

Winona City Council Zoom Meeting Access and Procedures

April 2, 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.
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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

Monday, April 5, 2021

6:30 P.M., Meeting No. 7

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. Appointments to the Building & Fire Code Board of Appeals
City Clerk	2. Renew Liquor Permit for Winona Tour Boat
Parks & Recreation	3. Levee Park Dock Agreement With Winona State University
Parks & Recreation	4. Request for Drive-in Movie Series
Parks & Recreation	5. Winona Parks – Ash Tree Planning
Parks & Recreation	6. West End Skatepark Proposal
Parks & Recreation	7. Great River Shakespeare Festival Request for the Use of Levee Park
City Clerk	8. Proposal for a Downtown Parklette
City Clerk	9. Request to Hold Parade by Lake Winona Manor
City Manager	10. Resolution of Support for the 2 nd Daily Train
4. Unfinished Business	
5. New Business	
Public Works	1. Facilities Plan for Wastewater Treatment Plant
Finance	2. Financial Planning Model
Parks & Recreation	3. Grant Agreement with the Minnesota State Arts Board
Parks & Recreation	4. Friendship Center Grant Request
Parks & Recreation	5. Friendship Center – Air Conditioning Repair

Public Works	6. West Lake Winona Curly Leaf Pondweed Treatment
Public Works	7. Community Forestry Corps Program
6. Reports of Committees	
7. Council Concerns	
City Clerk	1. Council Concerns
8. Consent Agenda	
City Clerk	1. Approval of Minutes – March 15, 2021
City Clerk	2. Ordinance to Amend the Unified Development Code
City Clerk	3. Claim Against the City by Vic Noland
9. Adjournment	

REQUEST FOR COUNCIL ACTION

Agenda Section: **Petitions, Requests,
Communications**

Originating Department:

Date:

No: **3**

City Clerk

04/05/21

Item: **Appointments to the Building & Fire Code Board of Appeals**

No. **3.1**

SUMMARY OF REQUESTED ACTION:

Following is a communication from Mayor Scott Sherman regarding appointments to the Building and Fire Code Board of Appeals.

April 5, 2021

City Council
City Hall
Winona, MN 55987

Dear Councilmembers:

This letter is to advise that I am this date reappointing Brian Buelow and Mike Hansen to serve as the members of the Building and Fire Code Board of Appeals. In addition, I am appointing Randy Knutson, Jacob Nicklay and Larry Strange to this board. Each of these appointments would be effective April 6, 2021 through March 18, 2024.

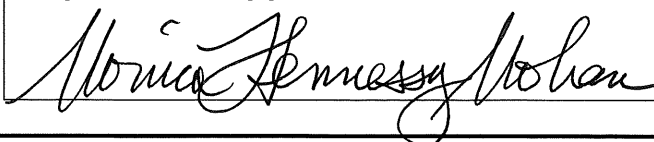
I trust that you will approve these appointments.

Sincerely,

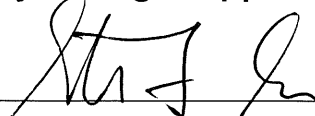


Scott Sherman
Mayor

Department Approval:



City Manager Approval:



REQUEST FOR COUNCIL ACTION

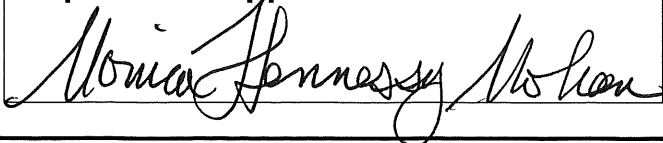
<i>Agenda Section:</i> Petitions, Requests, Communications	<i>Originating Department:</i>	<i>Date:</i>
<i>No:</i> 3	City Clerk	04/05/21
<i>Item:</i> Renew Liquor Permit for Winona Tour Boat		
<i>No.</i> 3.2		

SUMMARY OF REQUESTED ACTION:

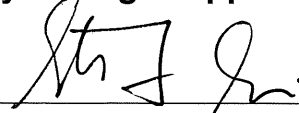
Aaron Repinski, doing business as the Winona Tour Boat, has applied for a Consumption and Display Permit for the tour boat operating from the Winona Levee. The effective dates of the license would be April 6, 2021 through March 31, 2022.

All of the documents are in order and if the Council concurs, a motion to approve the Consumption and Display permit would be in order.

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	Parks and Recreation	04/05/21
<i>Item:</i> Levee Park Dock Agreement With Winona State University		
<i>No.</i> 3.3		

SUMMARY OF REQUESTED ACTION:

Winona State University would like to continue the long standing relationship with the City of Winona regarding the docking of the Cal Fremling at Levee Park. The University has specifically requested an extension of their license agreement to December 31, 2022.

The City of Winona will continue to make any immediate repairs to the dock, yet further discussions on the long term viability of the dock need to continue.

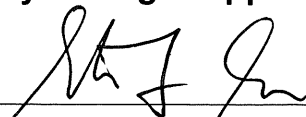
Staff recommends approval of the attached agreement.

If the Council is in concurrence, a motion to approve the attached agreement and authorize the City Clerk and City Manager to execute the contract would be in order

Department Approval:



City Manager Approval:



LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement") made this ____ day of _____, 2020, by and between the City of Winona, a municipal corporation under the laws of the State of Minnesota ("Licensor"), and the State of Minnesota, acting through its Board of Trustees of the Minnesota State Colleges and University, on behalf of Winona State University ("Licensee"), (collectively the "parties").

WITNESSETH:

WHEREAS, Licensee desires to moor a boat at the docking facility at Levee Park for Licensee's use in classroom instruction and available for community uses; and

WHEREAS, the Licensor is willing to permit such use subject to the terms, covenants, and conditions contained herein.

NOW, THEREFORE, IT IS AGREED by and between the parties as follows:

1. Grant of License and Description of Licensed Premises. The Licensor is the owner of Levee Park located in the City of Winona, Minnesota, and which is located between the Mississippi River and the railroad tracks on Front Street and between Johnson Street and Walnut Street. The Licensee is hereby granted a terminable license to place one (1) boat at the docking facility in Levee Park for the purpose of conducting classroom instruction (the "Licensed Premises"). The Licensed Premises are depicted on the schematic drawing which is attached hereto and incorporated herein by reference as Exhibit A.

The boat upon which this Agreement applies is described as follows: The Cal Fremling – 2014 Skipperliner – 49 Passengers (the "boat"). Licensee warrants and represents that at all times during the term of this Agreement, the boat shall be maintained in a safe and seaworthy condition by Licensee and shall be operated in a careful and safe manner so as not to damage Licensor's docking facilities or the Licensed Premises or to any other property, vessels or persons.

2. Specific Amendment. In the event that Licensor constructs another docking facility at Levee Park, this Agreement may be amended to provide that Licensee may use the new docking facility in place of the existing docking facility. A written Amendment to License Agreement shall be prepared and executed by both parties.

3. License Fee. The Licensee shall pay to the Licensor, as and for the use of the Licensed Premises, a license fee of Four Thousand and No/100ths Dollars (\$4,000.00). The license fee shall be paid by Licensee to Licensor on or before September 1, 2021.

4. License Term. The license term shall commence April 6, 2021 and terminate on December 31, 2022. The Agreement shall terminate (a) at the expiration of the term stated herein or (b) at Licensor's option, upon the failure of the Licensee to comply with any material

term or condition of this Agreement. Notwithstanding the preceding, it is understood and agreed that the Licensors may revoke/terminate the license with or without cause upon Sixty (60) days' notice to Licensee.

5. Use of Licensed Premises. Subject to the other terms and provisions contained herein, the Licensee shall be permitted to use the Licensed Premises only for the specific purpose hereinabove stated; provided, however, that during the term of this License, the Licensee shall comply with all applicable laws, regulations, conditions, and covenants affecting the Licensed Premises, whether federal, state, local, or contractual.

The boat owned/used by Licensee pursuant to the terms of this Agreement shall comply with all requirements of the U.S. Coast Guard as well as all other federal, state, and local laws, ordinances and regulations.

The Licensee shall perform the day to day maintenance of the docking facility including the repair or replacement of tarps and ropes. The Licensee shall not intentionally commit or allow to be committed any waste on, destruction of, or damage to, or nuisance on the Licensed Premises. Should the Licensee intentionally commit or allow to be committed any waste on or destruction to the Licensed Premises or should the Licensed Premises or docking facility be damaged or destroyed by Licensee's use of the same, the Licensee shall immediately restore the Licensed Premises to the original condition of the Licensed Premises at the inception of this License Agreement or as altered in accordance with plans as submitted to, and approved by, the City Manager of the Licensors, or her/his designated representative, or, alternatively, pay to the Licensors the cost of restoring the Licensed Premises to the condition herein stated, payment to be made within 30 days from the date of written notice given by Licensors to the Licensee of the amount of such costs.

If the mooring cleats are damaged or pulled out while the Licensee's boat is moored to them, Licensee shall, at Licensee's expense, immediately repair or replace said cleats. If any of the steel pilings are damaged or destroyed while the Licensee's boat is moored to them, Licensee shall, at Licensee expense, immediately repair or replace said pilings.

The Licensee shall keep the Licensed Premises in a sanitary condition and keep the premises free from refuse. On a daily basis, Licensee shall provide, or arrange for, clean-up of the Licensed Premises and any garbage. On termination of this Agreement, the Licensee shall, at the Licensee's expense, restore the Licensed Premises to the condition they were originally in at the inception of this Agreement.

6. Utility Services. The Licensors shall provide electrical service to the levee wall at no charge to Licensee. The Licensee shall be responsible for paying for the cost of electricity used in conjunction with this Agreement. The Licensors shall provide a water service which shall be a shallow, below ground, metered service. The Licensee shall be responsible for paying the cost of water used in conjunction with this Agreement.

7. Licensor's Right of Entry. The Licensor, its employees, and its agents shall have the right to enter the Licensed Premises at all times for all reasonable purposes, including, without limitation, enforcing all applicable laws, regulations and/or ordinances, keeping the peace, and inspecting, cleaning, repairing, altering, or improving the premises. Nothing in this Agreement shall be interpreted as requiring the Licensor to perform any such acts independent of the requirements of the other provisions of this Agreement.

8. Assignment or Transfer of License. Licensee shall have no right to assign its interest in this License Agreement without the prior written consent of Licensor.

9. Improvements and Alterations. The Licensee shall not be permitted to make any improvements or alterations to the Licensed Premises without the prior written consent of the Licensor, except, however, the Licensee shall, at Licensee's expense, make any improvements to the Licensed Premises which are needed to maintain the Licensed Premises in their original condition or their condition as altered, if such alteration has been approved in writing by the Licensor. The Licensee shall at all times maintain the Licensed Premises, and any allowed improvements made thereto, in a good and safe condition.

In the public interest the Licensor may at any time and from time to time order changes or alterations to be made in the improvement(s).

Notwithstanding any other provision contained in this Agreement, if at any time in the judgment of the City Manager the improvement(s) presents a hazard to the public, the City Manager may take such action as he/she shall consider appropriate to render the improvement(s) safe or to make the area in which the improvement(s) is present safe for public use. The City Manager may order the destruction and removal of the improvement(s), or its repair, or he/she may make the area unavailable for public use, or he/she may take whatever other or different action appear as appropriate, including but not limited to termination of this Agreement. Any expenses incurred as a result of action taken by the City Manager shall be paid by the Licensee.

All improvements made by Licensee to the Licensed Premises and/or docking facility shall be deemed the property of the Licensor without compensation to Licensee for said improvements upon termination of this Agreement or otherwise.

10. Insurance and Liability.

a. **Insurance.** It shall be the duty of Licensee and Licensor to maintain adequate insurance or self-insurance on their own property, both real and personal. The Licensor and Licensee shall, at their respective expense, maintain in effect commercial general liability insurance covering bodily injury liability and property damage with limits not less than the maximum liability amount for a municipality and the state of Minnesota as provided in Minnesota Statutes, Sections 466.04 and 3.736, respectively. Notwithstanding anything to the contrary contained in this Agreement, Licensee and Licensor hereby release one another and their respective partners, officers, and employees from any and all liability or responsibility to

the other or anyone claiming through or under them by way of subrogation or otherwise for loss or damage covered by said insurance, even if such loss or damage shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible.

b. **Liability.** Licensee and Licensors agree that each party will be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of any others and the results thereof. Licensors' and Licensee's liability shall be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes, Sections 466.04 and 3.736, respectively, and other applicable law. The Licensee knows, understands and acknowledges the risks and hazards associated with their respective use of the Licensed Premises described herein and Licensee hereby assumes any and all risks and hazards associated with its respective use. It is expressly agreed by Licensee that Licensors are not and shall not be construed to be an insurer of; (i) Licensee's officials, patrons, employees, students, volunteers or invitees using the Licensed Premises or Licensee's boat for any injury or death, or (ii) Licensee's property loss or property damage to the boat, its motor, accessories or contents due to fire, arson, vandalism, intrusion, theft, collision or any other criminal acts or casualty loss. Licensors assume no liability for the care, protection or security of the Licensed Premises or the boat. Licensee irrevocably waives any and all claims against the Licensors or any of its officials, employees or agents for any bodily injury (including death), loss or property damage incurred by the Licensee as a result of using the Licensed Premises or any of Licensors' activities related thereto, and hereby irrevocably releases and discharges the Licensors and any of its officials, employees or agents from any and all such claims of liability related to the Licensed Premises, except those resulting from the negligence or willful or wanton misconduct of the Licensors.

11. Condition of Licensed Premises.

Licensee acknowledges that it has inspected the Licensed Premises and accepts the same in an "as is" condition.

12. Additional Docking Authorized. The parties agree that the Licensors hereby reserves unto itself the right to exclusively use the Licensed Premises for the docking of the Mississippi Queen and/or the American Queen on those occasions when such vessels dock at the City of Winona. Further, the Parties agree that the Licensors reserves the right to exclusively use the Licensed Premises for special events which have been approved by the Winona City Council. During such events, the entity using the dock shall be responsible for any damage caused to the dock and/or mooring cleats and/or pilings.

13. General Terms.

a. **Voluntary and Knowing Action.** The parties, by executing this Agreement, state that they have carefully read this Agreement and understand fully the contents thereof; that in executing this Agreement they voluntarily accept all terms described in this 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 Agreement are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Agreement against it; each party indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.

c. **Notices.** The parties' representatives for notification for all purposes are:

Licensor:

Name: Monica Hennessy Mohan
Position: City Clerk
Address: P.O. Box 378
Winona, MN 55987-0378
Phone: 507-457-8256

Licensee:

Name: Lori Miki
Position: Director of Affirmative Action
Address: 8th and Johnson Streets
Winona, MN 56258
Phone: 507-457-2766

All communications, demands, notices, or objections permitted or required to be given or served under this Agreement shall be in writing and shall be deemed to have been duly given or served if delivered in person to the other party or its authorized agent or if deposited in the United States mail, postage prepaid, for mailing by certified or registered mail, return receipt requested, and addressed to the other party to this Agreement, to the address set forth above, or if to a party not a party to this Agreement, to the address designated by a party to this Agreement in the foregoing manner. Any party may change its address by giving notice in writing, stating its new address, to any other party as provided in the foregoing manner. Commencing on the 10th day after the giving of such notice, such newly designated address shall be such address for the purpose of all communications, demands, notices, or objections permitted or required to be given or served under this Agreement.

d. **No Partnership, Joint Venture, or Fiduciary Relationship.** Nothing contained in this Agreement shall be interpreted as creating a partnership, joint venture, or relationship of principal and agent between the Licensee and Licensor.

e. **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.

f. **Records—Availability and Retention.** Pursuant to Minn. Stat. § 16C.05, subd. 5, the Licensee agrees that the Licensor, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of the Licensee and involve transactions relating to this Agreement. The Licensee agrees to maintain these records for a period of six years from the date of termination of this Agreement.

g. **Cumulative Rights.** Except as otherwise expressly stated herein, no right or remedy herein conferred on or reserved to the Licensee or the Licensor is intended to be exclusive of any other right or remedy hereby provided by law, but each shall be cumulative in, and in addition to, every other right or remedy given herein or hereafter existing at law, in equity, or by statute.

h. **Compliance with Laws.** The Licensee 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 otherwise.

i. **Governing Law.** This 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 Agreement without regard to its choice of law or conflict of laws principles.

j. **Data Practices.** The parties acknowledge that data collected pertaining to this Agreement is subject to the requirements of Minnesota's Government Data Practices Act, Minnesota Statutes, Section 13.01 et seq.

k. **No Waiver.** Any party's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Agreement or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that party's right to assert or rely upon the terms and conditions of this Agreement. Any express waiver of a term of this Agreement shall not be binding and effective unless made in writing and properly executed by the waiving party.

l. **Severability.** The invalidity or unenforceability of any provision of this 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 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. **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 Agreement.

n. **Headings and Captions.** Headings and captions contained in this 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.

o. **Survivability.** All indemnities, guarantees, releases, representations and warranties by any party or parties, and any undischarged obligations of Licensee and Licensor arising prior to the expiration of this Agreement (whether by completion or earlier termination), shall survive such expiration.

[Remainder of page left intentionally blank]

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first above written.

ADDRESS:

P.O. Box 5838
Winona, MN 55987-5838

WINONA STATE UNIVERSITY

By: _____

Its: _____

Date: _____

VERIFIED AS AN ENCRUMBRANCE

By: _____

Its: Contract Administrator

ADDRESS:

City Hall
207 Lafayette Street
P.O. Box 378
Winona, MN 55987

CITY OF WINONA, MINNESOTA

By: _____

Its: City Manager

By: _____

Its: City Clerk

Date: _____

EXHIBIT A

Depiction of Licensed Premises

EXHIBIT A

LEVEE PARK DOCK LICENSE AGREEMENT

The City of Winona dock, being 72 feet in length, parallel to the river flow, and extending 45 feet into the river from the dock's anchoring point on the Levee front, which is 125 feet easterly of the centerline of Johnson Street if extended northerly.



This map was compiled from a variety of sources. This information is provided with the understanding that conclusions drawn from such information are solely the responsibility of the user. The GIS data is not a legal representation of any of the features depicted, and any assumptions of the legal status of this map is hereby disclaimed.

0 20 40 80 Feet

February 23, 2021

REQUEST FOR COUNCIL ACTION

Agenda Section: **Petitions, Requests,
Communications**

Originating Department:

Date

No: **3**

Parks & Recreation

04/05/21

Item: **Request for Drive-in Movie Series**

No. **3.4**

SUMMARY OF REQUESTED ACTION:

Treedome and the City would like to repeat their very successful Lake Park Drive-In Series again this summer. The City has applied for two grants to fund this series and was awarded a \$15,000 grant from the Minnesota State Arts Board, and a \$6,000 grant from the South Eastern Minnesota Arts Council.

The request of Council is to hold a series of eight outdoor concerts and movies with amplified sound at Lake Park – Bandshell Area. The movies will begin at 9:00 p.m. and end at approximately 11:00 p.m. The dates of the events are 5/29, 6/12, 6/25, 7/17, 7/24, 8/7, 8/28, and 9/11. The Department is seeking the approval to allow food trucks at these events should the COVID restrictions recede.

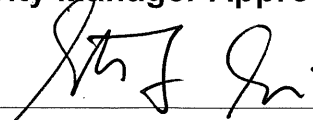
Staff has indicated to Treedome, that all MDH guidelines for outdoor events and drive-in style programming must be met. Staff has also indicated to Treedome that the City has the right to cancel any one or all events due to the safety of the public.

If City Council concurs, a motion to approve the request for the events at the Lake Park Bandshell Area would be in order.

Department Approval:



City Manager Approval:



REQUEST FOR COUNCIL ACTION

<i>Agenda Section:</i> Petitions, Requests, Communications	<i>Originating Department:</i> Parks and Recreation	<i>Date:</i> 04/05/21
<i>No:</i> 3		
<i>Item:</i> Winona Parks – Ash Tree Planning		
<i>No.</i> 3.5		


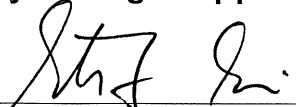
SUMMARY OF REQUESTED ACTION:

Howard Krueger will be in attendance to present a community project and fundraising effort to treat and replace ash trees within City Parks and other community locations. Below is a brief statement regarding the mission of the group:

We would work with the City Park Department and the City Forester to transition a city forest canopy of a heavily concentrated ash trees to a more diversified tree population. To lessen the abrupt deforesting of our parks, some trees would be removed by the City which are already dying or damaged from storms or planted in non-ideal locations (this process has already commenced). The Group would fundraise to continue to treat a portion of the ash trees and replant the removed trees with larger trees that are 3 to 5 inches in diameter. Planting larger trees would speed up the process of obtaining a tree canopy and reduce vandalism of those trees. The Friends of Winona Parks organization would work with the City Forester to eventually replace all the ash trees, unless a long-term inexpensive treatment of ash bore is developed.

