Council, this Agreement shall terminate and the approval of the Plat shall be null and void, subject to the following:
 - i. All costs, fees and other amounts previously paid to the City in connection with the Plat, the Project Improvements, this Agreement and the Project shall belong to and be retained by the City;
 - ii. The obligations of the Developer for costs incurred shall survive such termination and continue with respect to unpaid costs, fees and expenses incurred prior to such termination;
 - iii. The indemnifications of Developer shall survive and continue after such termination; and

iv. The parties shall be released from all other obligations and liabilities under this Agreement not specified above.

- b. The City shall have no obligation to construct the Improvements and Developer shall have no right to construct the Improvements or construct the Project on the Development Property unless the Developer acquires fee simple title to the Development Property and records this Agreement and the Plat in the office of the Winona County Recorder as required herein within one (1) year after approval of the final Plat by the City Council.
- c. Building permits may be issued prior to Closing, but no work shall be performed on the Development Property and the construction of the Improvements shall not be commenced, subject to Developer providing evidence satisfactory to the City that the Plat and this Development Agreement have been duly recorded with the Winona County Recorder and that Developer has acquired fee simple title to the Development Property.
- d. In the event of the termination of this Agreement, the parties agree, if requested by the other party, to execute and deliver to the other party a written termination acknowledgment in a form reasonably satisfactory to both parties.
- e. Developer's right to construct the Improvements is contingent upon its (i) [successful Closing on its purchase of Development Property, and (ii)] obtaining a building permit from the City following submission of a complete and valid application for same. Nothing contained in this Agreement shall be construed to contain a covenant, either express or implied, for Developer to close on its purchase of the Development Property, commence the development of the Development Property as set forth herein, or sell or lease homes constructed and located on the Development Property.

34. **ADOPTED BY REFERENCE.** The provisions of the City's Code, Chapter 43 are hereby adopted by reference in their entirety, unless specifically excepted, modified, or varied by the terms of this Agreement, or by the final plat as approved by the City, as applicable. In the event that a provision

of this Agreement is inconsistent with or in conflict with the City's Code, the City Code shall govern.

[Remainder of page left intentionally blank.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

DEVELOPER:

BRADFORD DEVELOPMENT, LLC

BY:

Bradford G. Bass, Its Manager

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by Brad Bass the Owner of Bradford Development, a limited liability company under the laws of the State of Minnesota, on behalf of the company and pursuant to the authority granted by its members and managers.

NOTARY PUBLIC

CITY OF WINONA

BY:

Scott Sherman, Its Mayor

(SEAL)

AND

Monica Hennessy Mohan, Its City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF WINONA)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by Scott Sherman and by Monica Hennessy Mohan, the Mayor and City Clerk of the City of Winona, a Minnesota municipal corporation, on behalf of the municipal corporation and pursuant to the authority granted by its City Council.

NOTARY PUBLIC

THIS INSTRUMENT WAS DRAFTED BY:

City of Winona
Community Development Department
Winona City Hall
207 Lafayette Street
Winona, MN 55987
507-457-8250

**FEE OWNER CONSENT
TO
DEVELOPMENT AGREEMENT**

_____, fee owners of all or part of the subject Development Property, the development of which is governed by the foregoing Development Agreement, affirm and consent to the provisions thereof and agree to be bound by the provisions as the same may apply to that portion of the subject Development Property owned by them.

Dated this ____ day of _____, 20____.

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2____,
by _____.

NOTARY PUBLIC

THIS INSTRUMENT WAS DRAFTED BY:

City of Winona
Community Development Department
Winona City Hall
207 Lafayette Street
Winona, MN 55987
507-457-8250

**MORTGAGEE CONSENT
TO
DEVELOPMENT AGREEMENT**

_____, which holds a mortgage on the subject Development Property, the development of which is governed by the foregoing Development Agreement, agrees that the Development Agreement shall remain in full force and effect even if it forecloses on its mortgage.

Dated this ____ day of _____, 20 ____.

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
2____, by _____.

NOTARY PUBLIC

THIS INSTRUMENT WAS DRAFTED BY:

City of Winona
Community Development Department
Winona City Hall
207 Lafayette Street
Winona, MN 55987
507-457-8250

**CONTRACT PURCHASER CONSENT
TO
DEVELOPMENT AGREEMENT**

_____, which/who has a contract purchaser's interest in all or part of the subject Development Property, the development of which is governed by the foregoing Development Agreement, hereby affirms and consents to the provisions thereof and agrees to be bound by the provisions as the same may apply to that portion of the subject Development Property in which there is a contract purchaser's interest.

Dated this ____ day of _____, 20 ____.

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
2____, by _____.