Staff recommends accepting the offer to fundraise on behalf of the City, via the Community Foundation, for ash tree treatment and/or replacement of ash trees.

If Council concurs, a motion to approve the fund raising campaign would be in order.

Department Approval: 	City Manager Approval: 
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REQUEST FOR COUNCIL ACTION

Agenda Section: **Petitions, Requests,
Communications**

Originating Department:

Date:

No: 3

Parks and Recreation

04/05/21

Item: **West End Skatepark Proposal**

No. 3.6

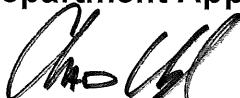
SUMMARY OF REQUESTED ACTION:

Zack Krage, owner and operator of Anthem Skatepark located within the West End Recreation Center will be in attendance to present a fundraiser proposal to Council.

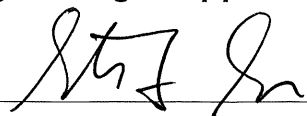
Staff recommends accepting the offer to fundraise on behalf of the City, for improvements at the West Recreation Center.

If Council concurs, a motion to approve the fund raising campaign would be in order.

Department Approval:



City Manager Approval:



REQUEST FOR COUNCIL ACTION

Agenda Section: **Petitions, Requests,
Communications**

Originating Department:

Date:

No: 3

Parks and Recreation

04/05/21

Item: **Great River Shakespeare Festival Request for the Use of Levee Park**

No. **3.1**

SUMMARY OF REQUESTED ACTION:

The Great River Shakespeare Festival has requested the use of a portion of Levee Park as an outdoor venue for their Festival in 2021. The area of Levee Park being requested is commonly known as the half patio and flood control drain area near the foot of Center Street (map attached within the license agreement as Exhibit A). The Festival will construct a stage over the top of the flood control drain area, to host performances. The Festival is requesting the use of the area from June 4 – August 6, 2021.

The attached license agreement would allow the Festival to use the areas described above for the duration of their Festival season, with a few exceptions due to prior bookings within Levee Park. Levee Park will remain open to the public during the term of the license agreement, however, the City has agreed to block other events that use amplified sound during the Festival's performance. A full schedule of Festival performance dates and times is contained within the agreement as Exhibit B.

Staff has reviewed the Festival's stage plan, COVID plan, and worked with the City Attorney to develop the license agreement and recommends approval of the attached license agreement.

If Council concurs a motion to direct staff to execute the agreement would be in order.

Department Approval:



City Manager Approval:

LICENSE AGREEMENT
GREAT RIVER SHAKESPEARE FESTIVAL

THIS LICENSE AGREEMENT (the "Agreement") is made this ____ day of _____, 2021, by and between the City of Winona, Minnesota, a municipal corporation under the laws of the State of Minnesota (the "Licensor" or "City"), and, Great River Shakespeare Festival, a nonprofit corporation under the laws of the State of Minnesota, (the "Licensee"); (collectively the "parties").

RECITALS:

WHEREAS, the Licensor is the owner of the Levee Park and Parking Lot #9 (the "Lot #9") located in the City of Winona, County of Winona, State of Minnesota; and

WHEREAS, the Licensee is a nonprofit corporation under the laws of the State of Minnesota; and

WHEREAS, the Licensee desires to hold an outdoor theatrical series of performances during the summer; and

WHEREAS, the Licensor is willing to permit such use, subject to the terms, covenants, and conditions contained herein.

NOW, THEREFORE, IT IS AGREED by and between the parties as follows:

1. **Grant of License and Description of Licensed Premises.** The Licensor is the owner of the Levee Park and Parking Lot #9 in the City of Winona (the "Licensed Premises" or "public areas"). The Licensee is hereby granted a terminable license to use the public areas to hold outdoor theatrical performances according to the specifications, which are attached hereto and incorporated herein by reference as Exhibit A. The Licensee shall use the specified public areas only for the purposes stated.
2. **License Term.** The term of this Agreement shall be: June 4, 2021 through August 6, 2021. This Agreement shall terminate: (a) at the expiration of the term stated herein; (b) at Licensor's option, upon the failure of the Licensee to comply with any material term or condition of this Agreement upon Ten (10) days' notice to Licensee; or c) by Licensor upon a showing by Licensor of good and sufficient reasons upon Ten (10) days' notice to the Licensee. For the purposes of this Agreement, "good and sufficient reasons" shall include, but not be limited to, changed circumstances affecting the purpose of this License Agreement or for reasons affecting the public interest or public health, safety or welfare.
3. **Purpose.** The schedule of performances, events and activities along with times for set up and take down before and after the date of each scheduled event/performance are set forth in Exhibit B. The following event/performance preparations are hereby approved by the

Licensors:

- a. Allow construction of stage on Flood Control Drain based on City approval of the design and location;
 - b. Allow limited use of Parking Lot #9 for parking;
 - c. Allow amplified sound during performances; and
 - d. For theatrical performances.
4. **Permits and Inspections.** The Licensee agrees to obtain the permits and pay the permit fees as may be required by the City and other governing bodies. This Agreement does not exempt the Licensee or any participants or spectators from observing all ordinances, especially those pertaining to noise and the consumption of intoxicating liquor or 3.2% malt beverages. Inspections shall be made by staff of Licensee to ensure compliance with all applicable local laws and state statutes.
5. **Portable Restrooms.** The location of all portable restrooms shall be approved by the Public Works Department. The restrooms shall be properly maintained and serviced, as needed.
6. **Use of Licensed Premises.** Subject to the other terms and provisions contained herein, the Licensee shall be permitted to use the Licensed Premises only for the limited purpose stated above. Events/performances may be canceled without notice to the Licensors, but no events/performances may be added or changed to a time and date not listed herein or on the attached Exhibit B without the Licensors' consent following reasonable notice of the added or rescheduled event(s)/performance(s). During the term of this License, the Licensee shall comply with all applicable laws, regulations, conditions, and covenants affecting the Licensed Premises, whether federal, state, local, or contractual. The Licensee shall not commit or allow to be committed any waste on, destruction of, or damage to, or nuisance on the Licensed Premises during Licensee's use thereof. In addition, the Licensee shall be responsible for cleaning the Licensed Premises to the satisfaction of the City at the close of each event/performance. The Licensee shall restore the Licensed Premises to its original condition at the inception of this License Agreement upon termination of this Agreement. Should the Licensee fail to restore the Licensed Premises to its original condition, the Licensors shall do so and the Licensee shall pay to the Licensors the cost of restoring the Licensed Premises to the condition herein stated, payment to be made within 30 days from the date of written notice given by Licensors to the Licensee of the amount of such costs.
7. **Assignment or Transfer of License.** Licensee shall have no right to assign its interest in this License Agreement without the prior written consent of Licensors. The Licensee, however, may license and sublet portions of the Licensed Premises to licensees, vendors and participants in the events/performances, provided that the substance of this Agreement is carried forward into any agreements with licensees and vendors.
8. **Maintenance/Alteration of Licensed Premises.** During the events/performances, the

Licensee shall keep the Licensed Premises in a sanitary condition and keep the Licensed Premises free from refuse. The Licensee shall instruct all vendors about recycling requirements and the location of receptacles for the collection of recyclables. The Licensee shall be responsible for the repair of any damages to the Licensed Premises resulting from its use thereof pursuant to this Agreement. The Licensee shall not be permitted to make any alterations to the Licensed Premises without the prior written consent of the Licensor. On termination of this Agreement, the Licensee shall, at the Licensee's expense, restore the Licensed Premises to the condition they were originally in at the inception of this Agreement, excepting reasonable wear and tear.

9. **Licensor's Right of Entry.** The Licensor, its employees, and its agents shall have the right to enter the Licensed Premises at all times for all reasonable purposes, including, without limitation, enforcing all applicable laws, regulations and/or ordinances, keeping the peace, and inspecting, cleaning, repairing, altering, or improving the Licensed Premises. Nothing in this Agreement shall be interpreted as requiring the Licensor to perform any such acts independent of the requirements of the other provisions of this Agreement.

10. **Insurance and Hold Harmless Provisions.**

- a. **Hold Harmless Agreement.** The Licensee assumes and agrees to pay for all loss or damage to property whatsoever and injury to or death of any person or persons whomsoever, including all costs and expenses incident thereto, however arising from or in connection with the existence, construction and maintenance or use of the Licensed Premises or any facilities used by the Licensee in connection with the events/performances. The Licensee shall indemnify the City against and agree to save it harmless from any and all claims, demands, lawsuits, or liability for, and such loss or damage, injury, death, and costs and expenses incident thereto. The indemnification provisions of this Section shall not apply to damages or other losses proximately caused by or resulting from the negligence or willful misconduct of the Licensor. All indemnification obligations shall survive termination, expiration or cancellation of this Agreement.

This clause shall not be interpreted to release any vendor or operator from the requirement to provide insurance and certificates of insurance to the Licensor as provided below, before set-up of operations will be allowed.

- b. **Liability Insurance Coverage.** The Licensee shall, at their expense, maintain in effect liability insurance with limits not less than the maximum liability limits for a municipality as provided in Minnesota Statutes, Section 466.04; the City of Winona shall be named insured. Such insurance policies shall cover all losses related to the events/performances, including set-up and take-down. The Certificate of Liability Insurance must specify that all licensees, vendors and participants in the market are covered by the required insurance policies, and shall name the Licensor as additional insureds. The insurance policy and certificate

shall not be canceled or its conditions altered in any manner without ten (10) days prior written notice to the City Manager of the City of Winona. The insuring company shall deliver to the City Clerk, certificates of all insurance required, signed by an authorized representative and stating that all provisions of the specified requirements are satisfied.

- c. Licensee shall require that all vendors and operators are covered by general liability coverage and that the Licenser has been named as an additional insured. No vendor or operator shall be allowed to set-up operations until the Licensee has verified that the vendor or operator has the required general liability insurance coverage.

11. **Condition of Licensed Premises.** Licensee acknowledges that it has inspected the Licensed Premises and accepts the same in an “as is” condition. The Licenser does not warrant that the Licensed Premises is suitable for the purposes for which it is permitted to be used under this License. The Licenser shall have no responsibility with regard to any failure of or damage to Licensee’s improvements within the Licensed Premises, if any. Licensee understands and acknowledges that this License grants it only a terminable license to use the Licensed Premises, and does not confer any permanent property rights with respect to the Licensed Premises or any improvements to be constructed thereon upon Licensee.
12. **License Fee.** The Licensee shall be required to pay a license fee for use of the Licensed Premises in the amount of \$2,053.79.
13. **Cost of Electricity.** The Licensee will be responsible for paying for the costs of electricity used in conjunction with each event/performance.
14. **COVID Requirements.** The Licensee shall submit a COVID plan that follows Federal, State, and Local rules and regulations. The Licensee’s COVID plan shall display how event/performance staff shall follow State regulation and crowd limits for events/performances. The Licenser shall have the right to stop any events/performances from occurring or terminate this Agreement due to COVID concerns.
15. **Traffic and Crowd Control.** The Licensee shall be responsible for establishing an adequate traffic and crowd control system. This system must be coordinated with and approved by the Police and Fire Departments. Every effort must be made by the Licensee to prevent parking in prohibited areas.
16. **Signage/Banners.** The Licensee is allowed to place signage prior to all events/performances to help with traffic and crowd and must remove all such signage immediately following events/performances.
17. **Removal of Equipment and Portable Restrooms.** All equipment (besides temporary performance stage) shall be removed at the close of each event/performance no later than

10:00 p.m. on the day after each event/performance. The portable restrooms, dumpster, stage, and/or tents used by the Licensee shall be removed from the Licensed Premises no later than Monday, August 9, 2021. The Licensee shall clean the area after the close of each event/performance. Representatives from the City and the Licensee shall inspect all public areas at the close of each event/performance to ensure compliance herewith.

18. **Contact Information.** The Licensee shall designate the contact persons responsible for the various areas or activities of the events/performances and provide the City with the names and phone numbers of the contact persons.

19. **General Terms.**

- a. **Recitals and Exhibits.** The recitals and exhibits hereto are made a part hereof and incorporated herein by reference.
- b. **Voluntary and Knowing Action.** The parties, by executing this Agreement, state that they have carefully read this Agreement and understand fully the contents thereof; that in executing this Agreement they voluntarily accept all terms described in this Agreement without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound thereby.
- c. **Authorized Signatories.** The parties each represent and warrant to the other that (1) the persons signing this Agreement are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Agreement against it; each party indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.
- d. **Notices.** The parties' representatives for notification for all purposes are:

LICENSOR:

Chad Ubl
Director of Community Services
PO Box 378
Winona, MN 55987
Phone: 507-457-8258
Email: cubl@ci.winona.mn.us

LICENSEE:

Aaron Young
Managing Director – Great River Shakespeare Festival
121 E. 3rd Street,
Winona, MN 55987

Phone: 507-474-9372

Email: _____

- e. **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.
- f. **No Partnership, Joint Venture, or Fiduciary Relationship.** Nothing contained in this Agreement shall be interpreted as creating a partnership, joint venture, or relationship of principal and agent between the parties.
- g. **Records—Availability and Retention.** Pursuant to Minn. Stat. § 16C.05, subd. 5, the Licensee agrees that the Licensor, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of the Licensee and involve transactions relating to this Agreement. The Licensee agrees to maintain these records for a period of six years from the date of termination of this Agreement.
- h. **Force Majeure.** The parties shall each be excused from performance under this Agreement while and to the extent that either of them are unable to perform, for any cause beyond its reasonable control. Such causes shall include, but not be restricted to fire, storm, flood, earthquake, explosion, war, total or partial failure of transportation or delivery facilities, raw materials or supplies, interruption of utilities or power, and any act of government or military authority. In the event either party is rendered unable wholly or in part by force majeure to carry out its obligations under this Agreement then the party affected by force majeure shall give written notice with explanation to the other party immediately.
- i. **Cumulative Rights.** Except as otherwise expressly stated herein, no right or remedy herein conferred on or reserved to the Licensee or the Licensor is intended to be exclusive of any other right or remedy hereby provided by law, but each shall be cumulative in, and in addition to, every other right or remedy given herein or hereafter existing at law, in equity, or by statute.
- j. **Compliance with Laws.** The Licensee and its sublicensees, vendors, operators and other participants in the market 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 the Licensee is responsible.
- k. **Interest by City Officials.** No elected official, officer, or employee of the

Licensors shall during his or her tenure or employment and for one year thereafter, have any interest, direct or indirect, in this Agreement or the proceeds thereof.

- l. **Governing Law.** This 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 the Agreement without regard to its choice of law or conflict of laws principles.
- m. **Data Practices.** The parties acknowledge that this Agreement is subject to the requirements of Minnesota's Government Data Practices Act, Minnesota Statutes, Section 13.01 et seq.
- n. **No Waiver.** Any party's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Agreement or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that party's right to assert or rely upon the terms and conditions of this Agreement. Any express waiver of a term of this Agreement shall not be binding and effective unless made in writing and properly executed by the waiving party.
- o. **Severability.** The invalidity or unenforceability of any provision of this 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 Agreement shall be construed and enforced as if the Agreement did not contain that particular provision to the extent of its invalidity or unenforceability.
- p. **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 Agreement.
- q. **Headings and Captions.** Headings and captions contained in this 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.
- r. **Survivability.** All covenants, indemnities, guarantees, relicenses, representations and warranties by any party or parties, and any undischarged obligations of the Licensor and the Licensee arising prior to the expiration of this Agreement (whether by completion or earlier termination), shall survive such expiration.
- s. **Execution.** This 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 blank intentionally.]

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

GREAT RIVER SHAKESPEARE FESTIVAL

By: _____

Its: _____

And By: _____

Its: _____

CITY OF WINONA

By: _____

Stephen T. Sarvi
Its: City Manager

And By: _____

Monica Hennessy Mohan
Its: City Clerk

EXHIBIT A

Depiction of Licensed Premises

2021 GRSF EVENT AT LEVEE PARK LICENSE AGREEMENT AREA



This map was compiled from a variety of sources. This information is provided with the understanding that conclusions drawn from such information are solely the responsibility of the user. The GIS data is not a legal representation of any of the features depicted, and any assumptions of the legal status of this map is hereby disclaimed.

0 80 160 320
Feet

EXHIBIT B

Scheduled Performances – Dates and Times

Exhibit B

Schedule of Performances

Wednesday, June 23, 6-9 p.m. - The Tempest (preview performance)

Thursday, June 24, 6-9 p.m. - Great Expectations (preview performance)

Friday, June 25, 6-9 p.m. - The Tempest (opening night)

Sunday, June 27, 6-9 p.m. - Great Expectations (opening night)

Tuesday, June 29, 6-9 p.m. - The Tempest

Wednesday, June 30, 6-9 p.m. - Great Expectations

Thursday, July 1, 6-9 p.m. - The Tempest

Friday, July 2, 6-9 p.m. - Great Expectations

Saturday, July 3, 6-9 p.m. - The Tempest

Sunday, July 4, 11 a.m.-2 p.m. - Great Expectations

Tuesday, July 6, 6-9 p.m. - Great Expectations

Wednesday, July 7, 6-9 p.m. - The Tempest

Thursday, July 8, 6-9 p.m. - Great Expectations

Friday, July 9, 6-9 p.m. - The Tempest

Saturday, July 10, 11 a.m.-2 p.m. - The Tempest

Saturday, July 10, 6-9 p.m. - Great Expectations

Sunday, July 11, 6-9 p.m. - The Tempest

Tuesday, July 13, 6-9 p.m. - The Tempest

Wednesday, July 14, 6-9 p.m. - Great Expectations

Thursday, July 15, 6-9 p.m. - The Tempest

Friday, July 16, 6-9 p.m. - Great Expectations

Saturday, July 17, 11 a.m.-2 p.m. - Great Expectations

Saturday, July 17, 6-9 p.m. - The Tempest

Sunday, July 18, 6-9 p.m. - Great Expectations

Tuesday, July 20, 6-9 p.m. - Great Expectations

Wednesday, July 21, 6-9 p.m. - The Tempest

Thursday, July 22, 6-9 p.m. - Great Expectations

Friday, July 23, 6-9 p.m. - The Tempest

Saturday, July 24, 11 a.m. - 2 p.m. - Hold for possible rain date if a show is cancelled earlier in the season

Saturday, July 24, 6-9 p.m. - Great Expectations

Sunday, July 25, 6-9 p.m. - The Tempest

Tuesday, July 27, 6-9 p.m. - The Tempest

Wednesday, July 28, 6-9 p.m. - Great Expectations

Thursday, July 29, 6-9 p.m. - The Tempest

Friday, July 30, 6-9 p.m. - Callithump (variety show/fundraiser)

Saturday, July 31, 11 a.m. - 2 p.m. - Hold for possible rain date if a show is cancelled earlier in the season

Saturday, July 31, 6-9 p.m. - Great Expectations (closing performance)

Sunday, August 1, 6-9 p.m. - The Tempest (closing performance)

REQUEST FOR COUNCIL ACTION

<i>Agenda Section:</i> Petitions, Requests, Communications	<i>Originating Department:</i>	<i>Date:</i>
<i>No:</i> 3	City Clerk	04/05/21
<i>Item:</i> Proposal for a Downtown Parklette		
<i>No.</i> 3.8		

SUMMARY OF REQUESTED ACTION:

Location:

76/78 East 3rd Street

A 9'x22' section of 3rd street just in front of the public bench that is on the NW corner of Lafayette and 3rd Street in the yellow section of the street. (Size is approximately the equivalent of one downtown parallel parking space.)

Project Description:

I would like to make use of the space in front of this bench as a complimentary public space. I would like to see the public gather, meet, and engage in this space. The outcome of the 2019 Artists on Main Street project was very positive. Many downtown residents and workers and the general public used the space in a variety of ways. To have lunch, to bring their children for picnics, public performances, and even tourists used it to take photographs and gather together. I would like to recreate this project through self-funding.

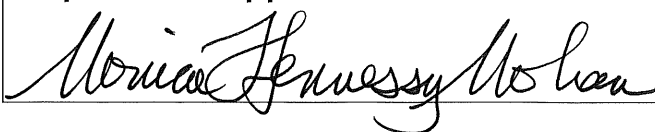
The space will have a green Astroturf "rug" to set a tone of a grassy area, approximately 9x22 feet' in size, again, the size of a standard parallel parking space. On each short side of the space a 6 foot long bench made of cinder blocks and 4x4 cedar posts. (please see attached photo of the 2019 project and schematic for current proposal). On the long side of the space (nearest to traffic) would be 3 large wooden parklette planters that would be filled with plantings and signage that would provide a project statement and indigenous peoples' land acknowledgement this will read as follows:

"Welcome to this gathering place. This space was made to bring people together to greet one another, share stories, and build community. I recognize the land that this space is situated on is on the ancestral lands of the Dakota people. I acknowledge and honor the Dakota Nations and the sacred land of all indigenous people." - Project Plackmaker, Jovy Rockey. I have already spoken to the planning department and city engineer to ensure that this project would be a fit for downtown and to ensure coordination with the city for annual repainting of the yellow curb. I also have the City of Winona covered as the additionally insured under my policy.