NOTARY PUBLIC

THIS INSTRUMENT WAS DRAFTED BY:

City of Winona
Community Development Department
Winona City Hall
207 Lafayette Street
Winona, MN 55987
507-457-8250

**EXHIBIT A
TO
DEVELOPMENT AGREEMENT**

**Legal Description of Development Property Being Final Platted as
Cedar Brook Subdivision**

That part of the Southwest Quarter of the Southeast Quarter and that part of the Southeast Quarter of the Southwest Quarter of Section 1; also that part of the Northwest Quarter of the Northeast Quarter and that part of the Northeast Quarter of the Northwest Quarter of Section 12; all in Township 106, Range 7, Winona County, Minnesota, and all described as follows:

Commencing at the southeast corner of said Section 1; thence South 89 degrees 10 minutes 09 seconds West, oriented with the Winona County Coordinate System, NAD 1983 (1996 adjustment), along the south line of the Southeast Quarter of said Section 1, a distance of 2515.00 feet; thence South 26 degrees 24 minutes 51 seconds East, 55.50 feet to the point of beginning of the land to be described; thence North 73 degrees 35 minutes 09 seconds East, 224.32 feet; thence North 20 degrees 12 minutes 51 seconds West, 197.28 feet; thence South 74 degrees 00 minutes 09 seconds West, 19.22 feet; thence North 19 degrees 59 minutes 51 seconds West, 250.00 feet; thence North 74 degrees 00 minutes 09 seconds East, 232.85 feet to the westerly line of Winona County Highway Right of Way Plat No. 1017, according to the recorded plat thereof, said Winona County; thence northerly along said westerly line, 290.14 feet along the arc of a non-tangential curve, concave easterly, having a radius of 17238.73 feet and a central angle of 00 degrees 57 minutes 52 seconds, the chord of said curve bears North 27 degrees 40 minutes 42 seconds West and measures 290.13 feet; thence South 62 degrees 38 minutes 58 seconds West, 36.73 feet; thence South 74 degrees 50 minutes 42 seconds West, 509.19 feet; thence South 15 degrees 09 minutes 18 seconds East, 66.00 feet; thence South 74 degrees 47 minutes 22 seconds West, 228.82 feet; thence South 15 degrees 09 minutes 01 seconds East, 305.02 feet; thence South 72 degrees 55 minutes 12 seconds East, 402.31 feet; thence South 19 degrees 10 minutes 00 seconds East, 145.60 feet; thence North 73 degrees 35 minutes 09 seconds East, 87.00 feet to the point of beginning.

**EXHIBIT B
TO
DEVELOPMENT AGREEMENT**

AFFADAVITS

Pursuant to the Development Agreement, prior to acceptance of the improvements by the City, the Developer must complete and furnish the following affidavits:

- Contractor's Certificate;
- Engineer's Certificate;
- Land Surveyor's Certificate; and
- Developer's Certificate;

in substantially the form provided herein, certifying that all construction has been completed in accordance with the terms of the Development Agreement.

CONTRACTOR'S CERTIFICATE OF COMPLIANCE

Project: _____

I/we, the undersigned, certify that the construction of those certain improvements (the “Project”) required to be made by _____ (the “Developer”) pursuant to that certain Development Agreement (the “Agreement”) dated _____, 20____, by and between the City of Winona (the “City”) and the Developer, are complete and have been completed all in accordance with the provisions of the Agreement, and that the Project improvement work substantially conforms to the approved plans for the required improvements for the above-referenced Project and in accordance with the City Code (Chapter _____), City standard specifications for utilities and street construction, and the City’s engineering standard specifications

I/we certify that the required improvements are free from all defects in material and workmanship from the date of acceptance thereof by the City, that the Contractor agrees to remedy all defects arising within the warranty period at the Developer's expense, and that the Contractor is now and will remain in compliance with the Warranty/Maintenance Guarantee required by Winona City Code, Chapter _____, section _____ for the required periods stated therein.

This affidavit is made for the purpose of inducing City of Winona to accept the Project improvements made as part of the Project for public ownership thereof in accordance with the Agreement.

DEVELOPER'S CONTRACTOR:

BY: _____,
_____, Its _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, the _____ of _____, a Minnesota _____, on behalf of _____.

Notary Public

ENGINEER'S CERTIFICATE OF COMPLIANCE

Project: _____

I/we, the undersigned, based upon site observation, certify that those certain improvements (the “Project”) required to be made by _____ (the “Developer”) pursuant to that certain Development Agreement (the “Agreement”) dated _____, 20____, by and between the City of Winona (the “City”) and the Developer, appear to have been completed in accordance with the provisions of the Agreement and, to the best of our knowledge, the Project improvement work substantially conforms to the approved plans for the required improvements for the above-referenced Project and in accordance with the City Code (Chapter ____), City standard specifications for utilities and street construction, and the City’s engineering standard specifications.

This affidavit is made for the purpose of inducing City of Winona to accept the Project improvements made as part of the Project for public ownership thereof in accordance with the Agreement.

DEVELOPER'S ENGINEER:

BY: _____,
_____, Its _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, the _____ of _____, a Minnesota _____, on behalf of _____.