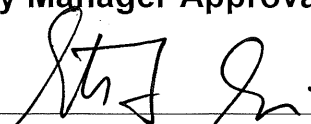
My request is for Council to approve the project for a semi permanent installation May 2021 through October 2021.

Jovy Rockey
78 East 3rd Street Winona, MN
507-313-4037

Department Approval:



City Manager Approval:



Street

Planter

Planter

Planter

Bench

Bench

Existing City Bench

REQUEST FOR COUNCIL ACTION

Agenda Section: **Petitions, Requests,
Communications**

Originating Department:

Date:

No: 3

City Clerk

04/05/21

Item: **Request to Hold Parade by Lake Winona Manor**

No. 3.9

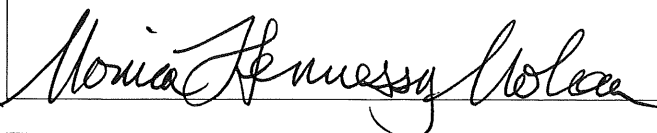
SUMMARY OF REQUESTED ACTION:

Winona City Council Members

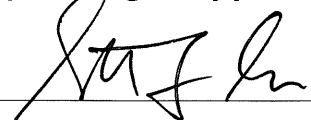
On behalf of Lake Winona Manor and the Therapeutic Recreation Department, we are requesting to host a parade June 15 from 1:00 p.m. – 4:00 p.m. on the Winona Health Campus for the residents of Lake Winona Manor. We are connecting with many people throughout the community to be a part of the parade, including horses to be apart and will dispose of all droppings appropriately. We are asking to park employee vehicles on one side of Lake Park Road, allowing vehicles to still pass through during the day of June 15. If you have any questions or concerns, please contact Jennifer Schultz at 494-5725. Thank you for your time.

Jennifer Schultz
Winona Health
jeschultz@winonahealth.org

Department Approval:



City Manager Approval:



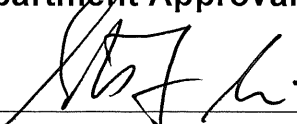
REQUEST FOR COUNCIL ACTION

<i>Agenda Section:</i> Petitions, Requests, Communications	<i>Originating Department:</i>	<i>Date:</i>
<i>No:</i> 3	City Manager	04/05/21
<i>Item:</i> Resolution of Support for the 2nd Daily Train		
<i>No.</i> 3.10		

SUMMARY OF REQUESTED ACTION:

Mayor Sherman requests that the Council consider adopting the attached resolution showing the City's support of the 2nd daily train. If the Council concurs, a motion to approve the resolution would be in order.

Department Approval:



City Manager Approval:

RESOLUTION

WHEREAS, the Minnesota Department of Transportation State Rail Plan includes a proposed 2nd Daily Passenger Train frequency (2nd train) between the Twin Cities and Chicago for which design planning is completed. This new service between the Twin Cities, Milwaukee and Chicago utilizes the current route of Amtrak's Empire Builder at speeds up to 79 miles an hour; and

WHEREAS, the State of Minnesota was awarded a Consolidated Rail Infrastructure and Safety Improvement (CRISI) grant in 2020 totaling \$31.8M for infrastructure improvements along the existing freight railroad's right of way to enable the 2nd train; and

WHEREAS, the State of Minnesota needs to provide \$10M in matching funds to receive the CRISI grant; and

WHEREAS, \$19.3M of these funds will be invested in Winona for infrastructure railroad improvements that will not only enable the 2nd train but improve freight operations (See Addendum 1 for full description of proposed improvements in Winona):

Rebuild siding, switches and signaling, and reconstruct 8 grade crossings: \$10.2 million
Tower CK, track, switches, and junction rebuild: \$9.1 million.

WHEREAS, freight railroads will benefit from the capital investment needed for the 2nd train, enabling greater freight train speeds, reducing railroad congestion, and providing significant improvements at eight grade crossings within the city making auto and truck travel safer; and

WHEREAS, the City of La Crescent will also realize freight rail infrastructure spending of \$20.9M in track and signal work reducing rail traffic congestion, for a total infrastructure spend of \$40.2M in our region creating many good paying jobs; and

WHEREAS, Winona residents are mainly reliant upon highways today for travel and the 2nd train would expand transportation options and access to 13 stations along for the route for our residents who cannot or don't want to drive or fly; and

WHEREAS, approximately 41% of college students in Winona have already used Amtrak train service, the 2nd train would greatly enhance travel options for students at Winona State University and Saint Mary's University; and

WHEREAS, the 2nd train would greatly benefit visitors and tourism for Winona, for such venues as the Great River Shakespeare Festival, Marine Art Museum, and bicycle tourism; and

WHEREAS, the 2nd train would offer greater reliability to points east than Amtrak's Empire Builder which originates its eastbound trip from the west coast, and offer greater frequency and travel choices for our residents; and

WHEREAS, the 2nd train will benefit Minnesota's economy by an estimated \$25M annually, by supporting and increasing jobs, tourism, and creating a more economical travel choice; and

WHEREAS, many states in the mid-west and around the country are investing in more passenger rail service as they realize the economic and mobility benefits of such services. Some of these states include but are not limited to: Wisconsin, Illinois, Michigan, Missouri, Ohio, Virginia, California, Oregon, Maine, North Carolina;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Winona Minnesota, that it hereby supports funding the proposed 2nd Passenger Train Frequency between the Twin Cities and Chicago, and requests that the Minnesota Legislature approve a minimum of \$10M to provide matching funds to secure the CRISI Grant Award as described above.

Dated this _____ day of _____, 2021.

Scott D. Sherman
Mayor

Attest:

Monica Hennessy Mohan
City Clerk

Addendum 1 - Winona project description. Source – CRISI Grant Application

Improvement	Location	Improvement Description	Details
Winona Siding	Winona, MN	Upgrade existing siding track and the installation of power switches and signals to allow more efficient train meets and the ability to clear the main track more quickly and efficiently. Additional work includes the rehabilitation of over two miles of siding track, installation of two new turnouts, railroad signals and communications infrastructure.	Rehabilitation of 11,852 track-feet of existing siding track 2 new turnouts New signals and communications
Tower CK	Winona, MN	Construct a new siding track connecting the main track to the CPR Waseca Subdivision over a half-mile to the east, power switches, and signals to allow more efficient train meets. This allows the main track to be cleared more quickly and efficiently, for freight trains to operate through Winona when Empire Builder and TCMC trains are making stops at the Winona station, and subsequently alleviate congestion west of Winona Depot.	Removal of 826 track-feet 3,260 track feet of new track Reconstruction of Bierce Street at-grade crossing (MP 310.11) 4 new turnouts New signals and communications

REQUEST FOR COUNCIL ACTION

Agenda Section: **New Business**

Originating Department:

Date

No: **5**

Public Works

4/5/21

Item: **Facilities Plan for Wastewater Treatment Plant**

No. **5.1**

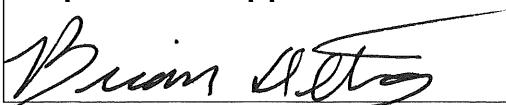
SUMMARY OF REQUESTED ACTION:

The City of Winona has been informed by the Minnesota Pollution Control Agency (MPCA) that there will be a phosphorus limit that will be imposed on the effluent from the Wastewater Treatment Plant (WWTP) by 2028. The first step in meeting this mandate will be creating and implementing a Facilities Plan for the WWTP. This facilities plan will determine which methods will be most effective for the removal of phosphorus which will in turn determine upgrades and improvements for the WWTP for phosphorus removal as well as other areas that may need to be improved. These improvements are anticipated to have a large cost associated with it, so the report will also explore grant and loan opportunities. Accompanying the report will also be a rate study so that the Sanitary Sewer Utility is able to pay for costs that would be over any grant monies received. This rate study would also provide a cost comparison of similar city's sewer rates.

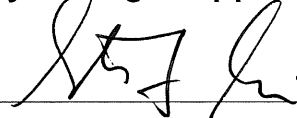
The result of this facilities plan is anticipated to be presented at a public hearing in July or August and then the Council would vote on the facilities plan following this hearing. SEH Engineering has a proposed cost for this report of \$88,610 and this includes the rate study in this plan. The contract is attached for your review. These costs would be paid out of the Sanitary Sewer Utility.

City Staff recommends approval of the proposal for this Facilities Plan for the WWTP. If the Council concurs approval of the attached resolution would be in order.

Department Approval:



City Manager Approval:



RESOLUTION

WHEREAS, A phosphorus effluent limit mandate will be imposed on the City of Winona Wastewater Treatment Plant (WWTP); and

WHEREAS, a Facilities Plan for the WWTP is needed to determine improvements to the WWTP; and

WHEREAS, SEH Engineering has provided a proposal to produce this facilities plan.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Winona, Minnesota, that the proposal dated February 2, 2021 be accepted and enter into a contract between the City of Winona and SEH Engineering and the Mayor and City Clerk are authorized to sign the contract.

Dated this _____ day of _____, 2021.

Scott Sherman
Mayor

Attest:

Monica Hennessy Mohan
City Clerk

CONSULTANT SERVICE CONTRACT

This Contract is made this ___ day of _____, 2021, by and between the CITY OF WINONA, a Minnesota municipal corporation, 207 Lafayette Street, Winona, Minnesota 55987, (“CITY”), and Short Elliott Hendrickson Inc., a corporation under the laws of the State of Minnesota, 3535 Vadnais Heights Drive, St. Paul, Minnesota 55110 (“CONSULTANT”); (collectively the “PARTIES”).

WHEREAS, CITY requires certain professional services in conjunction with a Wastewater Cost of Service Rate Study (the “Project”); and

WHEREAS, CONSULTANT agrees to furnish the various professional services required by CITY.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the Parties agree as follows:

SECTION I – CONSULTANT'S SERVICES AND RESPONSIBILITIES

- A. **Scope of Services.** CONSULTANT agrees to perform various Project services as detailed in Exhibit 1, Scope of Services, attached hereto and incorporated herein by reference.
- B. **Changes to Scope of Services/Additional Services.** Upon mutual agreement of the PARTIES hereto pursuant to Section VI, Paragraph J of this Contract, a change to the scope of services detailed in Exhibit 1, attached hereto, may be authorized. In the event that such a change to the scope of services detailed in Exhibit 1, attached hereto, requires additional services by CONSULTANT, CONSULTANT shall be entitled to additional compensation consistent with Section III of this Contract. CONSULTANT shall give notice to CITY of any additional services prior to furnishing such additional services. CITY may request an estimate of additional cost from CONSULTANT, and upon receipt of the request, CONSULTANT shall furnish such cost estimate, prior to CITY’s authorization of the changed scope of services.
- C. **Changed Conditions.** If CONSULTANT determines that any services it has been directed or requested to perform by CITY are beyond the scope of services detailed in Exhibit 1, attached hereto, or that, due to changed conditions or changes in the method or manner of administration of the Project, CONSULTANT’s effort required to perform its services under this Contract exceeds the estimate which formed the basis for CONSULTANT’s compensation, CONSULTANT shall promptly notify CITY of that fact. Upon mutual agreement of the PARTIES hereto pursuant to Section VI, Paragraph J of this Contract, additional compensation for such services, and/or an extension of time for completion thereof, may be authorized. In the absence of such a mutual agreement, amounts of compensation and time for completion shall be equitably adjusted, provided that CONSULTANT first provides notice to CITY as required by this Paragraph and

CITY has not terminated this Contract pursuant to Section IV, Paragraph B.

- D. **Standard of Care.** Services provided by CONSULTANT or its subcontractors and/or sub-consultants under this Contract will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of CONSULTANT's profession at the same time and same location. CONSULTANT shall be liable to the fullest extent permitted under applicable law, without limitation, for any injuries, loss, or damages proximately caused by CONSULTANT's breach of this standard of care. CONSULTANT shall put forth reasonable efforts to complete its duties in a timely manner. CONSULTANT shall not be responsible for delays caused by factors beyond its control or that could not be reasonably foreseen at the time of execution of this Contract. CONSULTANT shall be responsible for costs, delays or damages arising from unreasonable delays in the performance of its duties.
- E. **Insurance.** CONSULTANT shall not commence work under this Contract until CONSULTANT has obtained all insurance required herein and such insurance has been approved by CITY, nor shall CONSULTANT allow any subcontractor to commence work on a subcontract until such subcontractor has obtained like insurance covering as to worker's compensation, liability, and automobile insurance. All this insurance coverage shall be maintained throughout the life of this Contract.
1. CONSULTANT agrees to procure and maintain, at CONSULTANT's expense, statutory Workers' Compensation coverage. Except as provided below, CONSULTANT must provide Workers' Compensation insurance for all its employees. If Minnesota Statutes, section 176.041 exempts CONSULTANT from Workers' Compensation insurance or if CONSULTANT has no employees in the City, CONSULTANT must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes CONSULTANT from the Minnesota Workers' Compensation requirements. If during the course of the Contract CONSULTANT becomes eligible for Workers' Compensation, CONSULTANT must comply with the Workers' Compensation insurance requirements herein and provide CITY with a certificate of insurance.
 2. CONSULTANT agrees to procure and maintain, at CONSULTANT's expense, Commercial General Liability ("CGL") and business automobile liability insurance coverages insuring CONSULTANT against claims for bodily injury or death, or for damage to property, including loss of use, which may arise out of operations by CONSULTANT or by any subcontractor or by anyone employed by any of them or by anyone for whose acts any of them are liable (including automobile use). The following coverages shall, at a minimum, be included in the CGL insurance: Premises and Operations Bodily Injury and Property Damage, Personal and Advertising Injury, Blanket Contractual Liability, and Products and Ongoing and Completed Operations Liability. The required automobile liability coverage must include coverage for "any auto" which extends coverage to owned autos, non-owned autos, and hired autos. Such insurance shall include, but not be limited to, minimum coverages and limits of liability specified in this Paragraph,

or required by law. CITY shall have additional insured status and be listed by name on an endorsement attached to such policy(ies) for the services provided under this Contract and shall provide that CONSULTANT's coverage shall be primary and noncontributory in the event of a loss. To meet the Commercial General Liability requirements, CONSULTANT may use a combination of underlying coverage and Excess and Umbrella coverage

3. CONSULTANT agrees to procure and maintain, at CONSULTANT's expense, the following insurance policies, including the minimum coverages and limits of liability specified below, or as specified in the applicable insurance certificate(s), or as required by law, whichever is greater:

Worker's Compensation	Statutory Limits
Employer's Liability	\$500,000 bodily injury by accident \$500,000 bodily injury by disease aggregate \$500,000 bodily injury by disease per employee
Commercial General Liability	\$2,000,000 property damage and bodily injury per occurrence \$4,000,000 annual aggregate \$2,000,000 annual aggregate Products – Completed Operations
Automobile Liability	\$1,000,000 per occurrence combined single limit for Bodily Injury and Property Damage (shall include coverage for all owned, hired and non-owned vehicles)
Umbrella or Excess Liability	\$1,000,000

4. Professional/Technical (Errors and Omissions) Liability Insurance.
CONSULTANT agrees to procure and maintain, at CONSULTANT's expense, Professional/Technical (Errors and Omissions) Liability Insurance. The required policy will provide coverage for all claims CONSULTANT may become legally obligated to pay resulting from any actual negligent act, error, or omission related to CONSULTANT's professional services required under the contract.
CONSULTANT is required to carry the following minimum limits: \$2,000,000 – per wrongful act or occurrence; \$4,000,000 – annual aggregate; or as specified in the applicable insurance certificate(s), or as required by law, whichever is greater. Any deductible will be the sole responsibility of CONSULTANT. The retroactive or prior acts date of such coverage shall not be after the effective date of this contract and CONSULTANT shall maintain such insurance for a period of at least

three (3) years, following completion of the work. If such insurance is discontinued, extended reporting period coverage must be obtained by CONSULTANT to fulfill this requirement.

5. True, accurate and current certificates of insurance, showing evidence of the required insurance coverages, are hereby provided to CITY by CONSULTANT and are attached hereto as Exhibit 2.
6. Any insurance limits in excess of the minimum limits specified herein above shall be available to CITY.
7. CONSULTANT's insurance policies and certificate(s) shall not be cancelled without at least thirty (30) days' advance written notice to CITY, or Ten (10) days' prior written notice to CITY for nonpayment of premium.
8. CONSULTANT's policies shall be primary insurance and noncontributory to any other valid and collectible insurance available to CITY with respect to any claim arising out of CONSULTANT's performance under this Contract.
9. CONSULTANT is responsible for payment of Contract related insurance premiums and deductibles. If CONSULTANT is self-insured, a Certificate of Self-Insurance must be attached.
10. CONSULTANT shall ensure that all subcontractors comply with the insurance provisions contained in this Contract and such insurance is maintained as specified.
11. CONSULTANT's policies shall include legal defense fees in addition to its liability policy limits, with the exception of the professional liability insurance and technology errors and omissions insurance, if applicable.
12. All policies listed above, except professional liability insurance (or other coverage not reasonably available on an occurrence basis), shall be written on a per "occurrence" basis ("claims made" and "modified occurrence" forms are not acceptable) and shall apply on a "per project" basis.
13. CONSULTANT shall obtain insurance policies from insurance companies having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the State of Minnesota, or as approved by CITY.
14. Notwithstanding the foregoing, CITY reserves the right to immediately terminate this Contract if CONSULTANT is not in compliance with the insurance requirements contained herein and retains all rights to pursue any legal remedies against CONSULTANT.

SECTION II – CITY’S RESPONSIBILITIES

- A. CITY shall promptly compensate CONSULTANT as services are performed to the satisfaction of the CITY’s Director of Public Works, in accordance with Section III of this Contract.
- B. CITY shall provide access to any and all previously acquired information relevant to the scope of services detailed in Exhibit 1, attached hereto, in its custody to CONSULTANT for its use, at CONSULTANT’s request.
- C. CITY will, to the fullest extent possible, grant access to and make all provisions for entry upon both public and private property as necessary for CONSULTANT’s performance of the services detailed in Exhibit 1, attached hereto.
- D. Brian Defrang, CITY’s Director of Public Works, shall serve as the liaison person to act as CITY’s representative with respect to services to be rendered under this Contract. Said representative shall have the authority to transmit instructions, receive instructions, receive information, interpret and define CITY’s policies with respect to the Project and CONSULTANT’s services. Such person shall be the primary contact person between CITY and CONSULTANT with respect to the services from CONSULTANT under this Contract. CITY reserves the right to substitute the authorized contact person at any time and shall notify CONSULTANT thereof.

SECTION III – CONSIDERATION

- A. **Fees.** CITY will compensate CONSULTANT as detailed in Exhibit 3, Compensation, which is attached hereto and incorporated herein by reference, for CONSULTANT’s performance of services under this Contract.
- B. If CITY fails to make any payment due CONSULTANT for services performed to the satisfaction of the CITY’s Director of Public Works and expenses within thirty days after the date of CONSULTANT’s invoice, CONSULTANT may, after giving seven days written notice to CITY, and without waiving any claim or right against CITY and without incurring liability whatsoever to CITY, suspend services and withhold project deliverables due under this Contract until CONSULTANT has been paid in full all amounts due for services, expenses and charges.

SECTION IV – TERM AND TERMINATION

- A. **Term.** This Contract shall be in effect until such time as the Project is completed, or as otherwise provided in this Contract, whichever comes first.
- B. **Termination.** This Contract may be terminated by either PARTY for any reason or for convenience by either PARTY upon Seven (7) days written notice. In the event of termination, CITY shall be obligated to CONSULTANT for payment of amounts due and owing including payment for services performed or furnished to the date and time of

termination, computed in accordance with Section III of this Contract.

- C. **Default.** If CONSULTANT fails to satisfy any of the provisions of this Contract, or so fails to perform and/or administer the services detailed in Exhibit 1, attached hereto, pursuant to the requirements of Section I of this Contract, in such a manner as to endanger the performance of the Contract or the services provided hereunder, this shall constitute default. Unless CONSULTANT's default is excused by CITY, CITY may, upon written notice, immediately cancel this Contract or exercise any other rights or remedies available to CITY under this Contract or law. In the event of CONSULTANT's default, CONSULTANT shall be liable to CITY for any and all costs, disbursements, attorneys and consultant fees reasonably incurred by CITY in enforcing this Contract.
- D. **Suspension of Work.** If any work performed by CONSULTANT is abandoned or suspended in whole or in part by CITY, CONSULTANT shall be paid for any services performed to the satisfaction of the CITY's Director of Public Works prior to CONSULTANT's receipt of written notice from CITY of such abandonment or suspension, but in no event shall the total of CITY's payments to CONSULTANT under this Contract be required to exceed a percentage of the total contract price (calculated by either the Contract price or the maximum price set forth in Exhibit 3, attached hereto) equivalent to the percentage of the scope of services completed by CONSULTANT to the satisfaction of the CITY's Director of Public Works as determined by CITY.

SECTION V – INDEMNIFICATION

- A. CONSULTANT shall indemnify, protect, save, and hold harmless CITY, and its respective officers, directors, employees and members and agents, from and against any claims, liability, damages, costs, judgments, or expenses, including reasonable attorney's fees, to the extent attributable to or caused by the negligent or otherwise wrongful acts or omissions, including breach of a specific contractual duty, of CONSULTANT or CONSULTANT's independent contractors, subcontractors, agents, employees, vendors or delegates with respect to this Contract or the Project. CONSULTANT shall defend CITY against the foregoing, or litigation in connection with the foregoing, at CONSULTANT's expense, with counsel reasonably acceptable to CITY, except that for professional liability claims, CONSULTANT shall have no upfront duty to defend CITY, but shall reimburse defense costs to CITY to the same extent of CONSULTANT'S indemnity obligation herein. CITY, at its expense, shall have the right to participate in the defense of any claims or litigation and shall have the right to approve any settlement, which approval shall not be unreasonably withheld. The indemnification provision of this Section shall not apply to damages or other losses proximately caused by or resulting from the negligence or willful misconduct of CITY. All indemnification obligations shall survive termination, expiration or cancellation of this Contract. CONSULTANT agrees, that in order to protect itself and CITY under the indemnity provisions set forth above, it will at all times during the term of this Contract keep in force policies of insurances required in the Paragraph entitled, "Insurance." Nothing in this Contract shall be construed to waive any immunities or limitations to which CITY is entitled under Minn. Stat. Chapter 466 or otherwise.

- B. CITY shall indemnify protect, save, and hold harmless CONSULTANT, and its respective officers, directors, employees and members and agents, from and against any claims, liability, damages, costs, judgments, or expenses, including reasonable attorney's fees, to the extent attributable to or caused by the negligent or otherwise wrongful acts or omissions of CITY or its agents, employees, contractors or subcontractors with respect to CITY's performance of its obligations under this Contract. CITY shall defend CONSULTANT against the foregoing, or litigation in connection with the foregoing, at CITY's expense. CONSULTANT, at its expense, shall have the right to participate in the defense of any Claims or litigation. The indemnification provision of this Section shall not apply to damages or other losses proximately caused by or resulting from the negligence or willful misconduct of CONSULTANT. All indemnification obligations shall survive termination, expiration or cancellation of this Contract.
- C. Nothing contained in this Contract shall create a contractual relationship with or a cause of action in favor of a third party against CITY or CONSULTANT. CONSULTANT's services under this Contract are being performed solely for CITY's benefit, and no other entity shall have any claim against CONSULTANT because of this Contract or the performance or nonperformance of services provided hereunder.

SECTION VI – GENERAL TERMS

- A. **Voluntary and Knowing Action.** The PARTIES, by executing this Contract, state that they have carefully read this Contract and understand fully the contents hereof; that in executing this Contract they voluntarily accept all terms described in this Contract without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound hereby.
- B. **Authorized Signatories.** The PARTIES each represent and warrant to the other that (1) the persons signing this Contract are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Contract against it; each PARTY indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.
- C. **Notices.** All notices and other communications required or permitted under this Contract shall be in writing, and hand delivered or sent by registered or certified mail, return-receipt requested, postage prepaid, or by overnight delivery service and shall be effective upon receipt at the following addresses or as either PARTY shall have notified the other PARTY. The PARTIES' representatives for notification for all purposes are:

CITY:

Brian Defrang

Director of Public Works

207 Lafayette Street

Winona MN 55987

Phone: (507) 457-8269

Email: bdefrang@ci.winona.mn.us

CONSULTANT:

Susan Danzl

Client Services Manager

3535 Vadnais Heights Drive

St. Paul MN 55110

Phone: (651) 280-0884

Email: sdanzl@sehinc.com

- D. **Dispute Resolution.** CITY and CONSULTANT agree to negotiate all disputes between them in good faith for a period of Thirty (30) days from the date of notice of dispute prior to proceeding to formal dispute resolution or exercising their rights under law.
- E. **Electronic/Digital Data.** Because of the potential instability of electronic/digital data and susceptibility to unauthorized changes, copies of documents that may be relied upon by CITY are limited to the printed copies (also known as hard copies) that are signed or sealed by CONSULTANT. Except for electronic/digital data which is specifically identified as a Project deliverable by this Contract or except as otherwise explicitly provided in this Contract, all electronic/digital data developed by CONSULTANT as part of the Project is acknowledged to be an internal working document for CONSULTANT's purposes solely and any such information provided to CITY shall be on an "as is" basis strictly for the convenience of CITY without any warranties of any kind. In the event of any conflict between a hard copy document and the electronic/digital data, the hard copy document governs. The electronic/digital data shall be prepared in the current software in use by CONSULTANT and is not warranted to be compatible with other systems or software.
- F. **Independent Contractor Status.** CONSULTANT, at all times and for all purposes hereunder, shall be an independent contractor and is not an employee of CITY for any purpose. No statement contained in this Contract shall be construed so as to find CONSULTANT to be an employee of CITY, and CONSULTANT shall not be entitled to any of the rights, privileges, or benefits of employees of CITY, including but not limited to, workers' compensation, health/death benefits, and indemnification for third-party personal injury/property damage claims. CONSULTANT acknowledges that no withholding or deduction for State or Federal income taxes, FICA, FUTA, or otherwise, will be made from the payments due CONSULTANT, and that it is CONSULTANT's sole obligation to comply with the applicable provisions of all Federal and State tax laws. CONSULTANT shall at all times be free to exercise initiative, judgment and discretion as to how to best perform or provide services identified herein. CONSULTANT is responsible for hiring sufficient workers to perform the services/duties required by this Contract, withholding their taxes and paying all other employment tax obligations on their behalf.
- G. **Acceptance of Deliverables.** Each deliverable shall be subject to a verification of acceptability by CITY to ensure such deliverable satisfies stated requirements. The

acceptability of any deliverable will be based on CITY's satisfaction or non-satisfaction with the deliverable based on requirements of this Contract. If any deliverable is not acceptable, CITY will notify CONSULTANT specifying reasons in reasonable detail, and CONSULTANT will, at no additional cost, conform the deliverable to stated requirements of this Contract.

- H. **Subcontracting.** CONSULTANT shall not enter into any subcontract for performance of any services contemplated under this Contract without the prior written approval of CITY. CONSULTANT shall be responsible for the performance of all subcontractors and/or sub-consultants. As required by Minn. Stat. § 471.425, CONSULTANT must pay all subcontractors, less any retainage, within Ten (10) calendar days of CONSULTANT's receipt of payment from CITY for undisputed services provided by the subcontractor(s) and must pay interest at the rate of one and one half percent per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s).
- I. **Assignment.** This Contract may not be assigned by either PARTY without the written consent of the other PARTY.
- J. **Modifications/Amendment.** Any alterations, variations, modifications, amendments or waivers of the provisions of this Contract shall only be valid when they have been reduced to writing, and signed by authorized representative of CITY and CONSULTANT.
- K. **Records—Availability and Retention.** Pursuant to Minn. Stat. § 16C.05, subd. 5, CONSULTANT agrees that CITY, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of CONSULTANT and involve transactions relating to this Contract. CONSULTANT agrees to maintain these records for a period of six years from the date of termination of this Contract.
- L. **Force Majeure.** The PARTIES shall each be excused from performance under this Contract while and to the extent that either of them are unable to perform, for any cause beyond its reasonable control. Such causes shall include, but not be restricted to fire, storm, flood, earthquake, explosion, war, total or partial failure of transportation or delivery facilities, raw materials or supplies, interruption of utilities or power, and any act of government or military authority. In the event either PARTY is rendered unable wholly or in part by force majeure to carry out its obligations under this Contract then the PARTY affected by force majeure shall give written notice with explanation to the other PARTY immediately.
- M. **Compliance with Laws.** CONSULTANT shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Contract or to the facilities, programs and staff for which

CONSULTANT is responsible.

- N. **Covenant Against Contingent Fee.** CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from award or making of this Contract.
- O. **Covenant Against Vendor Interest.** CONSULTANT warrants that it is not employed by any vendor of equipment or service provider that could result in a commission, percentage, brokerage, or contingent fee as a result of CONSULTANT's association with CITY.
- P. **Non-Discrimination.** The provisions of any applicable law or ordinance relating to civil rights and discrimination shall be considered part of this Contract as if fully set forth herein.
- Q. **Interest by City Officials.** No elected official, officer, or employee of CITY shall during his or her tenure or employment and for one year thereafter, have any interest, direct or indirect, in this Contract or the proceeds thereof.
- R. **Work Product.** All materials such as reports, exhibits, models, graphics, computer files, maps, charts, and supporting documentation produced under work authorized by this Contract ("Materials") shall become the property of CITY upon completion of the work. CITY may use the information for the Project for which they were prepared. Such use by CITY shall not relieve any liability on the part of CONSULTANT. Notwithstanding any of the foregoing to the contrary; (a) CONSULTANT may reuse standard details of its Materials in the normal course of its business; and (b) CITY understands that the Materials have been prepared for a specific project, and are not intended to be reused for other purposes. If CITY reuses the Materials for any other purpose, CITY waives any claims against CONSULTANT arising from such reuse and agrees to defend and indemnify CONSULTANT from any claims arising from such reuse.
- S. **Governing Law.** This Contract 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 the Contract without regard to its choice of law or conflict of laws principles.
- T. **Data Practices.** The PARTIES acknowledge that this Contract is subject to the requirements of Minnesota's Government Data Practices Act (Act), Minnesota Statutes, Section 13.01 *et seq.* CONSULTANT 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. CONSULTANT understands that all of the data created, collected, received, stored, used, maintained or disseminated by CONSULTANT in performing those functions that the CITY would perform is subject to the requirements of the Act, and CONSULTANT must comply with those requirements

as if it were a government entity. This does not create a duty on the part of CONSULTANT to provide the public with access to public data if the public data is available from the CITY, except as required by the terms of this Contract.

- U. **No Waiver.** Any PARTY's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Contract or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that PARTY's right to assert or rely upon the terms and conditions of this Contract. Any express waiver of a term of this Contract shall not be binding and effective unless made in writing and properly executed by the waiving PARTY.
- V. **Data Disclosure.** Under Minn. Stat. § 270C.65, Subd. 3 and other applicable law, CONSULTANT consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to CITY, to federal and state agencies and state personnel involved in the payment of CITY obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring CONSULTANT to file state tax returns, pay delinquent state tax liabilities, if any, or pay other CITY liabilities.
- W. **Patented Devices, Materials and Processes.** If this Contract requires, or CONSULTANT desires, the use of any design, device, material or process covered by letters, patent or copyright, trademark or trade name, CONSULTANT shall provide for such use by suitable legal agreement with the patentee or owner and a copy of said agreement shall be filed with CITY. If no such agreement is made or filed as noted, CONSULTANT shall indemnify and hold harmless CITY 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 Contract, and shall indemnify and defend CITY for any costs, liability, expenses and attorney's fees that result from any such infringement.
- X. **Mechanic's Liens.** CONSULTANT hereby covenants and agrees that CONSULTANT will not permit or allow any mechanic's or materialman's liens to be placed on CITY's interest in the Property that is the subject of the Project during the term hereof. Notwithstanding the previous sentence, however, in the event any such lien shall be so placed on CITY's interest, CONSULTANT shall take all steps necessary to see that it is removed within thirty (30) days of its being filed; provided, however, that CONSULTANT may contest any such lien provided CONSULTANT first posts a surety bond, in favor of and insuring CITY, in an amount equal to 125% of the amount of any such lien.
- Y. **Severability.** The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Contract to the extent of its invalidity or unenforceability, and this Contract shall be construed and enforced as if the Contract did not contain that particular provision to the extent of its invalidity or unenforceability.

- Z. **Entire Contract.** These terms and conditions constitute the entire Contract between the PARTIES regarding the subject matter hereof. All discussions and negotiations are deemed merged in this Contract.
- AA. **Headings and Captions.** Headings and captions contained in this Contract are for convenience only and are not intended to alter any of the provisions of this Contract and shall not be used for the interpretation of the validity of the Contract or any provision hereof.
- BB. **Survivability.** All covenants, indemnities, guarantees, releases, representations and warranties by any PARTY or PARTIES, and any undischarged obligations of CITY and CONSULTANT arising prior to the expiration of this Contract (whether by completion or earlier termination), shall survive such expiration.
- CC. **Execution.** This Contract 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 Contract, 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.

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SECTION VII –SIGNATURES

IN WITNESS WHEREOF, the PARTIES have hereunto executed this document the day and year first above written.

CONSULTANT: SHORT ELLIOTT HENDRICKSON INC.

By:  Date: 3/18/2021
(Signature)
Title: Senior Principal
Print Name: Robert L. Ellis

By:  Date: 3/19/2021
(Signature)
Title: Client Service Manager
Print Name: Susan Danzl

CITY OF WINONA:

By: _____ Date: _____
Scott Sherman, Its Mayor

By: _____ Date: _____
Monica Hennessey Mohan, Its City Clerk

EXHIBIT 1

SCOPE OF SERVICES

Subject to the terms of this Contract, CONSULTANT shall perform the following services:

TASK 1: DATA COLLECTION AND GOAL SETTING

We will use historical data to establish trends and set up a sewer rate model. Typically, five years of data is required to establish a trend. The following will be completed for Task 1:

1. Provide data request form. This itemized list identifies the various records and data needed for our team to initiate the rate study. By receiving data prior to the kick-off meeting, we can familiarize ourselves with the historical data and identify where additional information is necessary. This will be beneficial during the kick-off meeting as we set goals.
2. Review the data for completeness and organize into tables for ease of review and to identify trends. The tables will be incorporated into the sewer rate model.
3. Kick-Off meeting. Team members from both SEH and the City will discuss ideas, interests, goals and schedule. It is assumed that this meeting will be remote. The kick-off meeting will:
 - a. Review historical data and discussion of trends
 - b. Clarify and/or collect additional information, as needed
 - c. Present proposed five-year population projections, connections/users, flows and loadings
 - d. Review significant industrial user (SIU) agreements
 - e. Compile a list of communities similar to the City of Winona in population and infrastructure systems for evaluation for Task 2 – Regional Rate Comparison
 - f. Review current rate system and identify how best to incorporate the new rates to work with the City's existing software.
 - g. Establish communications protocol and project schedule.
4. Project future population and system connection/users. The number of wastewater customers is an important part of the rate formula, so we will incorporate projections relating to future connections, annexations or redevelopment.
5. Project water sales. SEH will track water billing records over the last five years and provide projections five years into the future. Data requested from billing records includes consumption of water for the billing period, account numbers, customer type along with meter size. Data will be provided by the City in a database format that is exportable to Microsoft Excel. Similarly, we will project water billed (sanitary flow) five years into the future to account for anticipated population growth. This data helps determine volume of flow from each connection sent to the sanitary sewer.

6. Review current operations and maintenance (O&M) costs associated with wastewater treatment and collection/conveyance. The evaluation of O&M costs will include labor, energy, materials, chemicals, biosolids handling and other related costs and current depreciation schedules.

7. Evaluate flows with loadings in excess of domestic strength to make sure the cost to remove these loadings is equitable.

Task 1 Deliverables (Technical Memo 1)

Summary of key items discussed at kick-off meeting:

- Historical data and trends
- Projected population growth
- Connections by user types (single-family residential, multi-family residential, commercial, industrial, municipal, other)
- Connections by meter size
- Metered flow to be used for sewer rate study
- Top wastewater users
- Identify water use per person for single-family (REU) and multi-family connections
- Industrial users: provide flows and loadings (BOD, TSS, P), billings and review Significant
- Industrial User (SIU) agreements
- NPDES permit: review of limits (current and projected)
- Discussion of City's existing software, capabilities
- Compiled list of communities similar to the City of Winona in population to be evaluated in Task 2

TASK 2: REGIONAL RATE COMPARISON

SEH will contact the communities identified at the kick-off meeting who have similar population and infrastructure as Winona. We will provide documentation identifying each community's rate structure for wastewater. As part of the review, we will confirm if a community is planning to modify their rates or rate structures in the near future, and if so, we will include comments on potential changes.

Task 2 Deliverables (Technical Memo 2)

Spreadsheet evaluating communities similar to Winona. Data will include:

- Rates structure, base rates, usage rates, residential, commercial, industrial rate structures,
- Meter sizes and billing cycles
- Last rate increase

- Status of existing infrastructure (future improvements)
- Indication whether a community is planning to modify rates in the near future.

TASK 3: DATA ANALYSIS AND PROJECTIONS

Upon completion of Tasks 1 and 2, we will identify proposed expenditures and income based on the historical trends over the past five years and from information supplied by the City. Task 3 will include the following:

1. Project expenditures and sources of income out 5 years. Income and expenditures will include:

- **Capital Improvements Plan (CIP):** The existing CIP will be reviewed and updated to include those projects proposed be either paid in cash or financed by the sewer rates, including the improvements identified in the Facilities Plan.
- **Administration costs:** Projected costs associated with meter reading (related to sewer), billing, collection, supplies, administration/ billing personnel, etc.
- **O&M expenses:** O&M expenses, including labor, power, chemicals, insurance, training, parts, etc.
- **Debt:** Review existing and future debt service requirements to determine level of cash flow needed to meet all current and future bonding requirements.
- **Depreciation schedules:** Depreciation schedules for current assets will be reviewed for accuracy and updated. The City's five-year CIP will be reviewed. The impact of future CIP and anticipated depreciation on sewer rates will be included.
- **Other expenses:** These include such items as principle and interest payments on the existing debts
- **Other sources of income:** These include income from invested funds and miscellaneous fees (connection charges, etc.)

2. Present projections at a second meeting with City's staff (administration, operations and finance). At this meeting, two tables will be provided: an expense table and an income table. The expense table will identify proposed expenditures for the next five years for each expenditure category as a line item (capital improvements, administration, operation and maintenance, debt repayment, depreciation, etc.). The income table will identify proposed income from interest income or fees over the next five years.

The difference between these two tables is what the user rates must cover. These tables will be incorporated into Microsoft Excel-based sewer model. At this meeting, we will also review cash balance goals.

3. Project adequacy of current rates and to identify modifications needed to ensure rates are fair and equitable, providing stability and producing adequate reserves both near- and long-term.

4. Incorporate proposed rates to determine if there will be a financial shortfall that may develop if rates are not increased and confirm a positive fund balance is maintained.

Task 3 Deliverables (Technical Memo 3)

- Finalized expense and income tables
- Need for rate and/or surcharge adjustments
- Impact of infrastructure improvement projects on rates and funding alternatives
- Adequacy of fund balances

TASK 4: SEWER RATE MODEL

The data discussed at the meetings and summarized in Technical Memos 1, 2 and 3 will be used to develop the Microsoft Excel based sewer rate model. The SEH team will work with the billing department to make sure the current billing software can continue to be utilized, incorporating any proposed modifications to the rate structure that best fits the City's needs. The goal is to ensure that adequate revenue is collected for current and future operations and capital improvements by modifying existing rates as needed to fairly distribute the costs of service amount across all classes of users. Allocation of costs to each customer class will take into account flow, number of customers and other relevant factors.

To determine fair and equitable sewer rates, as part of Task 4, SEH will:

1. Develop annual revenue requirements on a cash basis (O&M, debt service, rate funded capital, etc.)
2. Allocate annual revenue requirements to defined fixed or variable expenses
3. Develop total units of services from billing records
4. Calculate unit costs of service
5. Meet to review recommended modifications and impacts that infrastructure projects (funding) will have on rates, along with examples of how rate modifications impact the average residential and commercial users and the top 10 users, both monthly and annually. Selected fee structures and modifications will be provided in Technical Memo 4.

Task 4 Deliverables (Technical Memo 4)

- Summary of rate analysis, identifying proposed and recommended rate modifications
- Cost of service (fixed versus variable costs)
- Cost per pound for BOD, TSS and Phosphorus removal
- Proposed rates for next 5 years and impact on users
- Recommended annual cash reserve for next five years

TASK 5: REPORT AND PRESENTATIONS

A draft of the Wastewater Cost of Service Rate Study with the four Technical Memos included in the Appendix will be provided to City staff for review. We will utilize GoToMeeting (remote

collaboration software) to present the study to City staff via virtual conference. We have found this to be an effective online meeting platform, but can facilitate an alternative meeting platform if desired. Comments from meeting will be incorporated into the final report. A summary of the study and proposed rate modifications will then be presented to the City.