Notary Public

SURVEYOR'S CERTIFICATE

THE UNDERSIGNED is a Registered Land Surveyor. The plat of _____ Addition was graded in accordance with the grading plan approved by the City for the plat prepared by _____ dated _____. The undersigned certifies that the “record” grading plan dated _____ is accurate and was prepared by the undersigned or under the undersigned’s direction. The record grading plan includes field verified elevations of the following: a) cross sections of ponds; b) location and elevations along all swales, wetlands, wetland mitigation areas if any, ditches, locations and dimensions of borrow areas/stockpiles; and c) lot corner elevations and house pads. All lots with house footings placed on fill have been monitored and constructed to meet or exceed FHA/HUD 79G specifications.

Dated: _____

REGISTERED LAND SURVEYOR

Registration No. _____

STATE OF _____)
) ss.
COUNTY OF _____)

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

Notary Public

DEVELOPER'S CERTIFICATE OF COMPLIANCE

Project: _____

I/we, the undersigned, certify that the construction of those certain improvements (the "Project") required to be made by _____ (the "Developer") pursuant to that certain Development Agreement (the "Agreement") dated _____, 20____, by and between the City of Winona (the "City") and the Developer, are complete and have been completed all in accordance with the provisions of the Agreement, that the Developer has complied to date with all requirements set forth in the Agreement, and that the work under the above named Project including all appurtenances thereto has been completed in accordance with the City Code (Chapter _____), City standard specifications for utilities and street construction, and the City's engineering standard specifications.

I/we further certify that all charges or bills for labor or services performed or materials furnished, and other charges by the subcontractors for the required Project improvements have been paid in full and in accordance with the terms of that/those contract(s).

I/we further certify that the required Project improvements are free and clear of any and all liens and encumbrances; that no notice of intention to claim liens is outstanding, and that no suits are pending by reason of the Project.

I/we finally certify that the required improvements are free from all defects in material and workmanship from the date of acceptance thereof by the City, that the Developer agrees to remedy all defects arising within the warranty period at the Developer's expense, and that the Developer is now and will remain in compliance with the Warranty/Maintenance Guarantee required by Winona City Code, Chapter _____, section _____ for the required periods stated therein.

This affidavit is made for the purpose of inducing City of Winona to accept the Project improvements made as part of the Project for public ownership thereof in accordance with the Agreement.

DEVELOPER:

BY: _____

_____, Its _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____,
by _____ the _____ of _____, a Minnesota
_____, on behalf of _____.

Notary Public

**EXHIBIT C
TO
DEVELOPMENT AGREEMENT**

IRREVOCABLE LETTER OF CREDIT

No. _____
Date: _____

TO: City of Winona
207 Lafayette Street
Winona, MN 55987

Dear Sir or Madam:

We hereby issue, for the account of Bradford Development, LLC, a limited liability company under the laws of the State of Minnesota with its principal office located at 501 N. Riverfront Drive, Mankato, MN 56001, and in your favor, our Irrevocable Letter of Credit in the amount of \$462,992.50, available to you by your draft drawn on sight on the undersigned bank.

The draft must:

- a) Bear the clause, "Drawn under Letter of Credit No. _____, dated _____, 2_____, of _____ (Name of Bank) _____";
- b) Be signed by the Mayor or City Manager of the City of Winona.
- c) Be presented for payment at _____ (Address of Bank) _____.

This Letter of Credit shall automatically renew for successive one-year terms unless, at least forty-five (45) days prior to the next annual renewal date (which shall be _____ of each year), the Bank delivers written notice to the Winona City Manager that it intends to modify the terms of, or cancel, this Letter of Credit. Written notice is effective if sent by certified mail, postage prepaid, and deposited in the U.S. Mail, at least forty-five (45) days prior to the next annual renewal date addressed as follows: Winona City Manager, Winona City Hall, P.O. Box 207, Winona, MN 55987, and is actually received by the City Manager at least thirty (30) days prior to the renewal date.

This Letter of Credit sets forth in full our understanding which shall not in any way be modified, amended, amplified, or limited by reference to any document, instrument, or agreement, whether or not referred to herein.

This Letter of Credit is not assignable. This is not a Notation Letter of Credit. More than one draw may be made under this Letter of Credit.

This Letter of Credit shall be governed by the most recent revision of the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 600.

We hereby agree that a draft drawn under and in compliance with this Letter of Credit shall be duly honored upon presentation.

BY: _____

Its _____

**EXHIBIT D
TO
DEVELOPMENT AGREEMENT
ESCROW AGREEMENT**

This Escrow Agreement ("Escrow Agreement") is made and entered into this _____ day of _____, 20____, by and between the CITY OF WINONA, a Minnesota municipal corporation (the "City"), whose address is 207 Lafayette Street, Winona, MN 55987; Bradford Development, LLC, a limited liability company under the laws of the State of Minnesota (the "Developer"), whose address is 501 N. Riverfront Drive, Mankato, MN 56001; and _____ [Insert Name of the Bank] (the "Bank" or "Escrow Agent"), as Escrow Agent in connection with the development of a senior CO-OP multi-family housing development (ages 62+) and associated public improvements on the Development Property known as Cedar Brook (the "Project") located at _____ [Insert Full Address of Project], Winona, Winona County, Minnesota.

RECITALS

WHEREAS, the Developer has received final plat approval from the City for the development of the Project as set forth on the final plat entitled "Cedar Brook Subdivision", dated _____, 20____, (the "Final Plat"); and

WHEREAS, as a condition of Final Plat approval, the Developer and City have also entered into that certain Development Agreement, dated _____, 20____, (the "Development Agreement"); and

WHEREAS, the Developer pursuant to Winona City Code, the Development Agreement, Final Plat and other City approvals, at its own expense, is required to complete the construction of certain public improvements (the "Improvements" or "work") as part of the Project; and

WHEREAS the Parties to this Escrow Agreement wish to establish a mechanism to secure the obligations of the Developer for the work as set forth above and to provide the City a financial guarantee to assure the satisfactory completion of the required Improvements; and

WHEREAS, pursuant to Winona City Code and the Development Agreement, the Developer must provide security for construction of the required Improvements and an Escrow Account is a permissible form of security; and

WHEREAS, the Developer desires to provide the required Improvements and has established an Escrow Account with the Bank for such purpose; and

WHEREAS, the Bank executes this Escrow Agreement solely in the capacity of Escrow Agent.

NOW, THEREFORE, in consideration of the promises and the mutual obligations of the Parties contained herein, each does hereby covenant and agree with the others as follows:

1. Incorporation of Recitals and Documents. The recitals set forth above are acknowledged by the Parties to be true and correct and are hereby incorporated herein by reference. The following documents referred to in this Escrow Agreement are hereby made a part hereof by reference:
 - a. Development Agreement;
 - b. Final Plat; and
 - c. Winona City Code, Chapter 43.
2. Escrow Account/Funds Amount. To guarantee compliance with the terms of the Development Agreement, the Developer has established an Escrow Account with the Bank and agrees to deposit cash escrow funds in U.S. Dollars into the established Escrow Account with the Bank in that amount required by the Development Agreement, which is \$462,992.50 (the "security"). The security shall be deposited into the established Escrow Account prior to or at the time

of Final Plat approval. The Developer shall obtain a letter from the Bank addressed to the City acknowledging Developer's creation of the required Escrow Account in the name of the City as surety deposit for the Project and verifying that the Developer has deposited the cash escrow funds in the amount of the security required in the Development Agreement. The Developer shall submit the Bank's letter to the City prior to or at the time of Final Plat Approval.

3. Disbursements from Escrow Account.

- a. The City agrees that the Escrow Account funds on deposit with the Bank shall be deposited in an interest bearing account and shall only be disbursed and used as payment for the required Improvements pursuant to the process and requirements contained in the Development Agreement and this Escrow Agreement. All interest shall accrue to the Developer at such times as the Bank pays interest, but shall remain in Trust with the Bank.
- b. The deposit of the Escrow Account funds by the Developer will be made to ensure that Developer funds are available to the City for withdrawal by the City in the event it becomes necessary for the City, in the City's judgment, to withdraw the funds in order to complete satisfactory construction of the required Improvements in accordance with the Development Agreement.
- c. The Escrow Account funds shall not be used or pledged by the Developer for any other purpose during the period the Escrow Account is in effect. Upon satisfactory completion of the required public Improvements, as shall be determined by the City Engineer or his designee in writing, money in the Escrow Account, plus any accrued interest, shall be released to the Developer in accordance with the requirements contained in the Development Agreement taking into consideration the required warranty period.
- d. In the judgment of the City, in the event the Developer defaults as the same is defined in the Development Agreement, or otherwise fails to comply with the terms of the Development Agreement, or otherwise fails to complete the required public Improvements to the satisfaction of the City Engineer in accordance with the terms of the Development Agreement and City approved plans and specifications, upon notice by the City to the Bank, the Escrow Account Funds shall be immediately, without further action, paid over to the City, in the amount requisitioned by the City, for use by the City in completion of the required public Improvements and/or to reimburse the City for any costs or expenses incurred by the City therefore.
- e. The City will also promptly submit to the Developer a copy of such notice as it files with the Bank. The consent of the Developer to payments by the Bank to the City shall not be required or solicited. The Bank shall incur no liability to the Developer on account of making such payment to the City, nor shall the Bank be required to inquire into the propriety of any claim by the City of default on the part of the Developer or into the use of such funds by the City in completing such Improvements. The Bank shall not refuse or delay to make such payments to the City when requested by the City by an appropriate notice, and the Developer will not interfere with, object to or otherwise hinder such payments by the Bank to the City.
- f. Any work to be performed by the City pursuant hereto shall be let on a contractual basis as required by governing law, or on a time and material basis or shall be performed by the City with its own personnel and equipment or shall be accomplished in such a manner as in the judgment of the City shall accomplish the work expeditiously and economically.
- g. The City shall be the sole beneficiary of the Escrow Account and shall have sole power to draw upon funds from the Escrow Account in accordance with the terms of the Development Agreement and this Escrow Agreement.
- h. Nothing herein shall relieve the Developer from the obligation to pay any additional costs, if actual costs exceed the above-stated cost. Nothing herein shall relieve the Developer from the obligation to pay any additional costs, if actual costs exceed the amount retained in the Escrow Account, after the time of completion.
- i. All disbursements under this Escrow Agreement from the Escrow Account shall be made by and through the Escrow Agent in accordance with the terms of the Development Agreement and this Escrow Agreement.