Task 5 Deliverables

- Wastewater Rate Model (Excel): copy of rate models in an editable Microsoft Excel worksheet file to assist Utilities Staff in determining future rate adjustments
- Five draft copies of the Cost of Service Rate Study for review and comment
- Technical Memos: Technical Memos 1 through 4 will be included in an appendix of the final Report
- Five copies of the final Cost of Service and Rate Study and one electronic copy in PDF format provided to the City for distribution, plus electronic version (on a flash drive) of the Final Study

SUMMARY OF DELIVERABLES AND MEETINGS

The following deliverables, identified above, are assumed for the Rate Study:

- Technical Memorandum 1 – Data and Kickoff Meeting Summary.
- Technical Memorandum 2 – Regional Rate Comparison.
- Technical Memorandum 3 – Fund Balance Projections.
- Technical Memorandum 4 – Recommended Rate Modifications
- Final Report
- Wastewater Rate Model (Excel).

Electronic copies of the draft and final deliverables will be provided to the City. Comments from the City on draft deliverables will be incorporated into the final documentation. Two hard copies of the Report will be provided.

The following meetings are assumed for this project:

- Kick-off meeting
- Income/Expenditure Projections Review meeting
- Rate Recommendations Review meeting

EXHIBIT 2

CERTIFICATES OF REQUIRED INSURANCE COVERAGES

[Certificates of Insurance attached hereto]

EXHIBIT 3

COMPENSATION

Subject to the limitations set forth in this Exhibit, CITY will pay CONSULTANT a flat fee of \$88,610.00 ("Contract price") for CONSULTANT's services, including expenses, under this Contract.

CITY will make periodic payment to CONSULTANT upon billing at intervals not more often than monthly at the rates specified in the following schedule of fees, provided that no bill submitted to CITY shall exceed a percentage of the Contract price equivalent to the percentage of the scope of services completed by CONSULTANT to the satisfaction of the Director of Public Works.

CITY shall be entitled to withhold five percent (5%) of the Contract price until such time as CONSULTANT has fully performed the scope of services detailed in Exhibit 1 to the satisfaction of the Director of Public Works.

Any additional services provided by CONSULTANT to CITY outside the scope of services identified in this Contract and otherwise authorized in writing by CITY shall be billed in accordance with the following schedule of fees and expenses:

SEH Hourly Billable Rates – 2021

Classification – Office Staff	Billable Rate
Principal	\$170.00 - \$270.00
Project Manager	\$140.00 - \$240.00
Senior Project Specialist	\$135.00 - \$220.00
Project Specialist	\$100.00 - \$175.00
Senior Professional Engineer I	\$115.00 - \$180.00
Senior Professional Engineer II	\$140.00 - \$225.00
Professional Engineer	\$105.00 - \$165.00
Graduate Engineer	\$85.00 - \$135.00
Senior Architect	\$125.00 - \$210.00
Architect	\$110.00 - \$150.00
Graduate Architect	\$85.00 - \$110.00
Senior Landscape Architect	\$115.00 - \$170.00
Landscape Architect	\$95.00 - \$125.00
Graduate Landscape Architect	\$85.00 - \$100.00
Senior Scientist	\$130.00 - \$170.00
Scientist	\$90.00 - \$135.00

Graduate Scientist	\$80.00 - \$105.00
Senior Planner	\$130.00 - \$210.00
Planner	\$100.00 - \$150.00
Graduate Planner	\$90.00 - \$120.00
Senior GIS Analyst	\$110.00 - \$175.00
GIS Analyst	\$100.00 - \$120.00
Project Design Leader	\$120.00 - \$185.00
Lead Technician	\$105.00 - \$170.00
Senior Technician	\$90.00 - \$135.00
Technician	\$65.00 - \$115.00
Graphic Designer	\$90.00 - \$145.00
Administrative Professional	\$55.00 - \$130.00

Classification – Field Staff	Billable Rate
Professional Land Surveyor	\$110.00 - \$160.00
Lead Resident Project Representative	\$95.00 - \$155.00
Senior Project Representative	\$90.00 - \$135.00
Project Representative	\$75.00 - \$125.00
Survey Crew Chief	\$85.00 - \$135.00
Survey Instrument Operator	\$60.00 - \$95.00

SEH Schedule of Expenses – 2021

Vehicle Mileage Rates

Current IRS rate if IRS rate is whole cents, otherwise rounded down to nearest whole cent.

Vehicle Allowance Costs

Resident Project Representative \$16.00/day
 Survey and Field Vehicle \$4.50/hour + mileage as referenced above

Survey Equipment

Robotic Total Station \$30.00/hour
 Global Positioning System (GPS) \$30.00/hour

Computer Equipment

Computer Charges per Direct Hour of Labor \$3.00/hour

Other Equipment Expenses uses many different types of equipment, such as traffic counters; flow meters; air, water, and soil sampling kits; inspection cameras; density meters; and many others. Our equipment is frequently upgraded to utilize current technology. You will be charged for equipment usage per your agreement with SEH.

REQUEST FOR COUNCIL ACTION

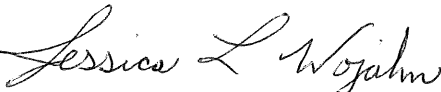

<i>Agenda Section:</i> New Business	<i>Originating Department:</i>	<i>Date</i>
<i>No:</i> 5	Finance Department	4/5/21
<i>Item:</i> Financial Planning Model		
<i>No.</i> 5. 2		

SUMMARY OF REQUESTED ACTION:

The City of Winona has capital projects that council may wish to fund in the future. To facilitate the funding decision of future capital projects, a long-term financial planning model could be created. This plan will enable its users to see the impact of capital projects to the tax rate while taking projected tax base changes into account. City staff will be able to maintain this planning model with anticipated capital projects, tax base projections, and funding sources which will help provide additional information to capital project decision makers.

BakerTilly has a proposed cost of \$15,250 for the development of this plan which will take approximately 10 weeks to complete. The costs would be paid by reassigning priority of the 2021 Finance Department budget.

City Staff recommends approval of the proposal to develop a Financial Planning Model. If the Council agrees, a motion to authorize administration to execute an agreement would be in order.

Department Approval: 	City Manager Approval: 
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CONSULTANT SERVICE CONTRACT

This Contract is made this _____ day of _____, 2021, by and between the CITY OF WINONA, a Minnesota municipal corporation, 207 Lafayette Street, Winona, MN 55987, (“CITY”), and Baker Tilly US, LLP, a limited liability partnership under the laws of the State of Illinois, 380 Jackson Street, Suite 300, St. Paul, MN 55101 (“CONSULTANT”), (collectively the “PARTIES”).

WHEREAS, CITY requires certain professional services in conjunction with the development of a financial planning model that will assist the CITY in long-range financial planning, management of its financial resources, debt management, and capital improvement planning over a five year planning period (the “Project”); and

WHEREAS, CONSULTANT agrees to furnish the various professional services required by CITY.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the Parties agree as follows:

SECTION I – CONSULTANT'S SERVICES AND RESPONSIBILITIES

- A. **Scope of Services.** CONSULTANT agrees to perform various Project services as detailed in Exhibit 1, Scope of Services, attached hereto and incorporated herein by reference.
- B. **Changes to Scope of Services/Additional Services.** Upon mutual agreement of the PARTIES hereto pursuant to Section VI, Paragraph J of this Contract, a change to the scope of services detailed in Exhibit 1, attached hereto, may be authorized. In the event that such a change to the scope of services detailed in Exhibit 1, attached hereto, requires additional services by CONSULTANT, CONSULTANT shall be entitled to additional compensation consistent with Section III of this Contract. CONSULTANT shall give notice to CITY of any additional services prior to furnishing such additional services. CITY may request an estimate of additional cost from CONSULTANT, and upon receipt of the request, CONSULTANT shall furnish such cost estimate, prior to CITY's authorization of the changed scope of services.
- C. **Changed Conditions.** If CONSULTANT determines that any services it has been directed or requested to perform by CITY are beyond the scope of services detailed in Exhibit 1, attached hereto, or that, due to changed conditions or changes in the method or manner of administration of the Project, CONSULTANT's effort required to perform its services under this Contract exceeds the estimate which formed the basis for CONSULTANT's compensation, CONSULTANT shall promptly notify CITY of that fact. Upon mutual agreement of the PARTIES hereto pursuant to Section VI, Paragraph J of this Contract, additional compensation for such services, and/or an extension of time for completion thereof, may be authorized. In the absence of such a mutual agreement,

amounts of compensation and time for completion shall be equitably adjusted, provided that CONSULTANT first provides notice to CITY as required by this Paragraph and CITY has not terminated this Contract pursuant to Section IV, Paragraph B.

- D. **Standard of Care.** Services provided by CONSULTANT or its subcontractors and/or sub-consultants under this Contract will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of CONSULTANT's profession or industry. CONSULTANT shall be liable to the fullest extent permitted under applicable law, without limitation, for any injuries, loss, or damages proximately caused by CONSULTANT's breach of this standard of care. CONSULTANT shall put forth reasonable efforts to complete its duties in a timely manner. CONSULTANT shall not be responsible for delays caused by factors beyond its control or that could not be reasonably foreseen at the time of execution of this Contract. CONSULTANT shall be responsible for costs, delays or damages arising from unreasonable delays in the performance of its duties.
- E. **Insurance.** CONSULTANT shall not commence work under this Contract until CONSULTANT has obtained all insurance required herein and such insurance has been approved by CITY, nor shall CONSULTANT allow any subcontractor to commence work on a subcontract until such subcontractor has obtained like insurance covering as to worker's compensation, liability, and automobile insurance. All this insurance coverage shall be maintained throughout the life of this Contract.
1. CONSULTANT agrees to procure and maintain, at CONSULTANT's expense, statutory Workers' Compensation coverage. Except as provided below, CONSULTANT must provide Workers' Compensation insurance for all its employees. If Minnesota Statutes, section 176.041 exempts CONSULTANT from Workers' Compensation insurance or if CONSULTANT has no employees in the City, CONSULTANT must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes CONSULTANT from the Minnesota Workers' Compensation requirements. If during the course of the Contract CONSULTANT becomes eligible for Workers' Compensation, CONSULTANT must comply with the Workers' Compensation insurance requirements herein and provide CITY with a certificate of insurance.
 2. CONSULTANT agrees to procure and maintain, at CONSULTANT's expense, Commercial General Liability ("CGL") and business automobile liability insurance coverages insuring CONSULTANT against claims for bodily injury or death, or for damage to property, including loss of use, which may arise out of operations by CONSULTANT or by any subcontractor or by anyone employed by any of them or by anyone for whose acts any of them may be liable (including automobile use). The following coverages shall, at a minimum, be included in the CGL insurance: Premises and Operations Bodily Injury and Property Damage, Personal and Advertising Injury, Blanket Contractual Liability, and Products and Ongoing and Completed Operations Liability. The required automobile liability coverage must include coverage for "any auto" which extends coverage to owned

autos, non-owned autos, and hired autos. Such insurance shall include, but not be limited to, minimum coverages and limits of liability specified in this Paragraph, or required by law. CITY shall have additional insured status and be listed by name on an endorsement attached to such policy(ies) for the services provided under this Contract and shall provide that CONSULTANT's coverage shall be primary and noncontributory in the event of a loss.

3. CONSULTANT agrees to procure and maintain, at CONSULTANT's expense, the following insurance policies, including the minimum coverages and limits of liability specified below, or as specified in the applicable insurance certificate(s), or as required by law, whichever is greater:

Worker's Compensation	Statutory Limits
Employer's Liability	\$500,000 bodily injury by accident \$500,000 bodily injury by disease aggregate \$500,000 bodily injury by disease per employee
Commercial General Liability	\$2,000,000 property damage and bodily injury per occurrence \$4,000,000 annual aggregate \$2,000,000 annual aggregate Products – Completed Operations
Automobile Liability	\$1,000,000 per occurrence combined single limit for Bodily Injury and Property Damage (shall include coverage for all owned, hired and non-owned vehicles
Umbrella or Excess Liability	\$1,000,000

4. Professional/Technical (Errors and Omissions) Liability Insurance
 CONSULTANT agrees to procure and maintain, at CONSULTANT's expense, Professional/Technical (Errors and Omissions) Liability Insurance. The required policy will provide coverage for all claims CONSULTANT may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to CONSULTANT's professional services required under the contract. CONSULTANT is required to carry the following minimum limits: \$2,000,000 – per wrongful act or occurrence; \$4,000,000 – annual aggregate; or as specified in the applicable insurance certificate(s), or as required by law, whichever is greater. Any deductible will be the sole responsibility of CONSULTANT. The retroactive or prior acts date of such coverage shall not be after the effective date of this contract and CONSULTANT shall maintain such

insurance for a period of at least three (3) years, following completion of the work. If such insurance is discontinued, extended reporting period coverage must be obtained by CONSULTANT to fulfill this requirement.

5. Technology Errors and Omissions Insurance. CONSULTANT agrees to procure and maintain, at CONSULTANT's expense, Technology Errors and Omissions Insurance or confirm liability for technology errors and omissions are covered in one of the previously mentioned policies. The required policy will provide coverage for all claims CONSULTANT may become legally obligated to pay, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, cloud computing, extortion and network security. CONSULTANT is required to carry the following minimum limits: \$2,000,000 – per occurrence; \$4,000,000 – annual aggregate; or as specified in the applicable insurance certificate(s), or as required by law, whichever is greater.
6. True, accurate and current certificates of insurance, showing evidence of the required insurance coverages, are hereby provided to CITY by CONSULTANT and are attached hereto as Exhibit 2.
7. Any insurance limits in excess of the minimum limits specified herein above shall be available to CITY.
8. CONSULTANT's insurance policies and certificate(s) shall not be cancelled without at least thirty (30) days' advance written notice to CITY, or Ten (10) days' prior written notice to CITY for nonpayment of premium.
9. CONSULTANT's policies shall be primary insurance and noncontributory to any other valid and collectible insurance available to CITY with respect to any claim arising out of CONSULTANT's performance under this Contract.
10. CONSULTANT is responsible for payment of Contract related insurance premiums and deductibles. If CONSULTANT is self-insured, a Certificate of Self-Insurance must be attached.
11. CONSULTANT shall ensure that all subcontractors comply with the insurance provisions contained in this Contract and such insurance is maintained as specified.
12. CONSULTANT's policies shall include legal defense fees in addition to its liability policy limits, with the exception of the professional liability insurance and technology errors and omissions insurance, if applicable.
13. All policies listed above, except professional liability insurance (or other coverage not reasonably available on an occurrence basis), shall be written on a per

“occurrence” basis (“claims made” and “modified occurrence” forms are not acceptable) and shall apply on a “per project” basis.

14. CONSULTANT shall obtain insurance policies from insurance companies having an “AM BEST” rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the State of Minnesota, or as approved by CITY.
15. Effect of Failure to Provide Insurance. If CONSULTANT fails to provide the specified insurance, then CONSULTANT will defend, indemnify and hold harmless CITY and CITY’s officials, agents and employees from any loss, claim, liability and expense (including reasonable attorney’s fees and expenses of litigation) to the extent necessary to afford the same protection as would have been provided by the specified insurance. Except to the extent prohibited by law, this indemnity applies regardless of any strict liability or negligence attributable to CITY (including sole negligence) and regardless of the extent to which the underlying occurrence (i.e., the event giving rise to a claim which would have been covered by the specified insurance) is attributable to the negligent or otherwise wrongful act or omission (including breach of contract) of CONSULTANT, its subcontractors, agents, employees or delegates. CONSULTANT agrees that this indemnity shall be construed and applied in favor of indemnification. CONSULTANT also agrees that if applicable law limits or precludes any aspect of this indemnity, then the indemnity will be considered limited only to the extent necessary to comply with that applicable law. The stated indemnity continues until all applicable statutes of limitation have run.

If a claim arises within the scope of the stated indemnity, CITY may require CONSULTANT to:

- a. Furnish and pay for a surety bond, satisfactory to CITY, guaranteeing performance of the indemnity obligation; or
- b. Furnish a written acceptance of tender of defense and indemnity from CONSULTANT’s insurance company.

CONSULTANT will take the action required by CITY within Fifteen (15) days of receiving notice from CITY.

16. Notwithstanding the foregoing, CITY reserves the right to immediately terminate this Contract if CONSULTANT is not in compliance with the insurance requirements contained herein and retains all rights to pursue any legal remedies against CONSULTANT.

SECTION II – CITY’S RESPONSIBILITIES

- A. CITY shall promptly compensate CONSULTANT as services are performed to the

satisfaction of the CITY's Director of Finance, in accordance with Section III of this Contract.

- B. CITY shall provide access to any and all previously acquired information relevant to the scope of services detailed in Exhibit 1, attached hereto, in its custody to CONSULTANT for its use, at CONSULTANT's request.
- C. CITY will, to the fullest extent possible, grant access to and make all provisions for entry upon both public and private property as necessary for CONSULTANT's performance of the services detailed in Exhibit 1, attached hereto.
- D. Jessica Wojahn, CITY's Director of Finance, shall serve as the liaison person to act as CITY's representative with respect to services to be rendered under this Contract. Said representative shall have the authority to transmit instructions, receive instructions, receive information, interpret and define CITY's policies with respect to the Project and CONSULTANT's services. Such person shall be the primary contact person between CITY and CONSULTANT with respect to the services from CONSULTANT under this Contract. CITY reserves the right to substitute the authorized contact person at any time and shall notify CONSULTANT thereof.

SECTION III – CONSIDERATION

- A. **Fees.** CITY will compensate CONSULTANT as detailed in Exhibit 3, Compensation, which is attached hereto and incorporated herein by reference, for CONSULTANT's performance of services under this Contract.
- B. If CITY fails to make any payment due CONSULTANT for services performed to the satisfaction of the CITY's Director of Finance and expenses within thirty days after the date of CONSULTANT's invoice, CONSULTANT may, after giving seven days written notice to CITY, and without waiving any claim or right against CITY and without incurring liability whatsoever to CITY, suspend services and withhold project deliverables due under this Contract until CONSULTANT has been paid in full all amounts due for services, expenses and charges.

SECTION IV – TERM AND TERMINATION

- A. **Term.** This Contract shall be in effect until such time as the Project is completed, or as otherwise provided in this Contract, whichever comes first.
- B. **Termination.** This Contract may be terminated by either PARTY for any reason or for convenience by either PARTY upon Seven (7) days written notice. In the event of termination, CITY shall be obligated to CONSULTANT for payment of amounts due and owing including payment for services performed or furnished to the date and time of termination, computed in accordance with Section III of this Contract.
- C. **Default.** If CONSULTANT fails to satisfy any of the provisions of this Contract, or so

fails to perform and/or administer the services detailed in Exhibit 1, attached hereto, pursuant to the requirements of Section I of this Contract, in such a manner as to endanger the performance of the Contract or the services provided hereunder, this shall constitute default. Unless CONSULTANT's default is excused by CITY, CITY may, upon written notice, immediately cancel this Contract or exercise any other rights or remedies available to CITY under this Contract or law. In the event of CONSULTANT's default, CONSULTANT shall be liable to CITY for any and all costs, disbursements, attorneys and consultant fees reasonably incurred by CITY in enforcing this Contract.

- D. **Suspension of Work.** If any work performed by CONSULTANT is abandoned or suspended in whole or in part by CITY, CONSULTANT shall be paid for any services performed to the satisfaction of the CITY's Director of Finance prior to CONSULTANT's receipt of written notice from CITY of such abandonment or suspension, but in no event shall the total of CITY's payments to CONSULTANT under this Contract be required to exceed a percentage of the total contract price (calculated by either the Contract price or the maximum price set forth in Exhibit 3, attached hereto) equivalent to the percentage of the scope of services completed by CONSULTANT to the satisfaction of the CITY's Director of Finance as determined by CITY.