- j. If monies are released by the Bank to the City pursuant to this Escrow Agreement and it shall later develop that a portion of the released monies are surplus to the City's needs, any such surplus shall be returned by the City to the Bank to be held and distributed by the Bank pursuant to the terms of the Development Agreement and this Escrow Agreement.
- k. In the event that the Developer furnishes the City with an Irrevocable Letter of Credit, in a form and substance satisfactory to the City, as replacement security for the funds escrowed hereunder, and the City concludes that it is beneficial to the City to do so, the City may release all or a portion of the funds escrowed by this Escrow Agreement and accept the Irrevocable Letter of Credit, provided the Bank reconfirms, in writing its commitment to the terms and conditions contained herein.

4. Bank as Escrow Agent.

- a. As Escrow Agent hereunder, the Bank, acting in such capacity, shall have no duties or responsibilities except for those expressly set forth herein.
- b. The Parties agree that the Escrow Agent shall be a financial institution or title company licensed and registered to operate in the State of Minnesota and shall be acceptable to the City.
- c. The Developer shall indemnify and hold harmless the Bank against any loss, damage or liability, including, without limitation, attorney's fees which may be incurred by the Bank in connection with this Escrow Agreement, except any such loss, damage or liability incurred by reason of the negligence or willful misconduct of the Bank. It is further understood by the Developer that if, as the result of any disagreement between it and any other party or adverse demands and claims being made by it or anyone else upon the Bank, or if the Bank otherwise shall become involved in litigation with respect to this Escrow Agreement, the Developer agrees that it shall reimburse the Bank on demand for all costs and expenses, including, without limitation, attorney's fees, the Bank shall incur or be compelled to pay by reason of such dispute or litigation, including reasonable compensation for time expended in connection with any such dispute or litigation.
- d. The Developer shall indemnify and hold harmless the City against any claim, loss, damage or liability, including, without limitation, attorney's fees, which may be incurred by or brought against the City in connection with this Escrow Agreement, except any such loss, damage or liability incurred by reason of the negligence or willful misconduct of the City.
- e. All indemnification obligations shall survive termination, expiration or cancellation of this Escrow Agreement.
- f. The Bank, acting as such, shall not be liable to anyone by reason of an error or judgment, a mistake of law or fact, or for any act done or step taken or omitted in good faith, and this provision shall survive the termination of this Escrow Agreement.
- g. At the time the last of the escrowed funds are released and disbursed by the Bank in accordance with this Escrow Agreement, the Bank shall be discharged from any obligation under this Escrow Agreement.
- h. In accordance with the provisions above, the Bank may rely upon and shall be protected in acting upon any statement, instrument, opinion, notice, request, order, approval or document believed by the Bank to be genuine and to have been signed or presented by the proper party or parties.
- i. The Escrow Agent shall keep records of all requests and transactions made from the Escrow Account, which records may be inspected by the Developer and the City Engineer, respectively, immediately upon request by either Party to the Escrow Agent.
- j. The Developer is responsible for all costs and fees payable to the Escrow Agent for service rendered by the Bank in accordance with this Escrow Agreement.

5. Substitution or Resignation of Bank. The Bank reserves the right to withdraw from this Escrow Agreement and cease serving as Escrow Agent hereunder at any time by giving thirty (30) days written notice thereof to the Developer and

City. Upon notice of resignation by the Bank, the Developer agrees to find within ten (10) days of such notice a replacement Escrow Agent acceptable to the City. The Bank agrees to deliver the escrowed funds then held by the Bank to such replacement escrow holder and notify all parties hereto. The Bank shall thereupon be released from any and all responsibility or liability to the Parties hereto. If the Developer fails to appoint a replacement escrow agent within such ten (10) day period, the Bank shall petition any court having jurisdiction for the appointment of a successor escrow agent or for instructions as to the disposition of the documents and moneys held by it under this Escrow Agreement. In any event such court appoints a successor escrow agent, the Bank shall deliver the escrowed funds then held pursuant to this Escrow Agreement, and all records and other documents held by it under this Escrow Agreement, upon payment of all fees and expense reimbursements due to the Bank, to such successor escrow agent and the Bank shall thereby be released from any and all responsibility or liability to the Parties hereto. Pending such appointment or instructions, the Bank shall continue to be bound by the terms of this Escrow Agreement.

6. Notices. Any notice provided for or permitted under this Escrow Agreement, unless otherwise provided herein, will be treated as having been received (a) when delivered personally, (b) when sent by confirmed facsimile or (c) three (3) days following when sent by certified mail, to the party to be notified, at the address set forth below, or at such other place of which the other party has been notified in accordance with the provisions of this paragraph (except that the Escrow Agent shall not be bound by or required to act upon any notice unless and until actually received by it).

- a. If to the Developer, at:

Bradford G. Bass, Manager
Bradford Development, LLC
501 N. Riverfront Drive
Mankato, MN 56001

- b. If to the City, at:

Steve Sarvi, City Manager
City of Winona
P.O. Box 207
207 Lafayette Street
Winona, MN 55987

- c. If to the Escrow Agent, at:

Such notice will be treated as having been received upon actual receipt if actual receipt occurs earlier than as provided in clauses (a) through (c) hereof. Notwithstanding the foregoing, no notice to the Escrow Agent shall be deemed given to or received by the Escrow Agent unless delivered to an officer of the Escrow Agent having responsibility under this Agreement.

7. Termination. This Escrow Agreement shall terminate and be of no force or effect upon the completion of the terms and conditions contained herein and completion of the retained security requirements (retainage) contained in the Development Agreement; provided however, that the security requirements for the warranty period required in the Development Agreement are otherwise provided for in a manner acceptable to the City and in accordance with the Development Agreement. Subject to the retainage requirements contained in the Development Agreement, in the event that the security requirements for the warranty period required in the Development Agreement are not otherwise provided for in an alternate manner acceptable to the City, this Escrow Agreement shall not terminate until the expiration of the required warranty period, except that the amount of the security remaining in the Escrow Account for the warranty period shall be as provided in the Development Agreement.

8. General Terms.

- a. Voluntary and Knowing Action. The parties, by executing this Agreement, state that they have carefully read this Escrow Agreement and understand fully the contents thereof; that in executing this Escrow Agreement they voluntarily accept all terms described in this Escrow Agreement without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound thereby.
- b. Authorized Signatories. The parties each represent and warrant to the other that (1) the persons signing this Escrow Agreement are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Escrow Agreement against it; each party indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.
- c. Successors and Assigns. This Escrow Agreement may not be assigned by the Developer or Bank without the prior written consent of the City. This Escrow Agreement shall be binding upon, and inure to the benefit of the parties hereto and their respective successors and permitted assigns. No other person has any rights, interest, or claims hereunder or is entitled to any benefits under or on account of this Escrow Agreement as a third-party beneficiary or otherwise.
- d. Modifications/Amendment. Any alterations, variations, modifications, amendments or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing, and signed by authorized representative of the parties.
- e. Governing Law. This Escrow Agreement shall be deemed to have been made and accepted in Winona County, Minnesota, and the laws of the State of Minnesota shall govern any interpretations or constructions of this Escrow Agreement without regard to its choice of law or conflict of laws principles.
- f. Data Practices. The parties acknowledge that this Escrow Agreement is subject to the requirements of Minnesota's Government Data Practices Act, Minnesota Statutes, Section 13.01 et seq.
- g. No Waiver. Nothing in this Escrow Agreement shall be construed to waive any immunities or limitations to which the City is entitled under Minn. Stat. Chapter 466 or otherwise. No waiver by any party to this Escrow Agreement of any condition or of any breach of any provision of this Escrow Agreement will be effective unless in writing. No waiver by any party of any such condition or breach, in any one instance, will be deemed to be a further or continuing waiver of any such condition or breach or a waiver of any other condition or breach of any other provision contained in this Escrow Agreement.
- h. Entire Agreement. These terms and conditions constitute the entire agreement between the parties regarding the subject matter hereof. All discussions and negotiations are deemed merged in this Escrow Agreement.
- i. Headings and Captions. Headings and captions contained in this Escrow Agreement are for convenience only and are not intended to alter any of the provisions of this agreement and shall not be used for the interpretation of the validity of the agreement or any provision hereof.
- j. Cooperation. The parties hereto agree to cooperate with one another in the performance of their respective obligations and responsibilities set forth in this Escrow Agreement. The parties further agree to execute and deliver such other and additional documents and instruments as may be reasonably necessary to accomplish the purposes of this Escrow Agreement.
- k. No joint venture or partnership. The parties hereto agree that they will be independent contractors in performing their respective obligations under this Escrow Agreement. This Escrow Agreement is not intended to create nor does it create, a relationship of partners or joint ventures between the parties hereto.
- l. Severability. The invalidity or unenforceability of any provision of this Escrow Agreement shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Agreement to the extent of its invalidity or unenforceability, and this Escrow Agreement shall be construed and enforced as if the agreement did not contain that particular provision to the extent of its invalidity or unenforceability.