SECTION V – INDEMNIFICATION

- A. CONSULTANT shall indemnify, protect, save, and hold harmless CITY, and its respective officers, directors, employees and members and agents, from and against any claims, liability, damages, costs, judgments, or expenses, including reasonable attorney's fees, to the extent caused by the negligent or otherwise wrongful acts or omissions, including breach of a specific contractual duty, of CONSULTANT or CONSULTANT's independent contractors, subcontractors, agents, employees, vendors or delegates with respect to this Contract or the Project. CONSULTANT shall defend CITY against the foregoing, or litigation in connection with the foregoing, at CONSULTANT's expense, with counsel reasonably acceptable to CITY, except that for professional liability claims, CONSULTANT shall have no upfront duty to defend CITY, but shall reimburse defense costs to CITY to the same extent of CONSULTANT'S indemnity obligation herein. CITY, at its expense, shall have the right to participate in the defense of any claims or litigation and shall have the right to approve any settlement, which approval shall not be unreasonably withheld. The indemnification provision of this Section shall not apply to damages or other losses proximately caused by or resulting from the negligence or willful misconduct of CITY. All indemnification obligations shall survive termination, expiration or cancellation of this Contract. CONSULTANT agrees, that in order to protect itself and CITY under the indemnity provisions set forth above, it will at all times during the term of this Contract keep in force policies of insurances required in the Paragraph entitled, "Insurance." Nothing in this Contract shall be construed to waive any immunities or limitations to which CITY is entitled under Minn. Stat. Chapter 466 or otherwise.
- B. CITY shall indemnify protect, save, and hold harmless CONSULTANT, and its respective officers, directors, employees and members and agents, from and against any

claims, liability, damages, costs, judgments, or expenses, including reasonable attorney's fees, to the extent attributable to or caused by the negligent or otherwise wrongful acts or omissions of CITY or its agents, employees, contractors or subcontractors with respect to CITY's performance of its obligations under this Contract. CITY shall defend CONSULTANT against the foregoing, or litigation in connection with the foregoing, at CITY's expense. CONSULTANT, at its expense, shall have the right to participate in the defense of any Claims or litigation. The indemnification provision of this Section shall not apply to damages or other losses proximately caused by or resulting from the negligence or willful misconduct of CONSULTANT. All indemnification obligations shall survive termination, expiration or cancellation of this Contract.

- C. Nothing contained in this Contract shall create a contractual relationship with or a cause of action in favor of a third party against CITY or CONSULTANT. CONSULTANT's services under this Contract are being performed solely for CITY's benefit, and no other entity shall have any claim against CONSULTANT because of this Contract or the performance or nonperformance of services provided hereunder.

SECTION VI – GENERAL TERMS

- A. **Voluntary and Knowing Action.** The PARTIES, by executing this Contract, state that they have carefully read this Contract and understand fully the contents hereof; that in executing this Contract they voluntarily accept all terms described in this Contract without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound hereby.
- B. **Authorized Signatories.** The PARTIES each represent and warrant to the other that (1) the persons signing this Contract are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Contract against it; each PARTY indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.
- C. **Notices.** All notices and other communications required or permitted under this Contract shall be in writing, and hand delivered or sent by registered or certified mail, return-receipt requested, postage prepaid, or by overnight delivery service and shall be effective upon receipt at the following addresses or as either PARTY shall have notified the other PARTY. The PARTIES' representatives for notification for all purposes are:

CITY:

Jessica Wojahn

Director of Finance

207 Lafayette Street

Winona MN 55987

Phone: 507-457-8262

Email: jwojahn@ci.winona.mn.us

CONSULTANT:

Nick Dragisich, P.E.
Firm Director
380 Jackson Street, Suite 300
Saint Paul MN 55101-2887
Phone: 1-651-223-3012
Email: nick.dragisich@bakertilly.com

- D. **Dispute Resolution.** CITY and CONSULTANT agree to negotiate all disputes between them in good faith for a period of Thirty (30) days from the date of notice of dispute prior to proceeding to formal dispute resolution or exercising their rights under law.
- E. **Electronic/Digital Data.** Because of the potential instability of electronic/digital data and susceptibility to unauthorized changes, copies of documents that may be relied upon by CITY are limited to the printed copies (also known as hard copies) that are signed or sealed by CONSULTANT. Except for electronic/digital data which is specifically identified as a Project deliverable by this Contract or except as otherwise explicitly provided in this Contract, all electronic/digital data developed by CONSULTANT as part of the Project is acknowledged to be an internal working document for CONSULTANT's purposes solely and any such information provided to CITY shall be on an "as is" basis strictly for the convenience of CITY without any warranties of any kind. In the event of any conflict between a hard copy document and the electronic/digital data, the hard copy document governs. The electronic/digital data shall be prepared in the current software in use by CONSULTANT and is not warranted to be compatible with other systems or software.
- F. **Independent Contractor Status.** CONSULTANT, at all times and for all purposes hereunder, shall be an independent contractor and is not an employee of CITY for any purpose. No statement contained in this Contract shall be construed so as to find CONSULTANT to be an employee of CITY, and CONSULTANT shall not be entitled to any of the rights, privileges, or benefits of employees of CITY, including but not limited to, workers' compensation, health/death benefits, and indemnification for third-party personal injury/property damage claims. CONSULTANT acknowledges that no withholding or deduction for State or Federal income taxes, FICA, FUTA, or otherwise, will be made from the payments due CONSULTANT, and that it is CONSULTANT's sole obligation to comply with the applicable provisions of all Federal and State tax laws. CONSULTANT shall at all times be free to exercise initiative, judgment and discretion as to how to best perform or provide services identified herein. CONSULTANT is responsible for hiring sufficient workers to perform the services/duties required by this Contract, withholding their taxes and paying all other employment tax obligations on their behalf.
- G. **Acceptance of Deliverables.** Each deliverable shall be subject to a verification of acceptability by CITY to ensure such deliverable satisfies stated requirements. The acceptability of any deliverable will be based on CITY's satisfaction or non-satisfaction with the deliverable based on requirements of this Contract. If any deliverable is not acceptable, CITY will notify CONSULTANT specifying reasons in reasonable detail,

and CONSULTANT will, at no additional cost, conform the deliverable to stated requirements of this Contract.

- H. **Subcontracting.** CONSULTANT shall not enter into any subcontract for performance of any services contemplated under this Contract without the prior written approval of CITY. CONSULTANT shall be responsible for the performance of all subcontractors and/or sub-consultants. As required by Minn. Stat. § 471.425, CONSULTANT must pay all subcontractors, less any retainage, within Ten (10) calendar days of CONSULTANT's receipt of payment from CITY for undisputed services provided by the subcontractor(s) and must pay interest at the rate of one and one half percent per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s).
- I. **Assignment.** This Contract may not be assigned by either PARTY without the written consent of the other PARTY.
- J. **Modifications/Amendment.** Any alterations, variations, modifications, amendments or waivers of the provisions of this Contract shall only be valid when they have been reduced to writing, and signed by authorized representative of CITY and CONSULTANT.
- K. **Records—Availability and Retention.** Pursuant to Minn. Stat. § 16C.05, subd. 5, CONSULTANT agrees that CITY, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of CONSULTANT and involve transactions relating to this Contract. CONSULTANT agrees to maintain these records for a period of six years from the date of termination of this Contract.
- L. **Force Majeure.** The PARTIES shall each be excused from performance under this Contract while and to the extent that either of them are unable to perform, for any cause beyond its reasonable control. Such causes shall include, but not be restricted to fire, storm, flood, earthquake, explosion, war, total or partial failure of transportation or delivery facilities, raw materials or supplies, interruption of utilities or power, and any act of government or military authority. In the event either PARTY is rendered unable wholly or in part by force majeure to carry out its obligations under this Contract then the PARTY affected by force majeure shall give written notice with explanation to the other PARTY immediately.
- M. **Compliance with Laws.** CONSULTANT shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Contract or to the facilities, programs and staff for which CONSULTANT is responsible.
- N. **Covenant Against Contingent Fee.** CONSULTANT warrants that it has not employed

or retained any company or person, other than a bona fide employee working solely for CONSULTANT to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from award or making of this Contract.

- O. **Covenant Against Vendor Interest.** CONSULTANT warrants that it is not employed by any vendor of equipment or service provider that could result in a commission, percentage, brokerage, or contingent fee as a result of CONSULTANT's association with CITY.
- P. **Non-Discrimination.** The provisions of any applicable law or ordinance relating to civil rights and discrimination shall be considered part of this Contract as if fully set forth herein.
- Q. **Interest by City Officials.** No elected official, officer, or employee of CITY shall during his or her tenure or employment and for one year thereafter, have any interest, direct or indirect, in this Contract or the proceeds thereof.
- R. **Work Product.** All materials such as reports, exhibits, models, graphics, computer files, maps, charts, and supporting documentation produced under work authorized by this Contract ("Materials") shall become the property of CITY upon completion of the work. CITY may use the information for the Project for which they were prepared. Such use by CITY shall not relieve any liability on the part of CONSULTANT. Notwithstanding any of the foregoing to the contrary; (a) CONSULTANT may reuse standard details of its Materials in the normal course of its business; and (b) CITY understands that the Materials have been prepared for a specific project, and are not intended to be reused for other purposes. If CITY reuses the Materials for any other purpose, CITY waives any claims against CONSULTANT arising from such reuse and agrees to defend and indemnify CONSULTANT from any claims arising from such reuse. In addition, CONSULTANT shall retain ownership of all methodologies, processes, techniques, ideas, concepts, trade secrets and know-how embodied in any Project deliverables or that CONSULTANT may develop or supply in connection with this Agreement as well as all pre-existing patent, copyright, trademark and other intellectual property rights.
- S. **Governing Law.** This Contract 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 the Contract without regard to its choice of law or conflict of laws principles.
- T. **Data Practices.** The PARTIES acknowledge that this Contract is subject to the requirements of Minnesota's Government Data Practices Act (Act), Minnesota Statutes, Section 13.01 *et seq.* CONSULTANT 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. CONSULTANT understands that all of the data created, collected, received, stored, used, maintained or disseminated by CONSULTANT in performing those functions that the CITY would perform is subject to

the requirements of the Act, and CONSULTANT must comply with those requirements as if it were a government entity. This does not create a duty on the part of CONSULTANT to provide the public with access to public data if the public data is available from the CITY, except as required by the terms of this Contract.

- U. **No Waiver.** Any PARTY's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Contract or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that PARTY's right to assert or rely upon the terms and conditions of this Contract. Any express waiver of a term of this Contract shall not be binding and effective unless made in writing and properly executed by the waiving PARTY.
- V. **Data Disclosure.** Under Minn. Stat. § 270C.65, Subd. 3 and other applicable law, CONSULTANT consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to CITY, to federal and state agencies and state personnel involved in the payment of CITY obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring CONSULTANT to file state tax returns, pay delinquent state tax liabilities, if any, or pay other CITY liabilities.
- W. **Patented Devices, Materials and Processes.** If this Contract requires, or CONSULTANT desires, the use of any design, device, material or process covered by letters, patent or copyright, trademark or trade name, CONSULTANT shall provide for such use by suitable legal agreement with the patentee or owner and a copy of said agreement shall be filed with CITY. If no such agreement is made or filed as noted, CONSULTANT shall indemnify and hold harmless CITY 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 Contract, and shall indemnify and defend CITY for any costs, liability, expenses and attorney's fees that result from any such infringement.
- X. **Mechanic's Liens.** CONSULTANT hereby covenants and agrees that CONSULTANT will not permit or allow any mechanic's or materialman's liens to be placed on CITY's interest in the Property that is the subject of the Project during the term hereof. Notwithstanding the previous sentence, however, in the event any such lien shall be so placed on CITY's interest, CONSULTANT shall take all steps necessary to see that it is removed within thirty (30) days of its being filed; provided, however, that CONSULTANT may contest any such lien provided CONSULTANT first posts a surety bond, in favor of and insuring CITY, in an amount equal to 125% of the amount of any such lien.
- Y. **Severability.** The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Contract to the extent of its invalidity or unenforceability, and this Contract shall be construed and enforced as if the Contract did not contain that particular provision to the extent of its invalidity or

unenforceability.

- Z. **Entire Contract.** These terms and conditions constitute the entire Contract between the PARTIES regarding the subject matter hereof. All discussions and negotiations are deemed merged in this Contract.
- AA. **Headings and Captions.** Headings and captions contained in this Contract are for convenience only and are not intended to alter any of the provisions of this Contract and shall not be used for the interpretation of the validity of the Contract or any provision hereof.
- BB. **Survivability.** All covenants, indemnities, guarantees, releases, representations and warranties by any PARTY or PARTIES, and any undischarged obligations of CITY and CONSULTANT arising prior to the expiration of this Contract (whether by completion or earlier termination), shall survive such expiration.
- CC. **Execution.** This Contract 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 Contract, 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 intentionally left blank.

SECTION VII –SIGNATURES

IN WITNESS WHEREOF, the PARTIES have hereunto executed this document the day and year first above written.

CONSULTANT: BAKER TILLY US, LLP

By: _____
(Signature)

Date: _____

Title: _____
Print Name: _____

CITY OF WINONA:

By: _____
Scott Sherman, Its Mayor

Date: _____

By: _____
Monica Mohan Hennessy, Its City Clerk

Date: _____

EXHIBIT 1

SCOPE OF SERVICES

Subject to the terms of this Contract, CONSULTANT shall perform the following services:

Objective:

The purpose of this project is to assist the City of Winona, Minnesota (“City”) in the development of a financial planning model that will assist the City in long-range financial planning, management of its financial resources, debt management, and capital improvement planning over a five-year planning period.

Baker Tilly develop the Financial Planning Model for the City working in concert with City staff. The financial planning model will be built in Microsoft© Excel. It will incorporate tax base growth projections, anticipated capital improvements, and existing and projected debt service to provide tax rate projections over a five-year planning period. The Financial Planning Model will include:

- A capital improvement planning (CIP) module where the City can input anticipated capital improvement projects for each year, the anticipated funding source(s), the fund where the capital improvement will be placed. The funding sources will include those currently used by the City in its capital improvement plan:
 - Tax Levy
 - Funds in Reserve
 - Equipment Replacement
 - Facilities
 - General Obligation Bonds
 - Special Assessments
 - Equipment Certificates
 - Enterprise Fund Revenue
 - General Obligation Revenue Bonds
 - Municipal State Aid Streets
 - Tax Increment Financing
 - County
 - State Aid
 - Federal Grants
 - Sales Taxes
 - Port Authority
 - Donations
 - Other

- A user-friendly input form to enable the user to enter new or to make changes to anticipated capital improvements including the year of improvement, department, project name, funding source(s) and the depreciable life;
- A property tax base projection module that will enable the user to project market value and tax capacity growth in residential, commercial, and industrial properties
- The impact of the CIP on the City's property tax rate:
 - Property tax projections for residential and commercial/industrial properties.
- CIP and projected impacts of new debt as a percentage of operating revenues for the Water, Sanitary Sewer, and Storm Water enterprise funds.
- Schedule of existing and projected debt by type
- Integrated graphics to show the financial impacts of the CIP

Our approach is outlined in the tasks below.

Task 1

Review relevant data .

- Comprehensive Annual Financial Reports for the past three years
- Current year's budget
- Outstanding debt by type
- Capital improvement plan
- Current property tax data (market value and tax capacity) by property type
 - Residential
 - Commercial
 - Industrial
- Anticipated growth in property tax base
- Fiscal policies

Task 2

Develop preliminary Financial Planning Model

- Develop the preliminary Financial Planning Model to incorporate the modules as outlined above
- Input the data into the model (CIP, existing, debt, existing tax base, projected growth, existing tax rates, existing operating revenues for included enterprise funds)
- Develop a preliminary financial forecast and impacts of the CIP
- Review preliminary financial planning model and financial forecast with City staff. Based on that review Baker Tilly will modify the preliminary model incorporating suggested changes as appropriate.

Task 3

Develop Final Financial Planning Model

- Baker Tilly will develop the final Financial Planning Model
- Present the Financial Planning Model to the City

The City will need to identify a member of their staff to serve as a contact person between Baker Tilly and the City. This person will be responsible for assisting Baker Tilly in the gathering of accurate and timely information necessary to complete the project and arranging for and coordinating required meetings. Baker Tilly acknowledges some of this information may be available in our files and/or on the City's website. At a minimum, the following information will be needed to complete the study:

- Copies of the City's most recent and prior three years' financial statements
- Copies of the City's 2021 adopted budget
- Capital Improvement Plan
- Current fiscal policies

Deliverables

At the conclusion of this project, we will provide the City with the following deliverables:

- Financial Planning Model

Project Team

Baker Tilly will provide the following resources as part of the engagement:

- Nick Dragsich will serve as the lead consultant for the project and manage all project activities.
- Patty Kettles will assist in the development of the financial forecast and scenarios and the report
- Matt Stark will provide analytical support
- Baker Tilly will assign project staff to assist with other duties as needed.

EXHIBIT 2

CERTIFICATES OF REQUIRED INSURANCE COVERAGES

[Certificates of Insurance attached hereto]

EXHIBIT 3

COMPENSATION

Subject to the limitations set forth in this Exhibit, CITY will pay CONSULTANT a flat fee of \$15,250.00 ("Contract price") for CONSULTANT's services, including expenses, under this Contract.

CITY will make periodic payment to CONSULTANT upon billing at intervals not more often than monthly at the rates specified in the following schedule of fees, provided that no bill submitted to CITY shall exceed a percentage of the Contract price equivalent to the percentage of the scope of services completed by CONSULTANT to the satisfaction of the Director of Finance.

CITY shall be entitled to withhold five percent (5%) of the Contract price until such time as CONSULTANT has fully performed the scope of services detailed in Exhibit 1 to the satisfaction of the Director of Finance.

Title	2021 Hourly Rate
Principal, Partner and Firm Director	\$300 - \$400
Director and Senior Manager	\$270
Manager and Senior Staff	\$225
Staff	\$195
Associates	\$80

REQUEST FOR COUNCIL ACTION

<i>Agenda Section:</i> New Business	<i>Originating Department:</i>	<i>Date</i>
<i>No:</i> 5	Parks and Recreation	04/05/21
<i>Item:</i> Grant Agreement with the Minnesota State Arts Board		
<i>No.</i> 5.3		

SUMMARY OF REQUESTED ACTION:

The City of Winona, in partnership with Treedome, prepared a grant application for funding through the Minnesota State Arts Board, Creative Support for Organizations, to host a summer Drive-In Series. The Drive-In Series is a repeat of the very successful Music and Movies Drive-In Series held during the pandemic. The City of Winona was awarded a \$15,000.00 grant to continue the program this summer.

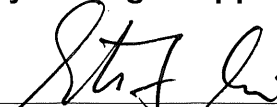
The City of Winona is required to enter into a grant agreement with the Minnesota State Arts Board, which is attached for your review.

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

Department Approval:



City Manager Approval:



RESOLUTION

WHEREAS, the Minnesota State Arts Board Agreement for Grant #111900, Creative Support for Organizations is accepted; and

WHEREAS, the Mayor and City Clerk are authorized to execute this Agreement and any amendments on behalf of the City of Winona.

NOW THEREFORE LET IT BE RESOLVED that the Minnesota State Arts Board Grant Agreement #1111900 is accepted; and that the Mayor and City Clerk are authorized to execute this agreement and any amendments on behalf of the City of Winona.

Dated this _____ day of _____, 2021.

Scott Sherman
Mayor

Attest:

Monica Hennessy Mohan
City Clerk



Minnesota State Arts Board
540 Fairview Avenue North, Suite 304
Saint Paul, MN 55104
(651) 539-2650 | (800) 866-2787

**FISCAL YEAR 2021
CREATIVE SUPPORT FOR ORGANIZATIONS**

Grant Number 111900

Legal Name City of Winona

This grant contract is between the State of Minnesota, acting through its Board of the Arts (referred to as the "Board"), and City of Winona (referred to as the "Grantee").

Whereas, Minnesota Statutes 2019, section 129D.04, authorizes the Board to distribute grants, loans, and other forms of assistance for artistic activities; and

Whereas, the Minnesota State Legislature in the 2019 First Special Session, chapter 2, article 4, section 2, subdivision 3, appropriated \$33,150,000 from the arts and cultural heritage fund to Minnesota State Arts Board for fiscal year 2021 arts grant programs and services; and

Whereas, the Minnesota State Legislature in the 2019 First Special Session, chapter 10, article 1, section 24, subdivision 1, appropriated \$7,541,000 from the State's general fund to the Minnesota State Arts Board for fiscal year 2021 arts grant programs and services; and

Whereas, the United States Congress, acting through the National Endowment for the Arts, has awarded \$835,600 to the Minnesota State Arts Board for fiscal year 2021 for arts programs and priorities in Minnesota;

Whereas the Board has instituted a pilot grant program, Creative Support for Organizations, and has selected the applicant as a Grantee in that program;

Therefore, the Board agrees to award to the Grantee a fiscal year 2021 Creative Support for Organizations grant in support of eligible costs as described in the Grantee's Application; and

The Grantee represents that it is duly qualified and agrees to perform all services described in this grant contract to the satisfaction of the Board. Pursuant to Minnesota Statutes §16B.98, subdivision 1, the Grantee agrees to minimize administrative costs as a condition of this grant.

Therefore, the Board and Grantee agree to the following terms and conditions, and further agree that Grantee's failure to comply with any of the requirements of this contract may jeopardize its eligibility to apply for or receive future Arts Board grants.