- m. Force Majeure. Escrow Agent shall not be liable to the undersigned for any loss or damage arising out of any acts of God, strikes, equipment, or transmission failure, war, terrorism, or any other act or circumstance beyond the reasonable control of Escrow Agent.
- n. Compliance with Laws. The parties hereto shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to the subject matter hereof.
- o. Non-Discrimination. The provisions of any applicable law or ordinance relating to civil rights and discrimination shall be considered part of this Agreement as if fully set forth herein.
- p. Execution. This Escrow Agreement may be executed simultaneously in two or more counterparts that, when taken together, shall be deemed an original and constitute one and the same document. The signature of any party to the counterpart shall be deemed a signature to the Agreement, and may be appended to, any other counterpart, facsimile and email transmissions of executed signature pages shall be deemed as originals and sufficient to bind the executing party.

(Remainder of page left intentionally blank.)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

DEVELOPER: BRADFORD DEVELOPMENT, LLC

By: _____
Bradford G. Bass, Its: Manager

CITY: CITY OF WINONA

By: _____
Scott Sherman, Its: Mayor

By: _____
Monica Hennessy Mohan, Its: City Clerk

BANK/ESCROW AGENT: _____

By: _____
_____, It _____

ACKNOWLEDGMENT OF DEVELOPER

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by Bradford G. Bass, the Manager of Bradford Development, LLC, a limited liability company under the laws of the State of Minnesota, on behalf of the company and pursuant to the authority granted by its members and managers.

NOTARY PUBLIC

ACKNOWLEDGMENT OF CITY

STATE OF MINNESOTA)
) ss.
COUNTY OF WINONA)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by Scott Sherman and by Monica Hennessy Mohan, the Mayor and City Clerk of the City of Winona, a Minnesota municipal corporation, on behalf of the corporation and pursuant to the authority granted by its City Council.

NOTARY PUBLIC

ACKNOWLEDGMENT OF BANK

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ of _____ the _____, a _____ *[e.g., corporation, limited liability company, limited liability partnership]* under the laws of the State of _____ *[Minnesota]*, on behalf of the _____ and pursuant to the authority granted by its _____ *[e.g., board of directors]*.

NOTARY PUBLIC

REQUEST FOR COUNCIL ACTION

Agenda Section: **New Business**

Originating Department:

Date:

No: 5

City Clerk

01/19/21

Item: **Extend Cable Television Franchise Agreement – Charter Communications**

No. 5.3

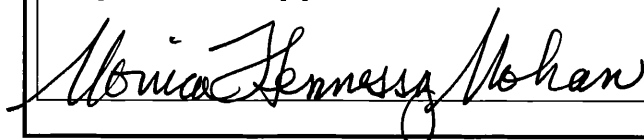
SUMMARY OF REQUESTED ACTION:

In December 2015, the Council approved a new cable television franchise agreement with Hiawatha Broadband Communications, Inc. (HBC), and extended the current agreement with Charter Communications until June 30, 2016. The Council has since extended the franchise agreement with Charter for additional six month terms seven more times. The current extension expired on December 31, 2020.

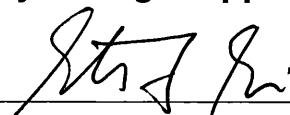
Legal counsel and City staff have recently discussed the latest draft agreement proposed by Charter and have determined that additional time is required to complete this process. Therefore, another extension of the old agreement is requested. Staff is recommending extending the agreement until June 30, 2021, or until such time as the new agreement has been fully executed.

If the Council concurs, a motion to adopt the attached resolution would be in order.

Department Approval:



City Manager Approval:



RESOLUTION NO. _____

**GRANTING SPECTRUM MID-AMERICA, LLC
A FRANCHISE EXTENSION TO JUNE 30, 2021**

WHEREAS, on February 21, 2000, the City of Winona, Minnesota ("City") adopted Cable Television Franchise Ordinance No. 3442 ("Franchise"), which is currently held by Spectrum Mid-America, LLC, d/b/a Charter Communications ("Charter"); and

WHEREAS, the initial term of the Franchise expired on December 31, 2015; and

WHEREAS, the City adopted Resolution No. 2015-118 on December 21, 2015 extending the term of the Franchise until June 30, 2016; and

WHEREAS, Charter executed said Resolution No. 2015-118 and agreed to continue complying with the Franchise, as amended by the Resolution; and

WHEREAS, the City adopted Resolution No. 2016-56 on June 6, 2016 extending the term of the Franchise until December 31, 2016; and

WHEREAS, Charter executed said Resolution No. 2016-56 and agreed to continue complying with the Franchise, as amended by the Resolution; and

WHEREAS, the City adopted Resolution No. 2016-103 on December 5, 2016 extending the term of the Franchise until June 30, 2017; and

WHEREAS, Charter executed said Resolution No. 2016-103 and agreed to continue complying with the Franchise, as amended by the Resolution; and

WHEREAS, the City adopted Resolution No. 2017-60 on June 5, 2017 extending the term of the Franchise until December 31, 2017; and