A. PURPOSE

The purpose of this grant program is to help arts organizations, and nonarts organizations that regularly offer arts programming as an integral part of their mission, adapt to the changing environment caused by the global pandemic. Grantees will be able to determine how best to use funds to stay relevant and connected to the audiences, participants, students, or communities that participate in their regular arts programming. By using their creativity and connection to community, this grant program is intended to help Minnesota organizations maintain the long-term viability of their arts programming so that Minnesota residents and communities will maintain access and connection to the arts.

B. DEFINITIONS

For the purpose of this grant contract the following terms shall have the meanings given to them.

“Arts and cultural heritage fund” means the special fund, created by the Minnesota Constitution, article XI, section 15, proceeds of which may be spent only for arts, arts education, and arts access and to preserve Minnesota’s history and cultural heritage.

“Authorizing official” means the individual delegated authority to enter into contracts and accept grants for the Grantee's organization (e.g. president or comparable officer, executive director, board chair).

“Primary contact person” means the individual with delegated authority to act for the Grantee's organization on grant activity matters such as signing off on final reports and routine contact with the Board.

“Application” means the official set of forms supplied by the Board and submitted by the Grantee, including any required attachments, which is stored in WebGrants and incorporated into this contract. To open the Application, select Login to WebGrants from the front page of the Board’s Web site at <http://www.arts.state.mn.us/>, enter log in information, select My Grants and the title of the grant that matches grant number listed on page one of this grant contract.

“Event” means a performance, exhibition, screening, workshop, class, or any other activity intended for an audience or group of participants.

C. TERM OF GRANT CONTRACT

Effective date: This grant contract shall take effect on the date the Board obtains all required signatures under Minnesota Statutes §16B.98, subdivision 5. Per Minnesota Statutes §16B.98, subdivision 7, no payments will be made to the Grantee until this grant contract is fully executed.

The Grantee must not begin work, and may not expend any grant funds, under this grant contract until this grant contract is fully executed and the State’s Authorized Representative has notified the Grantee that work may commence.

Expiration date: This grant contract shall end on March 31, 2022, or the date that all obligations have been satisfactorily fulfilled, whichever occurs first.

All eligible costs must be incurred between the effective date and the expiration date of the grant contract.

D. CONSIDERATION AND PAYMENT

The State will pay for services performed by the Grantee under this grant contract as outlined below.

The total obligation of the State for all compensation to the Grantee under this grant contract will not exceed \$15,000.

Grant contracts that are fully executed will be payable in full on April 20, 2021.

Allow three weeks for processing of scheduled payments.

The Grantee agrees to return to the Board all funds not spent at the end of the grant period.

The Board advances payments on all grants. The justification for making advance payment is as follows: The Board uses a stringent, competitive review process to determine which organizations to fund; this process ensures that there will be no substantial losses to the State. The agency has had a long-standing tradition of advancing payments to Grantees. Advance payments ensure that activities can begin immediately upon grant contract execution, therefore increasing the amount of time the Grantee has for successful completion of grant outcomes. Advance payments reduce the financial burden a Grantee might suffer waiting for the State to process reimbursements. A rigorous, citizen-driven review process and a practice of making advance payments enable the Board to make the most efficient use of its administrative resources.

Federal Funds

If no federal grant number, CFDA number, and federal fund amount are listed in this section then no federal funds were used to fund this grant contract. Payments under this grant contract will be made from federal funds obtained by the Board from the National Endowment for the Arts, awarded June 9, 2020, to support partnership agreement activities, federal grant number __, and CFDA number __. The amount of federal funds included in this grant contract is \$0. The Grantee is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by the Grantee’s failure to comply with federal requirements.

E. THE GRANT ACTIVITIES AND USE OF GRANT FUNDS

The Grantee shall use grant funds to support the activities described in the Grantee's Application and agrees that the funds received from the Board shall not be used to support any of the following purposes:

1. To support activities in which artists are required to pay excessive artist entry or exhibition fees;
2. To pay debts incurred before the grant period begins;
3. To support activities which are essentially for the religious socialization of the participants or audience;
4. To support activities in primary or secondary level parochial schools;
5. To pay for capital costs, such as improvements, construction, property, or equipment costing \$5,000 or more;
6. To pay bad debts or contingency funds, fines and penalties, interest and other financial costs, or the under-recovery of costs from one grant contract charged to other grant contracts;
7. To start, match, add to, or complete any type of capital campaign (such as endowment, debt retirement, or building campaign);
8. To make political contributions or donations, pay lobbyists' fees, to cover entertainment costs, or to support activities that attempt to influence any state or federal legislation or appropriation;
9. To support activities taking place after the end of the grant period;
10. To support an event that is not open to the general public or an event that does not establish admission charges when feasible;
11. To support projects, programs, or activities that take place outside the state of Minnesota.

In addition to the above conditions, the Grantee agrees that the arts and cultural heritage funds shall be used to:

1. Supplement and not substitute for traditional sources of funding. The Arts Board defines "traditional sources" as funds received from the State of Minnesota's general fund or capital investment budget.
2. Support projects, programs, or activities that have measurable outcomes, and a plan for measuring and evaluating the results.
3. Support only those administrative, indirect, or institutional overhead costs that are directly related to and necessary for carrying out Grantee's projects, programs, or activities that are supported by arts and cultural heritage fund dollars.

Arts and cultural heritage funds may not be spent on administrative, indirect, or institutional overhead costs unless they are directly related to and necessary for Grantee's projects, programs, or activities that are supported by arts and cultural heritage fund dollars.

F. AMENDMENTS

Amendments to this grant contract shall be in writing using the contract amendment form available from the Board and shall not be effective until it has been executed and approved by the same parties who made the original contract, or their authorized successors or designees. The Grantee agrees to submit any request to amend the contract to the Board during the term of the contract (see section C. Term of Grant Contract), and not later than 30 days prior to making any desired changes in the contract activities. Changes that will significantly alter proposed activities or budget must be submitted and approved in advance.

G. NOTIFICATION AND CHANGES REQUIRING PRIOR APPROVAL

The Grantee agrees to notify the Board, in writing, immediately of any change in the primary contact person or authorizing official, address, e-mail, or phone numbers relative to this grant contract.

H. ACKNOWLEDGMENT

Grantee must acknowledge this Minnesota State Arts Board grant. Publications, printed programs, or other graphic material related to activities supported must use the Arts Board and Minnesota legacy logos, and the following credit line:

This activity is made possible by the voters of Minnesota through a grant from the Minnesota State Arts Board, thanks to a legislative appropriation from the arts and cultural heritage fund.

Using the Arts Board and Minnesota legacy logos are required, however using the logos alone is not sufficient to meet this requirement; the text must also be included. Digital files for the required logos can be downloaded from the Board's Web site at <http://www.arts.state.mn.us/grants/support.htm>.

Oral acknowledgment should be given at any event for which there is no printed program, and in interviews with the media.

I. REPORTING

The Grantee agrees to report to the Board using the final report form, supplied by the Board, and submit one sample acknowledgment, as described in section H of this grant contract, by April 30, 2022. Grantee will be expected to report on activities that were supported and outcomes that were achieved as a result of this grant, and shall account for all funds awarded through this grant contract.

The Grantee agrees to return to the Board all funds not spent on the activities for which these funds were awarded within 30 days of the end of the grant period.

These obligations survive the expiration date of this grant contract.

J. RECORDKEEPING, AUDITS, AND MAINTENANCE OF RECORDS

The Grantee agrees to abide by the financial record keeping standards that require the Grantee to:

1. Provide for accurate, current, and complete disclosure of the financial results of the grant activities in accordance with Board reporting requirements;
2. Maintain records that identify adequately the source and application of funds for grant supported activities;
3. Provide effective control over and accountability for all funds, property, and other assets. Grantee shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes;
4. Provide a comparison of actual with budgeted amounts for the grant;
5. Provide principles and standards for determining allowable costs applicable to this grant (see Grant Activities and Use of Grant Funds section of this contract); and
6. Maintain accounting records that are supported by source documentation.

If Grantee received \$750,000 or more in a year from the federal government, the Grantee shall also comply with federal audit requirements in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and Title 2, "Office of Management and Budget Guidance for Grants and Agreements Part 200-Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards." If a Single Audit is required, the Grantee agrees to forward one copy to the State Auditor's Office.

Under Minnesota Statutes 16B.98, subdivision 8, the books, records, documents, and accounting procedures and practices of the Grantee or other party that are relevant to this grant agreement are subject to examination by the Board and the legislative auditor for a minimum of six years from the grant agreement end date, receipt and approval of all final reports, or the required period of time to satisfy all state and program retention requirements, whichever is later. This authority also is extended to the National Endowment for the Arts, the comptroller general of the United States, or any other duly authorized representative of state or federal government. The examination and use may include the making of audits, excerpts, transcripts, and other lawful purposes.

The fiscal records to be retained include, but are not limited to, invoices, receipts, canceled checks, supporting documents, statistical records, and all other records relating to this grant contract.

The program records to be retained include, but are not limited to, printed programs, posters, newspaper articles, and other publicity and information relating to this grant contract, as well as documentation appropriate to the grant activities.

These obligations survive the expiration date of this grant contract.

K. TERMINATION, RESCINDMENT, AND PENALTIES

This grant contract may be terminated at any time by mutual written agreement of the Board and Grantee; or upon written notice to the Grantee from the Board in the event the Grantee fails to comply with one or more of the conditions set forth in this grant contract.

The Grantee is responsible for complying with all applicable federal, state, and local laws, rules, regulations, and ordinances in relation to the use of these funds. Failure to comply may result in termination or forfeiture of the grant.

In the event of termination, the Grantee agrees to return all funds that have not been expended as of the date of the termination and all funds that the Board determines were spent in violation of this grant contract.

The Board may assign penalties for Grantee's failure to comply with any requirements of this contract.

These obligations survive the expiration date of this grant contract.

L. BOARD'S AUTHORIZED AGENT

The Board's authorized agent for the purposes of administration of this grant contract is the executive director. The Board's contact for the purposes of this grant contract is Rina Rossi at Rina.Rossi@arts.state.mn.us or (651) 539-2661 or (800) 866-2787.

M. ASSIGNMENT, WAIVER, AND GRANT CONTRACT COMPLETE

Assignment: The Grantee shall neither assign nor transfer any rights or obligations under this grant contract without the prior written consent of the Board, approved by the same parties who executed and approved this grant contract, or their successors in office.

Waiver: If the Board fails to enforce a provision of this grant contract, that failure does not waive the provision or the State's right to enforce it.

Grant Contract Complete: This grant contract contains all negotiations and agreements between the Board and the Grantee. No other understanding regarding this grant contract, whether written or oral, may be used to bind either party.

N. LIABILITY

The Grantee agrees to indemnify and save and hold harmless the State of Minnesota, the Board, its agents, and employees from any and all claims or causes of action arising from or relating in any way to the grant activities by Grantee or Grantee's agents or employees. This clause shall not be construed to bar any legal remedies the Grantee may have for the Board's failure to fulfill its obligations pursuant to this grant contract.

This provision shall survive the termination of this grant contract.

O. AFFIRMATIVE ACTION

The Grantee certifies having received a certificate of compliance from the commissioner of human rights pursuant to Minnesota Statutes, section 363A.36, when applicable.

P. WORKERS' COMPENSATION

In accordance with the provisions of Minnesota Statutes, the Grantee certifies compliance with the workers' compensation insurance coverage requirement of Minnesota Statutes, section 176.181, subdivision 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.

Q. ANTITRUST

The Grantee hereby assigns to the State of Minnesota any and all claims for overcharges as to goods and services provided in connection with this grant contract resulting from antitrust violations that arise under the antitrust laws of the United States and the antitrust laws of the State of Minnesota, when applicable.

R. BOARD RULES

The Grantee agrees to comply with the rules of the Board, Minnesota Rules, chapter 1900, pertinent to the grant program of this grant contract. If and to the extent that this grant contract is construed to be inconsistent with the rules of the Board, the rules shall govern.

S. DATA DISCLOSURE

Under Minnesota Statutes § 270C.65, subdivision 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 Board, 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, if any.

These obligations survive the expiration date of this grant contract.

T. GOVERNING LAW, JURISDICTION, AND VENUE

Minnesota law, without regard to its choice-of-law provisions, governs this grant contract agreement. 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.

U. FEDERAL COMPLIANCE

The Grantee agrees to abide by all requirements of federal law applicable to programs funded in whole or in part by the National Endowment for the Arts including, but not limited to, the laws listed herein. General descriptions of those laws

pertinent to this grant contract are provided below for the convenience of the Grantee only and are not intended to, and do not, interpret those laws. Grantee should consult the actual laws or legal counsel to determine their requirements and applicability.

National Endowment for the Arts regulations: 45 C.F.R. parts 1110, 1151, 1153, 1154, 1157, 1158.

General Terms and Conditions of National Endowment for the Arts grants are available on the NEA Web site at <http://arts.gov/grants/manage-your-award/partnership-agreements-fy15-and-later>.

Age Discrimination Act of 1975: This act provides that no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance as specified under 42 U.S.C. 6102.

Fair Labor Standards: Federal law requires that labor standards on activities assisted in part by funds from the National Endowment for the Arts must comply with 29 C.F.R. Part 505.

Discrimination on the Basis of Race, Color, or National Origin: No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under these grant activities, as specified under 42 U.S.C. 2000d.

Debarment and Suspension: Grantee certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency, nor has, within the three years preceding the submission of the application for this grant, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with a public (federal, state, or local) transaction or a grant contract under a public transaction; for violation of federal or state antitrust statutes; for commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; had any public transactions terminated for cause or default; or is presently indicted for or otherwise criminally or civilly charged by a governmental entity with any of the preceding offenses.

Drug-Free Workplace Act of 1988: The Grantee is required to certify to the Board that it will provide a drug-free workplace [45 C.F.R., part 1154.600(a) (1)]. Grantees should refer to 45 C.F.R., part 1154, Appendix C, for language regarding the required certification.

Discrimination of Individuals With A Disability: No otherwise qualified individual with a disability in the United States, shall, solely by reason of disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under these grant activities pursuant to 29 U.S.C. section 794 (Rehabilitation Act of 1973). The phrase "individual with a disability" means any person who (a) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (b) has a record of such an impairment, or (c) is regarded as having such an impairment and as otherwise defined by 29 U.S.C. section 705 (20).

Americans with Disabilities Act of 1990 (ADA): The ADA encompasses private sector entities that serve the public including arts organizations that do not receive federal support, retail businesses, movie theaters, and restaurants. It extends accessibility requirements for individuals with disabilities to the private sector.

Lobbying: The federal provisions regarding the use of National Endowment for the Arts funds for lobbying activities are included in two provisions. 18 U.S.C. Sec. 1913, "Lobbying with appropriated moneys," prohibits any federally appropriated funds to be used directly or indirectly to pay for activities intended or designed to influence a member of Congress. In addition, 31 U.S.C. Sec. 1352, "Certification regarding lobbying," prohibits the use of federally appropriated funds to pay costs associated with lobbying members of Congress, employees of Congress, and employees of federal agencies regarding the award or amendment of any federal grant, cooperative agreement, contract, or loan. Exempted from the definition of lobbying are certain agency and legislative liaison activities and professional and technical services. Use of nonfederal funds for such activities must be disclosed to the federal agency. Exempted from the disclosure requirement are lobbying activities of long-term employees.

Sex Discrimination: No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance, as specified under Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, as amended.

V. PATENTS AND COPYRIGHTS

To the extent allowable by federal law, any and all patents, copyrights, or other legal interest in and relevant to the grant activities, or materials generated in pursuance of the grant activities, shall be the sole and exclusive property of the Grantee or the Grantee's designee.

W. OTHER PROVISIONS

If the Grantee is a business or private enterprise that receives grants or loans from the State of Minnesota in amounts over \$200,000 a year, it must list any vacant or new positions with the state work force centers in accordance with Minnesota Statutes, section 116L.66.

X. ACCEPTANCE OF GRANT CONTRACT

This grant contract shall not be considered accepted, approved, or effective until all required signatures are affixed. The Grantee is responsible for the obligations contained herein. If the terms of this grant contract are not clearly understood, Grantees are advised to seek assistance before signing.

For the purposes of execution, the signatures of two different corporate officials, having the authority to enter into this grant contract on Grantee's behalf, are required.

1.

GRANTEE
<hr/>
Authorizing official, printed name
<hr/>
Signature
<hr/>
Title
<hr/>
Date

3.

MINNESOTA STATE ARTS BOARD
<hr/>
Susanne K. Gens
Authorizing official, printed name
<hr/>
Signature
<hr/>
Executive director
Title
<hr/>
Date

2.

GRANTEE
<hr/>
Authorizing official, printed name
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Signature
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Date

REQUEST FOR COUNCIL ACTION

<i>Agenda Section:</i> New Business	<i>Originating Department:</i>	<i>Date</i>
<i>No:</i> 5	Parks and Recreation	04/05/21
<i>Item:</i> Friendship Center Grant Request		
<i>No.</i> 5.4		

SUMMARY OF REQUESTED ACTION:

The Winona Friendship Center will apply for a grant through the Minnesota Department of Human Services. We are wishing to apply for a Live Well at Home grant. This grant is to develop and /or provide services for older Minnesotans to live in the community. It allows local communities to improve their capacity to develop, strengthen, integrate programs, and maintain home and community-based services for individuals' age 65 and older and at risk of long-term nursing home use and/or spending down into Medical Assistance.

For the past two years, we have been providing Chore opportunities for older adults. If we receive this grant, it would help us expand into more areas of home services such as grocery shopping, meal preparation, and transportation to shopping. We also hope to collaborate with the Fire department and 1st Responders to decrease the number of calls they receive for lift assist due to falls. We would do this by providing resources and referrals to the resident in gaining access to better home maintenance and/or strength training for better stability and lessen the risk of a fall. We would utilize our Bridges Health Winona Athletic Training students and nursing students for home assessments, as well as the current Senior Advocates.

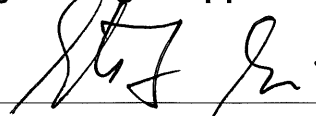
The grant does not require a cash match, however, the Center will submit in-kind contributions within the grant application.

If the Council concurs, a motion to allow staff to submit the grant application to the Minnesota Department of Human Services would be in order.

Department Approval:



City Manager Approval:



REQUEST FOR COUNCIL ACTION

Agenda Section: **New Business**

Originating Department:

Date

No: **5**

Parks and Recreation

04/05/21

Item: **Friendship Center – Air Conditioning Repair**

No. **5.5**

SUMMARY OF REQUESTED ACTION:

The air conditioning unit that services the first floor of the Masonic Temple – Friendship Center experienced a failure early in 2020. At the time, the City did not repair the unit due to the planning of the Masonic Temple HVAC replacement/upgrade project and closure of the Center due to the pandemic.

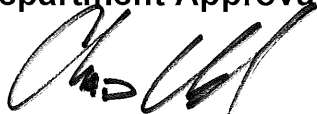
The Masonic Temple HVAC replacement/upgrade project has had several delays as we work through SHPO requirements for that replacement.

Due to the delay in the overall HVAC project, the upcoming warming season, and re-opening of services at the Friendship Center, staff requested quotes and options for temporarily cooling the 1st floor space. The most reasonable and cost effective solution is to fix the compressor on the existing air conditioning unit. The estimated cost is \$12,250.

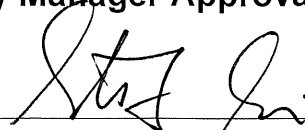
Staff is recommending a transfer of up to \$12,250 from the Facility Fund to complete the first floor repair of the air conditioning unit at the Masonic Temple.

If Council concurs, a motion to approve the Facility Fund transfer of up to \$12,250 to the Recreation Fund to complete the Masonic Temple air conditioning repair, would be in order.

Department Approval:



City Manager Approval:



REQUEST FOR COUNCIL ACTION

Agenda Section: New Business	Originating Department:	Date
No: 5	Public Works	04/05/21
Item: West Lake Winona Curly Leaf Pondweed Treatment		
No. 5.6		

SUMMARY OF REQUESTED ACTION:

The City's Natural Resources and Sustainability Coordinator sought and obtained \$1,800 in funds through the Minnesota Department of Natural Resources (MnDNR) to continue efforts for treating the invasive curly leaf pondweed (*Potamogeton crispus*) in Lake Winona. The City will still need to spend approximately \$3,200 to \$3,700 to complete the treatment. In past years, this funding has come from the stormwater fund, and staff proposes doing so again this year.

The treatment this year would build off the progress from the 2020 treatment and cover 12 acres. Approximately 11.85 acres were treated last year with passive treatment via diffusion of the herbicide to other lake areas. Another 5 or 6 years of treatment will be needed to treat the entire lake, and after that time, only periodic and highly targeted treatments should be necessary. The proposed treatment zone is shown in orange with last year's treatment in purple:



Department Approval:

John W. Howard

City Manager Approval:

Steve Smith

West Lake Winona Curly Leaf Pondweed Treatment

Staff would contract with an applicator to apply herbicide late in the spring or early in the summer. The herbicide of choice is known as endothall, which is a contact-based herbicide. Curly leaf pondweed is the first plant to begin growing, and the only one active at that time of year, so no more than minimal damage would be done to native plant species. Toxicological studies by the EPA have found the chemical to be safe to water recreationalists and has no significant adverse effects to aquatic life.

If Council concurs, a motion to approve accepting the grant and to proceed with treatment would be in order.

REQUEST FOR COUNCIL ACTION

<i>Agenda Section:</i> New Business	<i>Originating Department:</i>	<i>Date</i>
<i>No:</i> 5	Public Works	04/05/21
<i>Item:</i> Community Forestry Corps Program		
<i>No.</i> 5.7		

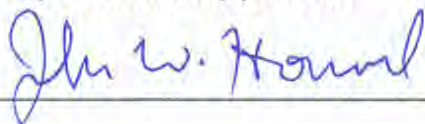
SUMMARY OF REQUESTED ACTION:

The City was invited to submit an application to host a Community Forestry Corps (CFC) member for the 2021-2022 service term. The current CFC member with the City, Katie Grannes, has been instrumental in updating our City tree inventory and coordinating tree planting. The CFC program is within the AmeriCorps family of programs, and is administered locally by Serve to Grow out of the Twin Cities. The City's specific work plan still needs to be developed and finalized, but staff anticipates having the member principally focus on tree planting and invasive species removal. There is no required match in dollars or in-kind time.

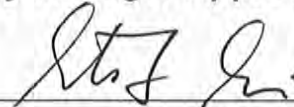
There are two types of service terms: full time (40 hours/week) and part-time (25 hours/week). Given the expected workload, staff suggests applying for a part time member to ensure they can be fully engaged now that the tree inventory is nearly completely updated. The City's natural resources and sustainability coordinator would be the primary supervisor and will work closely with the City's forester and outdoor recreation coordinator on projects.

If Council concurs, a motion authorizing staff to apply to be a CFC host site would be in order.

Department Approval:



City Manager Approval:



GUIDE TO APPLYING TO COMMUNITY FORESTRY CORPS

This document contains important information about applying to become a Community Forestry Corps site.



AmeriCorps

**Community
Forestry
Corps**

Please read this carefully prior to submitting your application.

Is Community Forestry Corps the Right Fit for your Site?.....	2
Program Overview	3
Program Expectations.....	4
Supporting Roles	5
Position Descriptions: Site Supervisor and Member.....	6
Cost of Community Forestry Corps	8
Timeline	9

IS COMMUNITY FORESTRY CORPS A GOOD FIT FOR YOUR SITE?

If you have questions about Community Forestry Corps or about the 2021-22 Site Application, please contact forestry@servetogrow.org.

Considerations before hosting a Community Forestry Corps member:

Community Forestry Corps thrives in a wide variety of contexts. There are minimum qualifications to consider:

- ☐ Does your organization engage in service including, but not limited to:
 - tree inventorying
 - tree planting events
 - gravel bed nursery design/construction/management
 - Emerald Ash Borer management plan development
 - citizen volunteer recruitment/training/utilization
 - outreach and education events?
- ☐ Would your participants benefit from more career-related services that they aren't able to receive from another staff person at your organization?
- ☐ Will a member have enough work to full their hours commitment each week (40 hours per week for Full-time and 25 hours per week for Part-time)?
 - Are there ongoing projects or activities the member can do during the winter months?
- ☐ Is there someone on your staff with the talent and capacity to serve as the Site Supervisor? **Please read the "Description of Site Supervisor" section:**
 - How will Site Supervisor's schedule reflect time for Community Forestry Corps duties (approx. 6-9 hours per member per month) plus training?
 - How will Site Supervisor be allowed to prioritize time spent on Community Forestry Corps duties throughout the year?

Name of proposed Site Supervisor: _____

Site Recruitment in partnership with Program Recruitment is essential to the success of the program.

- ☐ The Recruitment Contact should be available for phone and email conversations immediately upon receiving an award.
- ☐ The Recruitment Contact is expected to use the Site Recruitment Toolkit to recruit their member throughout the spring and summer, and **will make frequent and repeated appeals** to the site's networks to recruit for the open position(s) until filled.

Name of proposed Recruitment Contact: _____

The Site Supervisor or Director may also serve as the Recruitment Contact.

Other themes which will appear on the site application:

- ☐ **Is your site a nonprofit organization?** You must be a nonprofit in order to partner with any AmeriCorps program.

Determine the number of Community Forestry Corps for which to apply.

- ☐ What is the need for your organization? How would a Community Forestry Corps increase the capacity of your organization?
- ☐ Will the schedule allow for a minimum of 8 hours (Full-time) or 5 hours (Part-time) of service each day?
- ☐ Where in the building would be the designated office space for member(s)?
- ☐ Do you have the resources to provide each Member with a workspace, vehicle (if applicable), computer, phone, etc.?

Applying for ____ full-time (40 hours per week) member(s) | Applying for ____ part-time (25 hours per week) member(s)

The Process to Apply	
X	Instructions
	Locate site application at:
	Complete the application April 15, 2021 . Applications received past this date may be considered on a rolling basis.

PROGRAM OVERVIEW

PROGRAM GOAL

Community Forestry Corps is a partnership between Serve Minnesota, Reading & Math, Inc., and non-profit organizations or governmental agencies with the purpose of using the power of national service to preserve and protect Minnesota's environment and strengthen communities, with a focus on preserving and increasing tree canopy.

AMERICORPS OVERVIEW

Community Forestry Corps is a type of AmeriCorps program. AmeriCorps is often called the "domestic Peace Corps." It is a national service program that engages people in a year-long commitment to service.

COMMUNITY FORESTRY CORPS OVERVIEW

Community Forestry Corps was piloted in 2020 with 18 partner organizations throughout the state of Minnesota.

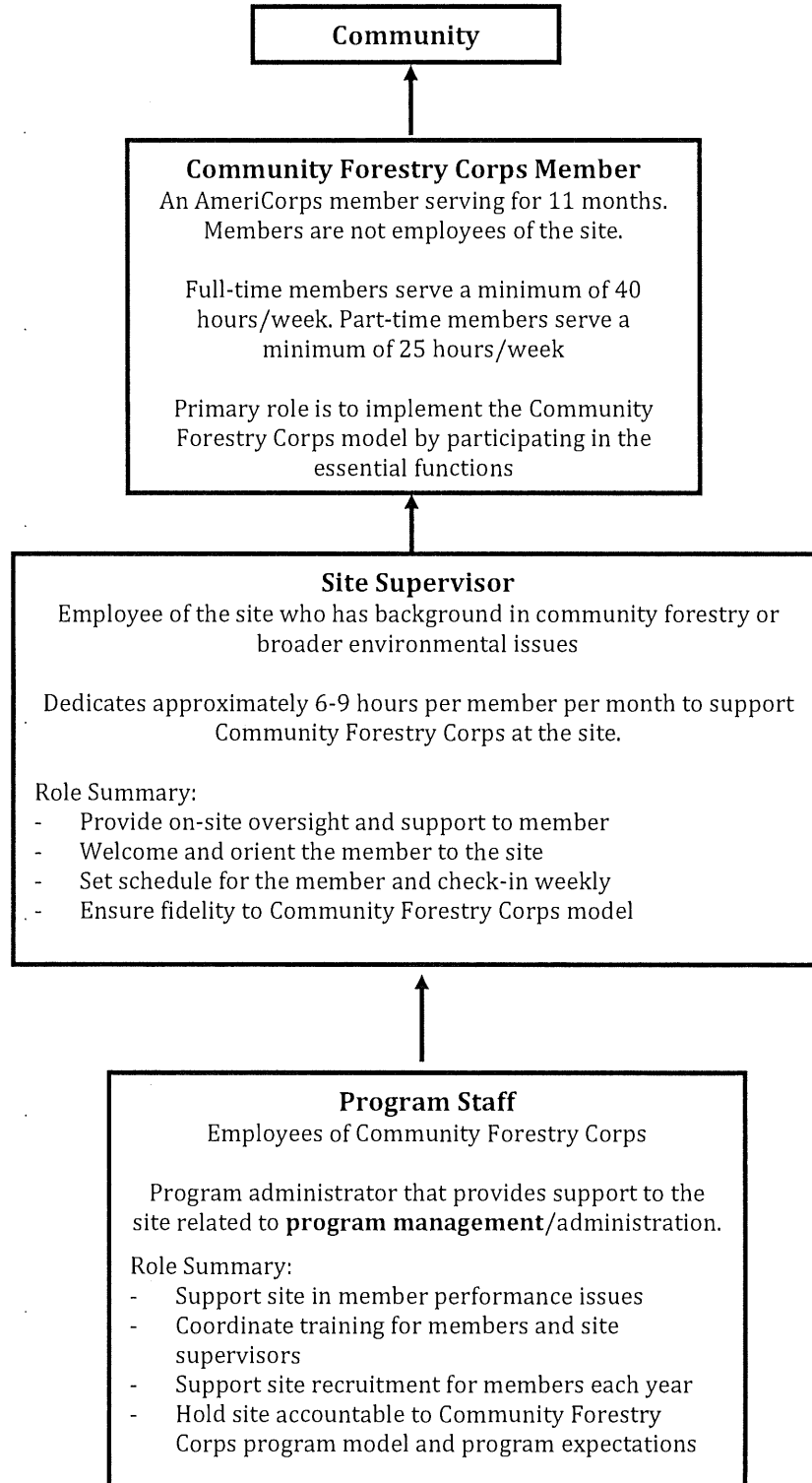
Community Forestry Corps Members are recruited to serve for 10 months. In exchange for their service, they receive a modest living allowance and an education award to use towards post-secondary education or to pay back qualified federal student loans.

Community Forestry Corps Members typically serve in a full-time capacity or part-time capacity. A full-time member must be able to serve 40 hours per week at the partner organization and complete 1700 hours of service in their 10-month service term. A part-time member must be able to serve 25 hours per week at the partner organization and complete 900 hours of service in their 11-month service term. Our priority start date is in September, but Members can also begin their service term in November and January if they are not placed by September.

PROGRAM EXPECTATIONS

1. **Identify a staff person** to fill the role of Site Supervisor and allocate sufficient time for the person to attend training and fulfill the on-site responsibilities of Community Forestry Corps.
2. **Recruit a pool of high-quality applicants** immediately upon notification of award for the Community Forestry Corps member position.
3. **Interview applicants (optional) in collaboration with Community Forestry Corps Staff** for the position on a rolling basis upon receiving an award. The priority deadline for hiring is August 27, 2021. Sites agree to work with the program on a case-by-case basis to fill any member positions not filled by that date.
4. **Welcome the member to the organization, introduce to staff, and provide an orientation to the site.** Ensure accessibility for each member at site, which includes, but is not limited to, the member workspace, site environment, and materials. etc. **Educate other staff** about the Community Forestry Corps to capture buy-in and support.
5. Allow the member to **implement the program model** appropriately
6. **Support program data collection** on a weekly basis. Data should be collected weekly at a minimum and is due by Monday of the following week.
7. **Ensure Community Forestry Corps Members serve their minimum hours commitment.** A full-time member serves a minimum of 40 hours per week while a part-time member serves a minimum of 25 hours per week.
8. **Provide on-site supervision** and support of the Community Forestry Corps member, including approval of timesheets.
9. **Designate a space** for the Community Forestry Corps member to work with program participants in either one-on-one or small group settings.
10. **Provide workspace for the member to use**, including computer access and a secure filing system/locked filing cabinet, as necessary.

SUPPORTING ROLES IN COMMUNITY FORESTRY CORPS



DESCRIPTION OF SITE SUPERVISOR

Training and supervision are critical elements to the success of Community Forestry Corps. The ability to provide adequate site supervision support must be carefully considered.

Site Supervisor Description	
Role	The Site Supervisor is designated by the site and will be trained by Community Forestry Corps to provide support and oversight to the Community Forestry Corps members. Site Supervisors will uphold the Community Forestry Corps model and act as a liaison between site staff, members, or program staff.
Time Commitment	<ul style="list-style-type: none"> • Average of 6-9 hours of support <u>per member</u> per month • Minimum of 2 annual site visits from program staff (approx. 45 minutes per member) • Attend site supervisor check ins as needed throughout the year
Training	Supervisor Orientation: Site Supervisors are required to attend Supervisor Orientation prior to the start of the program year. Completion of an orientation module is also required.
Responsibilities	<p>Provide an on-site orientation for the member to introduce them to the site.</p> <p>Set a daily schedule with the member that includes the ability to serve 40 hours per week (full-time) or 25 hours per week (part-time) at the site.</p> <p>Provide support to allow the member to develop professionally throughout the year, including inviting the member to participate in professional development opportunities at the service site and in the community.</p> <p>Work collaboratively with the member to complete work plan timeline for the year which includes projects and service activities.</p> <p>Ensure the member is accurately reporting data in their Forestry Log.</p> <p>Work closely with program staff and site administration to proactively address performance issues if they arise. Members are expected to adhere to site policies and procedures regarding confidentiality, safety, dress code, attendance, etc.</p> <p>Approve member timesheets once every two weeks and complete a member performance evaluation two times per year.</p> <p>Complete a semi-annual online program survey and participate in semi-annual site visits with program staff.</p> <p>Participate in special site visits to highlight and demonstrate the effectiveness of the Community Forestry Corps program. These site visits may include media, legislators, corporations, and other parties involved in funding.</p> <p>Fulfill additional or modified responsibilities for Community Forestry Corps pilot projects, as applicable.</p>

DESCRIPTION OF COMMUNITY FORESTRY CORPS MEMBER

Role	Community Forestry Corps Members are placed by Community Forestry Corps at a site partner.
Time Commitment	<ul style="list-style-type: none"> • Minimum of 8 hours per day, 5 days per week for full-time members and 5 hours per day, 5 days per week for part-time members • Regular, required training with Community Forestry Corps cohort (see 'Training' below) • Minimum of 2 annual site visits from program staff (approx. 45 minutes per member)
Training	<p><u>Member Orientation:</u> Members are required to attend Member Institute at the beginning of their term of service. They will learn about AmeriCorps and the Community Forestry Corps program model.</p> <p><u>Community Forestry Training:</u> Members participate in a variety of community forestry areas to enhance their ability to impact.</p> <p><u>Diversity, Equity, and Inclusion Training:</u> Members participate in diversity, equity, and inclusion training for their professional and personal development.</p> <p><u>Corps Days Training:</u> Members participate in supplemental professional development and member meet ups.</p>
Responsibilities	<p>Fulfill the duties and tasks outlined by the assigned service site in its Community Forestry Corps Project plan, specific activities may include:</p> <ul style="list-style-type: none"> • Tree inventorying • Planning and implementing tree planting events with volunteers and/or host site staff • Gravel bed nursery design/construction/management • Emerald Ash Borer management plan development and implementation • Citizen volunteer recruitment/training/utilization • Serve as a host site tree ambassador, providing outreach and education about the importance of trees in our communities

CFC Members DO ...	CFC Members DO NOT ...
<p>Support Community Forestry Corps mission to preserve and protect Minnesota's environment and strengthen communities.</p> <p>Serve everyday at their site(s) for the program year, 40 hours per week (full-time) or 25 hrs (part-time)</p>	<p>Replace or take on assigned tasks or duties of a paid program staff.</p> <p>"Cover" for program staff who are unable to work on a given day.</p>

COSTS OF COMMUNITY FORESTRY CORPS

The chart below breaks down the costs associated with Community Forestry Corps.

Description of cost	Community Forestry Corps pays	Site pays
Member recruitment efforts (i.e. newspaper ads)	✓	✓
Background checks on members	✓	
Member living allowance	✓	
Member benefits (insurance, child care, education award, forbearance)	✓	
Worker's Compensation policy for members	✓	
Member mileage to attend Community Forestry Corps required training	✓	
Facilitating Career Development training	✓	
Member mileage to attend site-required training		✓
Cost of including members in site-sponsored training		✓
Supplies used by member (i.e. markers, photocopies, paper, note pads)		✓
Computer and Internet access for member		✓
Work space for the member, including locked file cabinet and materials		✓
Salary of Site Supervisors to fulfill Community Forestry Corps responsibilities **		✓*
Community Forestry Corps Site Supervisor Training	✓	

* We recommend that programs be thoughtful about *incorporating* the Site Supervisor's responsibility into a staff person's position. Challenges occur when programs assign this responsibility to a staff person who already has many other responsibilities.

PROGRAM TIMELINE <small>*SOME DATES FLEXIBLE TO CHANGE</small>	
March-April	Partner Organization Application and Award Announcement
May	Member Application Released online – www.servetogrow.org/forestry Program Recruitment Begins
May 15 (or within two weeks after award is announced)	Signed Site Agreement returned to Community Forestry Corps
May – August	Recruit applicants for the Community Forestry Corps member position
August 27	All member positions filled!
Early September	Site Supervisor training
September 13	Service Year begins
Week of September 13	Community Forestry Corps Member Training
September 20	Members' first day at site
September – July	Regularly scheduled community forestry training, Corps Day/Member Meet Ups, and Diversity, Equity, and Inclusion Training
December / January	Program Site Visit
January 21	Mid-year member evaluations due
April / May	Program Site Visit
June 24	Year-end member evaluation due
July 30, 2022	Members' final day of service (last time sheet due)

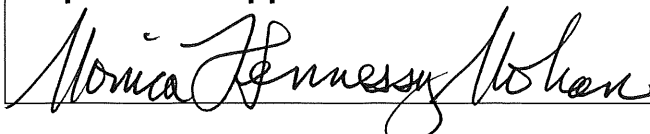
REQUEST FOR COUNCIL ACTION

<i>Agenda Section:</i> Council Concerns	<i>Originating Department:</i>	<i>Date:</i>
<i>No:</i> 7	City Clerk	04/05/21
<i>Item:</i> Council Concerns		
<i>No.</i> 7.1		

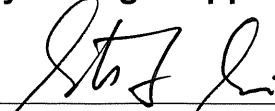
SUMMARY OF REQUESTED ACTION:

Time is reserved for Council Concerns.

Department Approval:



City Manager Approval:



REQUEST FOR COUNCIL ACTION

<i>Agenda Section:</i> Consent Agenda	<i>Originating Department:</i>	<i>Date:</i>
<i>No:</i> 8	City Clerk	04/05/21
<i>Item:</i> Consent Agenda		
<i>No.</i> 8.		

SUMMARY OF REQUESTED ACTION:

City Clerk:* *Item No. 8.1:* **Approval of Minutes – March 15, 2021*


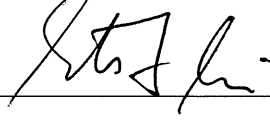
Minutes of the March 15, 2021 City Council meeting have been distributed. If the minutes are satisfactory, a motion to approve same would be in order.

City Clerk:* *Item No. 8.2:* **Ordinance to Amend the Unified Development Code*

An ordinance to amend the Unified Development Code to permit storage as a permitted use in the Mixed Use-Downtown Fringe Zoning District was introduced at the March 15, 2021 Council meeting. The purpose and effect of the proposed ordinance has been published by law. Accordingly, the ordinance may now be considered for final adoption. Accordingly, the ordinance may now be considered for final adoption. In addition, the Council is requested to adopt the attached Summary Ordinance to publish in the official newspaper rather than publishing the entire ordinance. If the Council concurs, a motion to adopt the ordinance as well as the summary publication would be in order.

City Clerk:* *Item No. 8.3:* **Claim Against the City by Vic Noland*

Vic Noland has filed a claim against the city for damages to due to a watermain 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: 
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**SUMMARY PUBLICATION OF CITY OF WINONA
ORDINANCE NO. 4147**

**AN ORDINANCE AMENDING WINONA CITY CODE,
CHAPTER 43 – UNIFIED DEVELOPMENT CODE**

SUMMARY: Ordinance No. 4147 amends Winona City Code, Chapter 43 - Unified Development Code, Section 43.02.22, Table 43-1, by adding storage facility as a permitted with standards use in the Mixed Use District, and by adding a new subsubsection P) to Section 43.03.74 establishing use specific standards for storage facilities.

The complete text of Ordinance No. 4147 may be obtained at no charge from the City Clerk at City Hall, 207 Lafayette Street, Winona MN 55987, or from the City of Winona website www.cityofwinona.com.

Dated this 5th day of April, 2021.

Mayor

Attested By:

City Clerk