WHEREAS, Charter executed said Resolution No. 2017-60 and agreed to

continue complying with the Franchise, as amended by the Resolution; and

WHEREAS, the City adopted Resolution No. 2017-149 on December 18, 2017 extending the term of the Franchise until July 16, 2018; and

WHEREAS, Charter executed said Resolution No. 2017-149 and agreed to continue complying with the Franchise, as amended by the Resolution; and

WHEREAS, the City adopted Resolution No. 2018-56 on July 2, 2018 extending the term of the Franchise until December 31, 2018; and

WHEREAS, Charter executed said Resolution No. 2018-56 and agreed to continue complying with the Franchise, as amended by the Resolution; and

WHEREAS, the City adopted Resolution No. 2018-106 on December 3, 2018 extending the term of the Franchise until June 30, 2019; and

WHEREAS, Charter executed said Resolution No. 2018-106 and agreed to continue complying with the Franchise, as amended by the Resolution; and

WHEREAS, the City adopted Resolution No. 2019-59 on July 1, 2019 extending the term of the Franchise until January 31, 2020; and

WHEREAS, Charter executed said Resolution No. 2019-59 and agreed to continue complying with the Franchise, as amended by the Resolution; and

WHEREAS, the City adopted Resolution No. 2020-08 on February 3, 2020 extending the term of the Franchise until July 31, 2020; and

WHEREAS, Charter executed said Resolution No. 2020-08 and agreed to continue complying with the Franchise, as amended by the Resolution; and

WHEREAS, the City adopted Resolution No. 2020-55 on July 20, 2020 extending

the term of the Franchise until December 31, 2020; and

WHEREAS, Charter executed said Resolution No. 2020-55 and agreed to continue complying with the Franchise, as amended by the Resolution; and

WHEREAS, the City and Charter desire to extend the term of the Franchise to facilitate renewal negotiations under state and federal law.

NOW, THEREFORE, the City Council of the City of Winona, Minnesota hereby resolves as follows:

1. The Franchise is hereby amended by extending the term of the Franchise from January 1, 2021 through and including June 30, 2021 unless earlier renewed by the parties.
2. Except as specifically modified hereby, the Franchise shall remain in full force and effect.
3. The City and Charter hereby agree that neither waives any rights either may have under the Franchise or applicable law.
4. This Resolution shall become effective upon the occurrence of both of the following conditions: (1) The Resolution being passed and adopted by the Winona City Council and (2) Charter's acceptance of this Resolution.

Passed and adopted by the City Council of Winona, Minnesota, this _____ day of _____, 2021.

[Signatures on next pages]

CITY OF WINONA, MINNESOTA

By: _____
Its: Mayor

ATTEST:

City Clerk

ACCEPTANCE

Spectrum Mid-America, LLC, d/b/a Charter Communications, hereby acknowledges the City of Winona Resolution No. _____, and hereby accepts the terms, provisions and recitals of the Resolution and agrees to be bound by the Franchise to the extent consistent with applicable laws.

DATED: _____, 2021

Spectrum Mid-America, LLC
d/b/a Charter Communications

By: _____

Its: _____

REQUEST FOR COUNCIL ACTION

Agenda Section: **Council Concerns**

Originating Department:

Date:

No: **7**

City Clerk

01/19/21

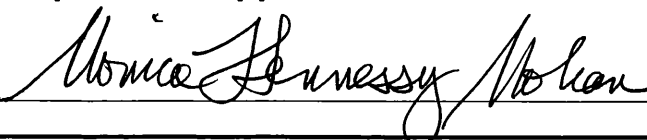
Item: **Council Concerns**

No. **7.1**

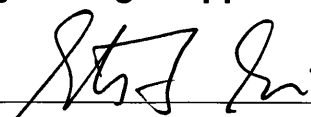
SUMMARY OF REQUESTED ACTION:

Time is reserved for Council Concerns.

Department Approval:



City Manager Approval:



REQUEST FOR COUNCIL ACTION

Agenda Section: **Consent Agenda**

Originating Department:

Date:

No: **8**

City Clerk

01/19/21

Item: **Consent Agenda**

No. **8.**

SUMMARY OF REQUESTED ACTION:

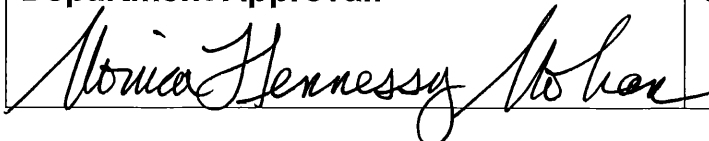
City Clerk: Item No. 8.1: Approval of Minutes – January 4, 2021

Minutes of the January 4, 2021 City Council meeting have been distributed. If the minutes are satisfactory, a motion to approve same would be in order.

City Clerk: Item No. 8.2: Claim Against the City by Ashley Carlson

Ashely Carlson has filed a claim against the city for damages to her home due to a sewer line backup. The claim has been forwarded to the League of Minnesota Cities- Insurance Trust, and is on file in the City Clerk's Office.

Department Approval:



City Manager Approval:

