



**Winona City Council  
Agenda**

**Monday, April 19, 2021, 6:30 p.m.  
City Council Chambers – City Hall  
3rd Floor - 207 Lafayette Street  
Winona, MN 55987**

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- 1. Call to Order – Mayor & City Manager's Comments**
- 2. Required Public Hearings**
- 3. Petitions, Requests, Communications**
  - 3.1. Appointment to the Heritage Preservation Commission**

**Recommended Motion:**  
That the Council confirm the appointment of Joseph Hughes to the Heritage Preservation Commission.
  - 3.2. Massage Therapy Licenses**

**Recommended Motion:**  
That the Council approve the Massage Therapist License and Massage Therapy Business for Kelsey Carlson doing business as River Valley Wellness.
  - 3.3. Craft Beer Tour Agreement with Leighton Enterprises**

**Recommended Motion:**  
That the Council approve the license agreement and to authorize administration to execute same.
  - 3.4. Request for Temporary Wine and Beer License for Great River Shakespeare Festival**

**Recommended Motion:**  
That the Council approve the Temporary Liquor License.
  - 3.5. Request for St. Martin's Strawberry Festival in Sinclair Park**

**Recommended Motion:**  
That the Council approve the request.
  - 3.6. Walk to End Alzheimer's Street Closure Request**

**Recommended Motion:**  
That the Council approve the request.

- 3.7. Street Closure Request for Sloppy Joe's  
**Recommended Motion:**  
That the Council approve the request.
- 3.8. Request from Winona's Nursing Club to Hold Pinning Ceremony at Bandshell  
**Recommended Motion:**  
That the Council approve the request.
- 3.9. Request for Winona Main Street Touch-A-Truck Parade  
**Recommended Motion:**  
That the Council approve the request.
- 3.10. Chamber of Commerce Sign Request  
**Recommended Motion:**  
That the Council approve the request.
- 3.11. Request for Amendment to Truck Route at 3rd Street and Ben Street  
**Recommended Motion:**  
That the Council introduce the ordinance to amend the Truck Route.
- 3.12. Heroes Among Us Monument Sign Request  
**Recommended Motion:**  
That the Council approve the request.

- 3.13. Request for Off-Site Permit for Lawful Gambling for the Red Men Club  
**Recommended Motion:**  
That the Council adopt the resolution to approve the gambling permit.

#### **4. Unfinished Business**

#### **5. New Business**

- 5.1. Gypsoil Pelletized – Subordination and Intercreditor Agreement  
**Recommended Motion:**  
That the Council authorize the Mayor and City Clerk to execute the document.
- 5.2. Water's Edge Apartments LLC—Tax Abatement Agreement  
**Recommended Motion:**  
That the Council adopt the resolution to authorize the Mayor and City Clerk to sign the tax abatement agreement.
- 5.3. Reduce Liquor License Fees for 2021  
**Recommended Motion:**  
That the Council approve the amended fee schedule and payment plan for 2021.
- 5.4. Amendment to Right-of-Way Ordinance and Small Cell Wireless Facilities Aesthetics Policy  
**Recommended Motion:**  
That the Council introduce the ordinance and adopt the resolution.

- 5.5. Amendment to Chapter 25.22 - Trees

**Recommended Motion:**

That the Council introduce the ordinance.

- 5.6. Comprehensive Plan RFP Review and Approval

**Recommended Motion:**

That the Council approve the RFP and authorize staff to solicit proposals.

- 5.7. Plat Review – Kwik Trip Plat at 1058 Homer Road

**Recommended Motion:**

That the Council adopt the resolution to approve the plat.

**6. Reports of Committees**

**7. Council Concerns**

**8. Consent Agenda**

**Recommended Motion:**

That the Council approve the items on the Consent Agenda.

- 8.1. Approval of Minutes – April 5, 2021

- 8.2. Claim Against the City by Steve Jorde

**9. Adjournment**

**Recommended Motion:**

The time being XX p.m. and there being no further business to come before the Council this evening, we do now adjourn.

# REQUEST FOR COUNCIL ACTION

Agenda Section: <b>Petitions, Requests, Communications</b>	Originating Department: <b>City Clerk</b>	Date: <b>04/19/21</b>
No: 3		
<b>Item: Appointment to the Heritage Preservation Commission</b>		
<b>No. 3.1</b>		

## SUMMARY OF REQUESTED ACTION:

Following is a communication from Mayor Scott D. Sherman.

April 19, 2021

City Council  
City Hall  
Winona, MN 55987

Dear Councilmembers:

This letter is to advise that I am this date appointing Joseph Hughes to serve on the Heritage Preservation Commission on the 1<sup>st</sup> Ward resident seat. Mr. Hughes will be replacing Merle Hanson who has resigned. The term would be effective April 20, 2021 and expire on July 17, 2022.

I trust that you will confirm this appointment.

Sincerely,

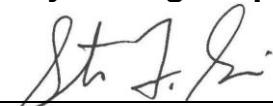


Scott D. Sherman  
Mayor

Department Approval:



City Manager Approval:

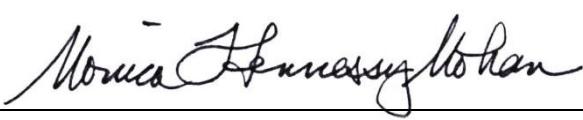
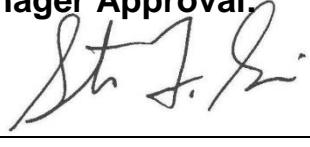


# REQUEST FOR COUNCIL ACTION

<i>Agenda Section:</i> <b>Petitions, Requests, Communications</b>	<i>Originating Department:</i> <b>City Clerk</b>	<i>Date:</i> <b>04/19/21</b>
<i>No:</i> <b>3</b>		
<b>Item:</b> <b>Massage Therapy Licenses</b>		
<b>No. 3.2</b>		

## SUMMARY OF REQUESTED ACTION:

Kelsey Carlson submitted an application for a Massage Therapist License and a Massage Therapy Business for River Valley Wellness, located at 1215 Gilmore Avenue, Suite B. All of the paperwork is in order, and the license would be effective April 20, 2021 through December 31, 2021. If the Council concurs, a motion to approve the licenses would be in order.

<b>Department Approval:</b> 	<b>City Manager Approval:</b> 
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# REQUEST FOR COUNCIL ACTION

<i>Agenda Section:</i> <b>Petitions, Requests, Communications</b>	<i>Originating Department:</i> <b>City Clerk</b>	<i>Date:</i> <b>04/19/21</b>
<i>No:</i> <b>3</b>		
<i>Item:</i> <b>Craft Beer Tour Agreement with Leighton Enterprises</b>		
<i>No.</i> <b>3.3</b>		

## SUMMARY OF REQUESTED ACTION:

Attached is a draft of the agreement with the Leighton Enterprises, Inc., for the 2021 Craft Beer Tour to be held on Saturday, June 26, 2021 at Levee Park. Leighton will be sponsoring this event, and Great River Shakespeare Festival will be running the beer sampling.

This will be a 21+ event. The area will be gated and all entrances monitored for the entire four hours. At the entrance, event organizers will take tickets, ID all attendees, and then wristband everyone before they are allowed to enter. Once the attendee enters, they will receive a commemorative sampling mug (a 5 ounce plastic mug) and an extensive program with a list of all the beers, descriptions, ABV's, IBU's and beer styles. Then the attendee will be able to walk around and sample from each brewery. This is an educational event, where people can look, smell, and taste beer from each brewery in 2 ounce samples at a time. The only cost to the event is the ticket for admission, and there will be some food available for purchase also. There will also be live entertainment on the stage. Once the event is over, cleanup will begin. The organizers will have recycling dumpsters at the event into which they will throw all cans, bottles and cardboard.

They will have a VIP hour from 1:00 – 2:00 pm, and general admission will be from 2:00 – 5:00 pm. They will also offer a Designated Driver Pass (No alcohol served to these attendees, but they still must be over 21). They plan to have 40 – 50 breweries and cider companies represented, and they will pour their products from cans, kegs, bottles and/or growlers into disposable cups.

If the Council concurs, a motion to approve the license agreement and to authorize administration to execute same would be in order.

**Department Approval:**



**City Manager Approval:**



## LICENSE AGREEMENT 2021 CRAFT BEER TOUR

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 Leighton Enterprises, Inc., a corporation under the laws of the State of Minnesota, (the "Licensee"), (collectively the "parties").

### RECITALS:

**WHEREAS**, the Licensor is the owner of the public streets and parking lots in the City of Winona, County of Winona, State of Minnesota; and

**WHEREAS**, the Licensee desires to hold a Craft Beer Tour at Levee Park in downtown Winona; 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. **Premises.** The Licensor is the owner of the public streets and parking lots in the City of Winona, Minnesota. The Licensee is hereby granted a terminable license to use the easterly portion of Levee Park (between Center Street and Walnut Street) and Municipal Parking Lot #9 located at Walnut Street and the levee for the Craft Beer Tour (the "Licensed Premises" or "public area"). The Licensee shall use the specified public area only for the purpose stated.
2. **Term.** The term of this Agreement shall be for the period from 6:00 a.m. on Friday, June 25, 2021, to 10:00 p.m. on Saturday, June 26, 2021.
3. **Purpose.** The following events and activities are hereby approved by the City of Winona for inclusion on the Licensed Premises:
  - Allow the use of the easterly portion of Levee Park and Municipal Parking Lot #9 during the term of the agreement
  - Allow the erection of a tents in the Municipal Parking Lot #9 during the license period;
  - Allow food vendors in the licensed area to operate on Saturday, June 26, 2021, from Noon to 6:00 p.m.;
  - Allow the sale and consumption of alcoholic beverages within licensed area with ingress to and egress from the area controlled by the Licensee subject to the liquor licensing requirements of state law and City ordinance.

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 to the sale and 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, throughout the event.
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 purpose and only for the term stated herein. 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. Should the Licensee commit or allow to be committed any waste on or destruction to the Licensed Premises, the Licensee shall immediately restore the Licensed Premises to the original condition of the Licensed Premises at the inception of this License Agreement, or, alternatively, pay to the Lessor 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 Lessor 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 Lessor. The Licensee, however, may license and sublet portions of the licensed premises to licensees, vendors and participants in the events, 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 event, the Licensee shall keep the licensed premises in a sanitary condition and keep the 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 Lessor. 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. The Licensor's Access. The Licensor, its employees, and its agents shall have the right to enter the 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.

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 any facilities used by the Licensee in connection with the event. 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 Licenser. 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 Licenser as provided below, before set-up of operations will be allowed.

B. Liability Insurance Coverage

The Licensee shall, at its 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. 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.

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. Cost of Electricity. The Licensee will be responsible for paying for the costs of electricity used in conjunction with the event.

12. 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.
13. Removal of Equipment, Tents and Portable Restrooms. All stages, tents, and portable restrooms shall be removed no later than noon on Sunday, July 1, 2018. The Licensee shall clean the area after the close of the event. Representatives from the City and the Licensee shall inspect all public areas at the close of the event to release the Licensee from its obligations under this agreement.
14. Contact Information. The Licensee shall designate the contact persons responsible for the various areas or activities of the event and provide the City with the names and phone numbers of the contact persons.
15. Termination of License. If at any time the Licensee breaches a material term of this Agreement, then this Agreement shall become null and void, at the option of the Lessor, immediately upon the Lessor's provision of written notice of the same to the Licensee.

## 16. **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. 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.
- 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 parties.

- e. Records—Availability and Retention. Pursuant to Minn. Stat. § 16C.05, subd. 5, the Licensee agrees that the Lessor, 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.
- f. 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.
- g. 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.*
- h. 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.
- i. 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.
- j. 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.
- k. 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.
- l. 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.

m. 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 to the facilities, programs and staff for which the Licensee is responsible.

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

LEIGHTON ENTERPRISES, INC.

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**

### **Tent Area**

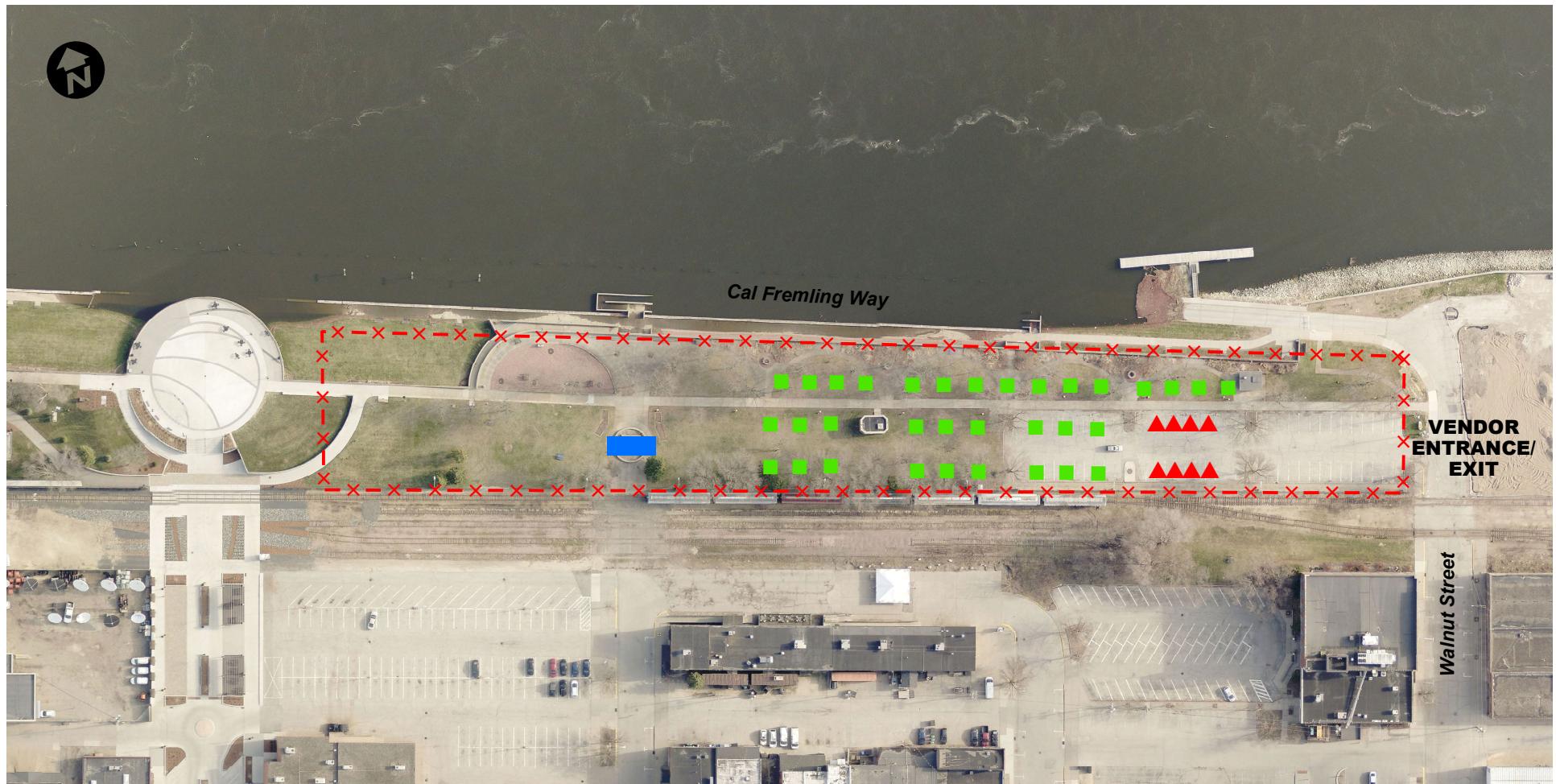
1. Tents may be set up in Municipal Parking Lot #9 from 8:00 a.m. on June 25, 2021, to 10:00 p.m. on Saturday, June 26, 2021.
2. The City shall post and provide street barricades for the closure of Municipal Parking Lot #9 prior to 6:00 a.m. on Friday, June 25, 2021.
3. Damage to the streets and parking areas caused by event activities shall be repaired at the expense of the Licensee.
4. 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.

### **Concessions**

1. To the extent the City of Winona is able to give an exclusive concessionaire right (no representation being made hereby as to the City's right to grant an exclusive concessionaire right which does not violate State or Federal anti-trust and/or restraint of trade laws), any public property designated for use by Licensee during the event shall be for the exclusive rights of their programs. This includes concessions, shows, and vending stands.
2. Concession stands are to be located in such a manner so as not to hinder other activities not related to the event.
3. Licensee shall inform all concessionaires that they must comply with State of Minnesota food inspection regulations.
4. The sale and consumption of alcoholic beverages in Municipal Parking Lot #9 must be limited to a fenced-in area with ingress to and egress from the area controlled by the Licensee.
5. Glass beverage containers are prohibited within the boundary of Levee Park and Municipal Parking Lot #9.

# CRAFT BEER TOUR @ LEVEE PARK

## SATURDAY, JUNE 26, 2021



- - x - x Fencing
- Food/Beer Tent
- Stage for Band
- ▲ Portable Toilet



0 50 100 200 Feet

# REQUEST FOR COUNCIL ACTION

Agenda Section: <b>Petitions, Requests, Communications</b>	Originating Department:	Date:
No: 3	City Clerk	04/19/21
<b>Item: Request for Temporary Wine and Beer License for Great River Shakespeare Festival</b>		
No. 3.4		

## SUMMARY OF REQUESTED ACTION:

The Great River Shakespeare Festival has applied for a Temporary On-Sale Wine and Malt Liquor license for the Craft Beer Tour, sponsored by Leighton Enterprises, located at the East Levee Parking lot and a portion of Levee Park on Saturday, June 26, 2021, from 1:00 – 5:00 p.m.

All documents are in order and administration recommends approval of the license.

**Department Approval:**



**City Manager Approval:**



# REQUEST FOR COUNCIL ACTION

Agenda Section: <b>Petitions, Requests, Communications</b>	Originating Department: <b>City Clerk</b>	Date: <b>04/19/21</b>
No: 3		
<b>Item: Request for St. Martin's Strawberry Festival in Sinclair Park</b>		
<b>No. 3.5</b>		

## SUMMARY OF REQUESTED ACTION:

Dear Councilmembers:

Once again we would like to hold our annual St. Martin's Strawberry Festival at Sinclair Park. This year's event is planned for Sunday, June 13. I have already reserved the park with the Parks & Recreation department.

If this is agreeable, I would also like to request electricity be available at the park for that date, and additional picnic tables.

Thank you for your time on this matter. This event has truly become a community event while also serving as a fundraiser for St. Martin's Lutheran Church and School.

Sincerely,

Sherri Wendland  
Strawberry Fest Chair  
St. Martin's Lutheran Church and School  
253 Liberty Street  
Winona, MN 55987

Department Approval



City Manager Approval:



# REQUEST FOR COUNCIL ACTION

Agenda Section: <b>Petitions, Requests, Communications</b>	Originating Department: <b>City Clerk</b>	Date: <b>04/19/21</b>
<b>Item: Walk to End Alzheimer's Street Closure Request</b>		
<b>No. 3.6</b>		

## SUMMARY OF REQUESTED ACTION:

Dear City Council,

I am submitting this request for the 2021 Winona Walk to End Alzheimer's event that will take place on Saturday, October 9, 2021, at East Lake Park and the Band Shell. We have reserved this area for set-up on Friday, October 8, 2021, starting at 5:30 pm through Saturday, October 9, 2021, at 2:00 pm.

We are requesting to also use the two Band Shell parking lots for these dates as we have in the past. We will use the parking lots to set up tents for registration, vendor information, and food for our participants. We will follow all COVID guidelines the day of the walk and for the set-up as well. We would also request that Lake Park Drive between Main Street and Franklin Street (around the Band Shell) be closed on Saturday, from 10 a.m. to 12 p.m.

Sincerely,

Jennifer O'Donnell, Regional Office Assistant  
Alzheimer's Association  
3224 6<sup>th</sup> Avenue NE, Unit A  
Rochester, MN 55906  
[jodonnell@alz.org](mailto:jodonnell@alz.org)

Department Approval:



City Manager Approval:



# REQUEST FOR COUNCIL ACTION

Agenda Section:	Petitions, Requests, Communications	Originating Department:	Date:
No:	3	City Clerk	04/19/21
<b>Item: Street Closure Request for Sloppy Joe's</b>			
No. 3.7			

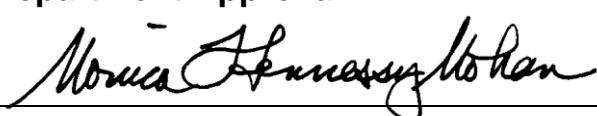
## SUMMARY OF REQUESTED ACTION:

Councilmembers,

I would like to request a road closure at Sloppy Joes Tavern, 526 East 3rd St. on Saturday, May 22, 2021 from 12:00 noon to 6:00 p.m. The closure on Hamilton Street and would be from the corner of 3rd Street north to the alley behind Sloppy Joes. This is to provide adequate social distancing for my father Chuck Loshek's memorial/celebration of life that will be held at Sloppy Joes Tavern.

Thank you,  
Angie Loshek Fossan

Department Approval:



City Manager Approval:



# REQUEST FOR COUNCIL ACTION

Agenda Section: <b>Petitions, Requests, Communications</b>	Originating Department: <b>City Clerk</b>	Date: <b>04/19/21</b>
No: 3		
<b>Item: Request from Winona's Nursing Club to Hold Pinning Ceremony at Bandshell</b>		
<b>No. 3.8</b>		

## SUMMARY OF REQUESTED ACTION:

Dear Councilmembers,

My name is Amber Callaway, and I am a nursing student at Winona State University. I am contacting you on behalf of Winona's Nursing Club. On April 29<sup>th</sup>, we will be celebrating our new grads through our pinning ceremony. This ceremony welcomes newly graduated nurses into the nursing profession. It is an exciting time for these students as they prepare for the NCLEX and start their careers.

We have reserved the bandshell at Lake Park from 4:00 p.m. – 8:00 p.m. for our event; however, we are requesting extra space to accommodate our guests and to be mindful of COVID. I am asking to meet with the city council during your next meeting; propose the closure of the parking lot during this event for 4 hours.

I have attached the proposal plan which includes safe practices. In total we will have 200 people attending.

1. Before coming to this event, everyone will be required to fill out Winona States COVID-19 questionnaire and provide proof upon admissions.
2. Upon admissions spectators and graduates will be provided with hand sanitizer.
3. Masks will be required, and social distancing will be enforced while at the park and during the ceremony.

To ensure this runs smoothly nursing club members will be checking family in, escorting individuals to seating, and enforcing our COVID precautions. If an individual does not abide by this they will be asked to leave the property.

I look forward to hearing from you and meeting with City Council.

Amber Christine Callaway  
Term 2 nursing student  
Amber.Callaway@go.winona.edu

**Department Approval:**



**City Manager Approval:**



## Pinning Ceremony 2021 Event Proposal

Nursing Club Committee Co-Chairs Brittany Thompson and Kiara Vandenlangenberg

### I. Objective

To present a proposal for and obtain approval of an in-person Pinning Ceremony for the graduating nursing students of May 2021.

### II. Purpose

As graduating nursing students and devoted Winona State Nursing Club leaders, we have a duty to recognize and celebrate the hard work of our peers. As students and individuals, this pandemic has taken away an immense number of experiences. After conducting a survey of the Term 4 cohort, of our 48 responses, all would be comfortable attending an in-person ceremony. Students expressed their excitement and hopefulness for an in-person ceremony in the free response in the survey. Ultimately, we would like to send off our May graduates with one last positive experience at Winona State University by celebrating their accomplishments with their cohort and families.

### III. Current State COVID-19 Guidelines

The current standings in the state of Minnesota according to the Minnesota Department of Health on March 5, 2021 state that guidelines for outdoor events and entertainment should not allow more than 250 attendees, social distancing is required (no events after 11pm), and there is a strong recommendation for masks, but they are not required.

### IV. Proposal

We would like to host an in-person Pinning Ceremony on Thursday, April 29, 2021, time to be determined. The following proposal has taken into consideration the current state of the COVID-19 guidelines. Our guidelines to be set in place regardless of any in-person ceremony progression includes the following:

1. Masks will always be worn by graduates, presenters, faculty, and attendees during the ceremony.
2. Guests will be limited to two per graduate. We have 54 graduating seniors. With taking those numbers into account plus faculty members that would like to attend, we would have about 200 people in attendance, keeping our numbers quite a bit lower than the maximum of 250 people.
3. Guests will need to provide their name and contact information to the Winona State Nursing Club for contact tracing purposes.

4. All in attendance will complete the Winona State University COVID-19 Self-Assessment.
5. All in attendance will be asked COVID-19 screening questions before admittance (see Appendix A)
6. Social distancing of 6 feet will be maintained and enforced for those who are not in the same household.
7. Virtual programs will be provided for those in attendance.
8. We will not be holding a gathering for refreshments following the ceremony.
9. We will be live streaming the ceremony for anyone that may not be comfortable attending and others that are unable to attend.

The following scenarios are what the Winona State Nursing Club have drafted, in order of preference:

- 1) In-person ceremony with two guests per graduate at Veteran's Memorial Park.
- 2) In-person ceremony with two guests per graduate on campus at the gazebo.
- 3) In-person ceremony with two guests per graduate on campus at the McCown Gymnasium.
- 4) In-person ceremony without guests at any of the previously stated locations.

Regarding weather, we hope to reserve the gymnasium pending approval of this proposal despite our first option for an in-person ceremony at Veteran's Memorial Park. We will make a final judgement on the location of the ceremony a week prior to the date of the ceremony to inform students if there will be a change in location due to the weather.

We understand the gravity of hosting a gathering during these times and we also understand the dynamic changes in guidelines. We are aware that even if plans are to be made, that they can change in an instant. We have also informed students that even if we do proceed with planning an in-person Pinning Ceremony, that it is not guaranteed.

## Appendix A COVID-19 Screening

### **1. Have you experienced any of the following symptoms in the past 48 hours:**

- fever or chills
- cough
- shortness of breath or difficulty breathing
- fatigue
- muscle or body aches
- headache
- new loss of taste or smell
- sore throat
- congestion or runny nose
- nausea or vomiting
- Diarrhea

### **2. Have you been in close physical contact in the last 14 days with:**

Anyone who is known to have laboratory-confirmed COVID-19?

OR

Anyone who has any symptoms consistent with COVID-19?

Close physical contact is defined as being within 6 feet of an infected/symptomatic person for a cumulative total of 15 minutes or more over a 24-hour period starting from 48 hours before illness onset (or, for asymptomatic individuals, 48 hours prior to test specimen collection).

### **3. Are you currently waiting on the results of a COVID-19 test?**

## Revisions

### I. Location

- a. Our primary location that we would proceed with in regard to planning is the Bandshell at Veteran's Memorial at Lake Winona.
  - i. This location allows up to 150 people including the green space and benches provided according to the facility. We would also reserve and block off the parking lot at the Bandshell to allow for additional seating and/or standing room to accommodate our original plan for 200 people in attendance.
- b. Our back-up location in case of bad weather is the McCown Gymnasium on the Winona State University campus.
  - i. This location allows up to 200 people according to the facility.

### II. Basic COVID-19 Safety Requirements for Ceremonial Activities

- a. Admittance
  - i. Guests will be allowed to be screened and admitted into the ceremony starting at 5:30 pm (if start of ceremony is to be at 6:00 pm)
  - ii. We will have at least 4 Nursing Club members around the perimeter of the ceremony at all times checking for the Winona State University COVID-19 Self-Assessment green screens, provide the COVID-19 screening, and confirming the names of these guests.
  - iii. There will be a shared document via OneDrive among the club with the names of all of those in attendance – guests, students, faculty, and presenters - that will be highlighted by the Nursing Club member upon their arrival.
  - iv. In the event of the ceremony being at the McCown Gymnasium, we would have 4 Nursing Club members at two entrances to monitor admittance.
- b. Mask Enforcement
  - i. There will be at least 4 members of nursing club surveying the ceremony to be sure that masks will stay on every person during the ceremony.
  - ii. Those who have their masks off or down will be asked to put them on/pull up.
  - iii. Those who are unable to keep their mask on will be asked/escorted to leave the ceremony grounds.
- c. Social Distancing
  - i. The Nursing Club will place student chairs 6 feet apart from one another in front of the bandshell.
  - ii. Benches at the location will be marked with tape as to where on the bench a singular guest may sit.
  - iii. In the parking lot, there will be tape marks where guests may set up their own seating or stand during the ceremony.

\*An email will be sent out to all students, guests, faculty, and presenters notifying them of our requirements. They will be notified that arrival to our event and presenting a Winona State

University COVID-19 Self-Assessment green screen is an agreement to our ceremony's terms of safety, and failure to abide may result in dismissal from the event. \*

d. Remarks from Speakers:

- i. Event speakers and presenters will be seated and socially distanced 6 feet on the stage.
- ii. Masks will be worn by speakers and presenters at all times.
- iii. Speakers will sanitize their hands before approaching the speaking podium.
- iv. The microphone is to be left on through the entirety of the ceremony.
- v. Student speakers will be seated on the ends of student rows to have safe access to the stage and will follow aforementioned speaker protocols.

e. Pinning/Name reading:

- i. Each student will walk up 1 by 1 to receive their pin to allow for viewing by their family members and friends.
- ii. Upon walking up to the stage, the student will sanitize their hands.
- iii. The Pinning will proceed as the Cabinet deems fit:
  1. Pins will be spaced out on a table and each student will pick up 1 pin.
  2. They will then turn and face the crowd, pin themselves, and walk across and off the stage.

OR

3. A faculty member will present and pin the students 1 by 1 on the stage.

f. Nurse Pledge Reading:

- i. All T4 students will stand from their seats and recite the pledge.
- ii. The Pledge Reading will be led by a speaker, yet to be determined, who would be on the stage.

III. Proper Space Calculations

- a. The Minnesota Department of Health COVID-19 restrictions, as of March 15<sup>th</sup> at 12 PM are as follows:
  - i. Open at 50% capacity, no more than 250 people
- b. The bandshell occupancy is originally placed at 500 people. With current COVID-19 restrictions at 50% capacity, that would allow space for 250 people. After discussing COVID restrictions with the City of Winona, the bandshell can hold up to 150 people including the green space. This does not include the occupancy number in the parking lot space.
  - i. There are 54 graduating senior nursing students. There are 10 members of the Nursing Club volunteering for the ceremony. The number of faculty

members and guests who will attend is yet to be determined. If each senior nursing student brought two guests, this would place the total number at 162 people. We would also want to invite the 27 undergraduate nursing faculty members to attend. This puts our total number at 199 people. By reserving the parking lot at the Bandshell, this would accommodate for the additional 49 people. This number would also be appropriate for reserving the McCown Gymnasium.

- ii. This takes into account the current COVID restrictions, the space at the bandshell, and 6 feet social distancing.

**IV. Confirmation of Date and Time**

- a. Thursday, April 29<sup>th</sup> at 6pm

# REQUEST FOR COUNCIL ACTION

Agenda Section: <b>Petitions, Requests, Communications</b>	Originating Department: <b>City Clerk</b>	Date: <b>04/19/21</b>
No: 3		
<b>Item: Request for Winona Main Street Touch-A-Truck Parade</b>		
<b>No. 3.9</b>		

## SUMMARY OF REQUESTED ACTION:

Dear City Council Members,

Winona Main Street requests permission to hold the Touch-A-Truck parade on May 22, from 9:00 a.m. to noon, with a backup date of July 10. We're looking to have between 25 and 30 total vehicles participating (3 semis maximum). They would line up on Cal Fremling Parkway (facing West) starting at 8 a.m. The parade will happen in three phases in order to better control and monitor foot traffic. Phase 1 would be a viewing when the vehicles are lining up for the parade, and would take place from 9-9:30 Cal Fremling Parkway. Phase 2 would be the parade, beginning at 9:45, where vehicles will follow the parade route. Parade should last approximately 30 minutes until 10:15. Vehicles will then park, spaced apart, along 3rd Street between either Main or Center to Franklin Street. The spacing will be determined by total number of vehicles participating. Phase 3 would be a second viewing period from 10:30 until Noon. We are proposing that parade watchers on the northerly sidewalk proceed west to view vehicles, and parade watchers on southerly sidewalk proceed east to view vehicles.

We are requesting that Third Street be closed with no parking from Johnson Street to Franklin Street from 8 a.m. to 1 p.m., and close Johnson Street from Cal Fremling Drive to Third Street from 8 am to approximately 10:30 am, once the parade procession is over. In addition, post Cal Fremling Drive for no overnight parking on Friday, May 21, until 1:00 pm on May 22. Traffic would still be able to cross Johnson on 2nd Street until the parade starts. All westbound traffic on Second Street will be routed to Fourth Street at Second and Franklin from 9:30 – 10:30 am.

Sincerely,

Ben Strand  
Main Street Program Coordinator

For Saturday, May 22, the bus stop at 3<sup>rd</sup> and Center Streets would need to be temporarily relocated one block north to the intersection of 4<sup>th</sup> Street and Center Street. The parking on the south side of 4<sup>th</sup> Street from Center Street west to the driveway for the Winona National Bank, and the parking on the west side of Center Street from 4<sup>th</sup> Street south one space, would be posted for no parking from 6:00 a.m. – 2:00 pm.

Department Approval:  	City Manager Approval:  
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Cal Fremling/Levee Park Viewing Area Sq. Ft.

- $83,548 / 113 = \text{approx. } 739 \text{ ppl}$

Johnson St. Parade Viewing Area Sq. Ft.

- $48,033 / 113 = \text{approx. } 425 \text{ ppl}$

3rd Street Parade/Viewing Area Sq. Ft.

- $137,922 / 113 = \text{approx. } 1,221 \text{ ppl}$

## STATE GUIDELINES & NUMBERS

The Winona Main Street Program and Winona Area Chamber of Commerce plan to follow these new guidelines in order to ensure a safe, accessible, and enjoyable environment for this event. We also know things may change in the coming weeks, and we will remain flexible and adapt if/when those changes come.

As per the governors most recent announcement regarding COVID guidelines, “non-seated outdoor venues may operate with an additional 15% of the capacity above 500, with a maximum capacity not to exceed 10,000 for the entire venue.”

Using the Venue Occupancy Calculator on [mn.gov/covid19/stay-safe/stay-safe-plan/index.jsp](http://mn.gov/covid19/stay-safe/stay-safe-plan/index.jsp), we calculated the max number of people that can occupy each space indicated on the map on page 2.

- **Phase 1 ,viewing period #1** (explained on page 1) there can be a maximum number of 739 people in that area for viewing period #1.
- **Phase 2, the parade procession** (which will include all three spaces indicated on the map on page 2) there can be a maximum number of 2,386 people to view the procession of the parade
  - for reference, it has been estimated in years past that between 2,000 and 2,500 people attend Touch-A-Truck
- **Phase 3, viewing period #2** there can be a maximum number of 1,221 people in that area for viewing period #2

The reason for dividing the parade into 3 phases is to minimize the risk of having too many people in one space at any given time. Families who choose to attend either viewing period #1 or viewing period #2 will also be able to see the parade commencement without weaving between each other in each space. Families who choose to attend viewing period #1 will be expected to leave the area once the parade commencement is over, limiting the possibility of having too many people on 3<sup>rd</sup> Street for viewing period #2. Once viewing period #2 is over the event will be completed and vehicles will continue down 3<sup>rd</sup> Street and turn off on Franklin.

## ENFORCEMENT

Another reason for dividing the parade into phases is it makes it easier to set up a volunteer strategy and enforce COVID guidelines.

- **Volunteer Group #1** would help monitor and control foot traffic (using clickers) during viewing period #1 and the parade commencement
- **Volunteer Group #2** would monitor and control foot traffic (using clickers) during viewing period #2
- **Chamber & Main Street Staff** would monitor and control foot traffic on 3<sup>rd</sup> Street during parade commencement
- **Signage** would be placed along Cal Fremling Parkway, Johnson Street, and 3<sup>rd</sup> Street to remind people to social distance and wear masks

For viewing period #1 we would have volunteers located at the east entrance of Cal Fremling Parkway/Levee Park and keep count of the number of families/people that enter through that area. Volunteers would also be located at the stairways to Levee Park patio to monitor number of people there.

For parade procession volunteers and staff would ensure people start spreading out among Cal Fremling/Levee park sightline area and Johnson St., making sure people aren't forming groups too large. Staff would also walk down 3<sup>rd</sup> Street ahead of the parade to make sure people are social distancing and not gathering in groups too large while they wait for the parade/viewing period #2.

For viewing period #2 volunteers would be stationed on sidewalks down 3<sup>rd</sup> Street monitoring the number of people and making sure groups larger than allowed aren't forming.

## PARKING

Included in the online promotion of this event, we will promote the use of parking spaces throughout downtown that best correlate to the portion of the parade families will be attending:

- **Viewing Period #1/Parade:** Promote use of municipal lots #6, #7, #8, and #9 as well as street side parking
- **Viewing Period #2/Parade:** Promote use of municipal lots #1, #2, #3, and #12 as well as street side parking

*\*\*Averaging 60 ft./vehicle (included space between each vehicle when parked along 3<sup>rd</sup> St.) allows for 30 vehicles parked between Center and Franklin, and we will take down street barricades at Main and 3<sup>rd</sup> and Center and 3<sup>rd</sup> after parade procession ends (to minimize amount of time bus route (Center St.) and heavily traveled road (Main St.) is blocked off). If we get more than 30 vehicles then we will keep the barricades at Center and 3<sup>rd</sup> up, but we would still take down barricades at Main and 3<sup>rd</sup> to minimize time a heavily traveled road is blocked.*

# REQUEST FOR COUNCIL ACTION

<i>Agenda Section:</i> Petitions, Requests, Communications	<i>Originating Department:</i> City Clerk	<i>Date:</i> 04/19/21
No: 3		
<b>Item: Chamber of Commerce Sign Request</b>		
No. 3.10		

## SUMMARY OF REQUESTED ACTION:

The Winona Chamber of Commerce submitted an application to post a sign at Central Park from May 3 – 17 to promote their Touch-A-Truck Parade event, and they have paid the \$25 fee. If Council concurs, a motion to approve the request would be in order.

**Department Approval:**



**City Manager Approval:**



# REQUEST FOR COUNCIL ACTION

Agenda Section: <b>Petitions, Requests, Communications</b>	Originating Department: <b>City Engineer</b>	Date: <b>04/19/2021</b>
No: <b>3</b>		
<b>Item: Request for a Truck Route on 3<sup>rd</sup> Street from McBride Street to Ben Street and on Ben Street from 3<sup>rd</sup> Street to 5<sup>th</sup> Street</b>		
<b>No. 3.11</b>		

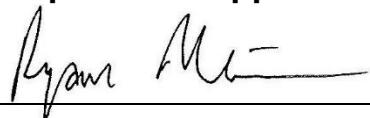
## SUMMARY OF REQUESTED ACTION:

There has been a request from the police department for declaring 3<sup>rd</sup> Street from McBride Street to Ben Street and Ben Street from 3<sup>rd</sup> Street to 5<sup>th</sup> Street as designated truck routes.

There are multiple semis that are still delivering items from Bay State Milling to the old Watkins building near the intersection of 3<sup>rd</sup> Street and Mechanic Street, and then taking Mechanic Street, Harvester Street, and Baker Street to get to 5<sup>th</sup> Street. The truck route on 3<sup>rd</sup> Street currently ends at McBride Street and there is no designated truck route in this area so law enforcement cannot enforce semis driving on any of these residential streets. Staff would recommend extending the truck route on 3<sup>rd</sup> Street to Ben Street, which would make 3<sup>rd</sup> Street a truck route from Olmstead Street to Ben Street, and also designate Ben Street a new truck route between 3<sup>rd</sup> Street and 5<sup>th</sup> Street.

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

**Department Approval:**



**City Manager Approval:**



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING WINONA CITY CODE,  
CHAPTER 61 – TRAFFIC, SCHEDULE G

THE CITY OF WINONA DOES ORDAIN (new material is underlined in red; deleted material is lined out; sections which are not proposed to be amended are omitted; sections which are only proposed to be re-numbered are only set forth below as to their number and title):

SECTION 1. That Schedule G of Winona City Code, Chapter 61 – Traffic, Section 61.50, Truck Routes, be amended as follows:

**TRUCK ROUTES**

The following streets in the City are hereby declared to be truck routes:

Ben Street from Third Street to Fifth Street.

Third Street from Olmstead Street to McBride Ben Street and from Franklin Street to Steuben Street.

SECTION 2. That this ordinance shall take effect upon its publication.

Passed by the City Council of the City of Winona, Minnesota, this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

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Mayor

Attested By:

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City Clerk

# REQUEST FOR COUNCIL ACTION

<i>Agenda Section:</i> <b>Petitions, Requests, Communications</b>	<i>Originating Department:</i> <b>Parks and Recreation</b>	<i>Date:</i> <b>04/19/21</b>
<i>No:</i> <b>3</b>		
<b>Item: Heroes Among Us Monument Sign Request</b>		
<b>No. 3.12</b>		

## SUMMARY OF REQUESTED ACTION:

On September 11, 2008 the Heroes Among Us Monument, adjacent to the Visitors Center, was officially dedicated. It has been brought to the attention of City staff, that a sign(s) indicating the monument's location were never placed in the area.

Staff has identified two locations within the Huff Street right-of-way for the signs (see attached). In accordance with City Code Section 43.05.13, a sign posted in City right-of-way requires Council approval.

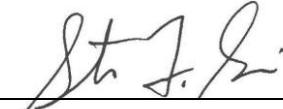
Staff recommends posting two 'Heroes Monument' signs, approximately 12" X 18", within the Huff Street right-of-way. Additional signage in Lake Park near the Visitor Center is also requested to further identify the location.

If Council concurs, a motion to place signage within the Huff Street right-of-way and Lake Park, for the purpose of identifying the location of the Heroes Among Us Monument.

**Department Approval:**



**City Manager Approval:**



## Heroes Among Us Monument - Huff Street Signage

Huff Street - Traveling North



Huff Street - Traveling South



# REQUEST FOR COUNCIL ACTION

<i>Agenda Section:</i> <b>Petitions, Requests, Communications</b>	<i>Originating Department:</i> <b>City Clerk</b>	<i>Date</i> <b>04/19/21</b>
<b>No: 3</b>		
<b>Item: Request for Off-Site Permit for Lawful Gambling for the Red Men Club</b>		
<b>No. 3.13</b>		

## SUMMARY OF REQUESTED ACTION:

The Red Men Club has submitted an application for an Off-Site Permit for Lawful Gambling to be used at the Jaycee's Pavilion on Lake Park Drive on July 18, 2021. If Council concurs, a motion to approve the resolution would be in order.

## RESOLUTION

**BE IT RESOLVED** by the City Council of the City of Winona, Minnesota, that it approves the Off-Site Permit for Lawful Gambling Application for the Red Men Club to conduct lawful gambling Jaycee's Pavilion on Lake Park Drive on July 18, 2021.

**Department Approval:**



**City Manager Approval:**



# REQUEST FOR COUNCIL ACTION

Agenda Section: <b>New Business</b>	Originating Department:	Date
No: 5	Community Development	4/19/2021
<b>Item: Gypsoil Pelletized – Subordination and Intercreditor Agreement</b>		
No. 5.1		

## SUMMARY OF REQUESTED ACTION:

### Background:

In May 2015, the City of Winona made a loan of \$300,000 through the Minnesota Investment Fund (MIF) to Gypsoil Pelletized Products ("Gypsoil"), a division of Beneficial Reuse Management LLC ("BRM"), collectively referred to as the "Borrowers" for the purpose of encouraging business growth and expansion. The \$300,000 loan provided to Gypsoil Pelletized Products LLC was for the purchase machinery and equipment to be used on the premise of 110 Harvester Avenue.

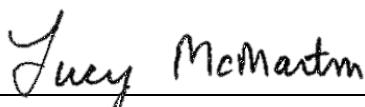
In September 2015, the Borrowers' then Senior Lender, MB Financial Bank N.A. requested a Subordination Agreement and Intercreditor Agreement from the City of Winona and Port Authority. This document outlines the position of each of the Senior and Junior Lenders ("Lenders") in the project. Both the City and Port ("Junior Lenders") approved the Subordination and Intercreditor Agreement in 2015.

The Borrowers' are planning to close on a new Senior Loan with new Senior Lender, Context Credit Holdings, LP, who have requested an updated a Subordination Agreement and Intercreditor Agreement with the City and Port Authority. This document outlines the position of each of the Lenders in the project.

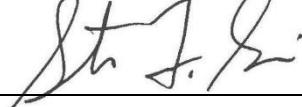
The Port Authority entered into the Subordination and Intercreditor Agreement on April 15, 2021.

If Council concurs, a motion to authorize the Mayor and City Clerk to execute the document would be appropriate.

**Department Approval:**



**City Manager Approval:**



## **SUBORDINATION AND INTERCREDITOR AGREEMENT**

**THIS SUBORDINATION AND INTERCREDITOR AGREEMENT** (this "Agreement") is made as of \_\_\_\_\_, 2021, by and among **BENEFICIAL REUSE MANAGEMENT LLC**, an Illinois limited liability company ("BRM"), **GYPSOIL, LLC**, an Illinois limited liability company ("Gypsoil", together with BRM, sometimes individually referred to as a "Borrower" and collectively as the "Borrowers"), each with its principal place of business at 372 W. Ontario, Suite 501, Chicago, Illinois 60654, **CONTEXT CREDIT HOLDINGS, LP** ("Senior Lender"), whose address is One Belmont Avenue, Suite 630, Bala Cynwyd, Pennsylvania, and the **CITY OF WINONA, MINNESOTA**, a Minnesota municipal corporation, with offices at 207 Lafayette Street, Winona, Minnesota 55987 ("City"), **PORT AUTHORITY OF, MINNESOTA**, a body politic and corporate under the laws of the State of Minnesota, with offices at 207 Lafayette Street, Winona, Minnesota 55987 ("Authority"). **SOUTHERN MINNESOTA INITIATIVE FOUNDATION**, a Minnesota not-for-profit organization, with offices at 525 Florence Ave. PO Box 695, Owatonna, Minnesota 55060 ("Foundation" and together with City and Authority, each sometimes individually referred to as "Junior Lender" and collectively as the "Junior Lenders")."

### **RECITALS**

- A. Senior Lender and Borrowers entered into a certain Loan and Security Agreement dated \_\_\_\_\_, 2021, as the same may amended and modified from time to time ("Loan Agreement"), pursuant to which Senior Lender has extended to Borrowers a revolving line of credit facility ("Revolving Loan") in an amount not to exceed at any one time the principal sum of \$7,000,000.00 (the "Senior Loan").
- B. The Senior Loan is evidenced by that certain Revolving Loan Note dated March \_\_\_, 2021 in the principal sum of \$7,000,000.00 (the "Senior Note").
- C. The Authority has made a loan to BRM in the sum of \$140,000.00 (the "Authority Loan") evidenced by that certain Port Authority of Winona Revolving Loan Fund Program Promissory Note dated May 14, 2015 payable to the order of the Authority in the sum of \$140,000.00 executed by BRM (the "Authority Note"). The City has agreed to make a future loan to BRM dba Gypsoil in the sum of \$300,000.00 (the "City Loan") to be evidenced by a Promissory Note, Minnesota Investment Fund payable to the order of the City in the principal sum of \$300,000.00 executed by BRM (the "City Note"). The Foundation has made a loan to BRM d/b/a Gypsoil Pelletized Products, LLC, in the sum of \$140,000.00 (the "Foundation Loan") evidenced by a Promissory Note dated May 14, 2015 payable to the order of the Foundation in the principal sum of \$140,000.00 executed by BRM d/b/a Gypsoil Pelletized Products, L.L.C., (the "Foundation Note" and collectively with the Authority Note and the City Note, the "Junior Notes"). The Authority Loan, the City Loan and the Foundation Loan are each sometimes referred to herein individually as a "Junior Loan" and collectively as the "Junior Loans". The Authority, the City and the Foundation are sometimes referred to herein individually as a "Junior Lender" and collectively as the "Junior Lenders".
- D. Subject to the terms and conditions contained herein, as a condition to making the Senior Loan, Senior Lender is requiring that (i) Junior Lenders agree to subordinate the Junior Indebtedness (hereinafter defined) to the payment of Senior Indebtedness (as hereinafter defined) and (ii) to the extent that any Junior Indebtedness is secured by a lien or security interest in or upon any property of one or more of Borrowers, Junior Lenders agree that such lien and/or

security interest is and shall be subordinated to Senior Indebtedness and to liens or security interests in any of the property of Borrowers which secure payment of any Senior Indebtedness.

**NOW, THEREFORE**, in consideration of the agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

1. **Recitals.** The above recitals are true and correct and are hereby incorporated herein by this reference.

2. **Definitions.** All capitalized terms used and not otherwise defined herein shall have the respective meanings assigned thereto in the Senior Loan Documents. For all purposes of this Agreement, the following terms shall have the respective meanings hereinafter specified:

**"Affiliate"** shall mean any Person which, directly or indirectly, owns or controls, is controlled by or is under common control with any of the Borrowers. For the purpose of this definition, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of management or policies of a Person, whether through the ownership of voting securities, common directors or officers, by contract or otherwise. A parent company, sister company or subsidiary of a Person is an Affiliate of that Person. Notwithstanding the foregoing, Senior Lender shall not be deemed to be an Affiliate of Borrowers by reason of the relationship created by this Agreement.

**"Compliance Date under Minnesota Business Subsidy Act"** means October 15, 2017, or such later date as may be set by the Junior Lenders after holding a public hearing and approval by the State of Minnesota, which is the date the job creation, wage level commitments and business operations requirements contained in the applicable Junior Loan Documents must be met in accordance with the Minnesota Business Subsidy Act.

**"Enforcement Action"** shall mean either or both of (a) the commencement of the enforcement of any rights, and/or (b) the exercise of any remedies available under the Senior Loan Documents, the Junior Loans or under any provision of applicable law against one or more of Borrowers in respect of the Junior Indebtedness, Junior Liens, Senior Indebtedness or Senior Liens, including without limitation, the commencement of any litigation or proceeding, including the commencement of any Insolvency Proceeding or foreclosure proceeding, the exercise of any power of sale available under the UCC or otherwise, the sale by advertisement, the taking of a deed or assignment in lieu of foreclosure, the obtaining of a receiver or the taking of any other action with respect to, or the enforcement of any remedy against, any of the property, assets or obligations of one or more of Borrowers.

**"Insolvency Proceeding"** shall mean any proceeding under Title 11 of the United States Code (11 U.S.C. Sec. 101 *et seq.*) or any other insolvency, liquidation, reorganization or other similar proceeding concerning any Borrower, any action for the dissolution of any Borrower, any proceeding (judicial or otherwise) concerning the application of the assets of any Borrower for the benefit of its creditors, the appointment of, or any proceeding seeking the appointment of, a trustee, receiver or other similar custodian for all or any substantial part of the assets of any Borrower or any other action concerning the adjustment of the debts of any Borrower, the cessation of business by any Borrower, except following a sale, transfer or other disposition of all or substantially all of the assets of any Borrower in a transaction, if any, permitted under the Senior Loan Documents.

"Job Creation, Wage Level Commitments, and Business Operations under Minnesota Business Subsidy Act": means the job creation, wage level commitments and business operations requirements, pursuant to the Minnesota Business Subsidy Act, as contained in the applicable Junior Loan Documents, including the following: i) at least 20 new full time jobs shall be created by the Compliance Date; ii) the jobs created must pay an hourly wage of at least \$18.00 including benefits (Jobs created after April 17, 2015, will count toward the job creation commitment); and iii) the Borrower must continue business operations within the City of Winona, Minnesota, for at least 5 years from May 14, 2015.

"Junior Debt Default" shall mean any default with respect to one or more of the Junior Loans or under the Junior Loan Documents.

"Junior Debt Default Notice" shall mean a written notice from any Junior Lender to Senior Lender pursuant to which Senior Lender is notified of a Junior Debt Default.

"Junior Indebtedness" shall mean the obligations, liabilities and indebtedness owing from the Borrower to the Junior Lenders as identified in paragraph 5, titled "Junior Indebtedness."

"Junior Liens" shall mean all liens and security interests previously, concurrently, or hereafter granted by any Borrower to or for the benefit of any Lender, securing in whole or in part the Junior Indebtedness.

"Junior Loan Documents" shall mean all present and future agreements, documents, and/or instruments, if any, evidencing, documenting, securing or otherwise relating to any or all of the Junior Indebtedness or Junior Liens as described herein, all as the same may be amended, extended, renewed or restated from time to time.

"Minnesota Business Subsidy Act" means Minnesota Statutes, Sections 116J.993-995 and its successor statute.

"Person" means any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, institution, entity, party, or government (whether national, federal, state, county, city, municipal or otherwise, including, without limitation, any instrumentality, division, agency, body, or department thereof).

"Senior Debt Default" shall mean any default with respect to one or more of the Senior Loan or under the Senior Loan Documents.

"Senior Debt Default Notice" shall mean a written notice from Senior Lender to Junior Lenders pursuant to which Junior Lenders are notified of a Senior Debt Default.

"Senior Indebtedness" shall mean all present and future obligations, liabilities and indebtedness (whether in the nature of principal, interest, fees, costs, expenses, indemnities or otherwise) owing from any Borrower to Senior Lender, whether or not evidenced by or incurred pursuant to the Senior Loan Documents (or any of them), individually, or jointly and severally with any Affiliate of any Borrower, including, but not limited to, Gypsoil Pelletized Products, LLC, all whether fixed or contingent, matured or unmatured, liquidated or unliquidated, and including, to the extent permitted hereunder, any or all of the foregoing

arising out of any amendments, modifications, extensions, renewals or restatements of any of the Senior Loan Documents, including but not limited to the Senior Loan.

"Senior Lender Collateral" shall mean all of the property, rights and assets of each Borrower, and all cash and non-cash proceeds thereof, described as collateral in the Senior Loan Documents, or any of them, or in which such Borrower has or hereafter may grant to Senior Lender a lien upon security interest in for the purpose of collateralizing payment of any of the Senior Indebtedness.

"Senior Liens" shall mean all liens and security interests (and rights associated therewith) previously, concurrently or hereafter granted by any Borrower to or for the benefit of Senior Lender, securing in whole or in part all or any of the Senior Indebtedness.

"Senior Loan Documents" shall mean the Loan Agreement, the Senior Notes, the Guaranties and all other documents evidencing, securing and guarantying the payment of the Senior Notes, in their respective original form or as amended, modified and restated from time to time.

"Subordination Termination Event" shall mean payment in full of the Senior Indebtedness or agreement by Senior Lender to a termination of this Agreement, whichever shall first occur.

"UCC" shall mean the Uniform Commercial Code as adopted in the State of Illinois and as adopted in the State of Minnesota, as may be amended from time to time.

### **3. Subordination.**

(a) **Generally.** Irrespective of: (i) the time, order, manner or method of creation, attachment or perfection of the respective security interests, guaranties and/or liens, if any, granted to any one or more of Junior Lenders by any Borrower, or to Senior Lender by any Borrower, in or with respect to any or all of the property or assets of such Borrower; (ii) the time or manner of the filing of such Junior Lender's or of Senior Lender's respective financing statements or mortgages, if any; (iii) whether any one or more of Junior Lenders or Senior Lender or any bailee or agent thereof holds possession of any or all of the property or assets of any Borrower; (iv) the dating, execution or delivery of any agreement, document or instrument granting to any Junior Lender or Senior Lender any security interests and/or liens in or on any or all of the property or assets of any Borrower; (v) the giving or failure to give notice of the acquisition or expected acquisition of any purchase money or other security interests; and/or (vi) any provision of the UCC or any other applicable law to the contrary, each Junior Lender agrees that the Junior Indebtedness, the Junior Loan Documents and all claims, rights and interests therein or arising therefrom or related thereto against any Borrower, any of Borrower's property or the Senior Lender Collateral, or any part thereof (including without limitation the Junior Liens), are hereby subjected and subordinated to the Senior Indebtedness, the Senior Loan Documents, the Senior Liens and the Senior Lender Collateral, in lien, priority, right, claim, payment and collection, except as otherwise hereinafter provided.

#### **(b) Payment and Performance.**

(i) Except as otherwise expressly permitted in subsections (ii) and (iii) below, until the occurrence of a Subordination Termination Event, Borrower shall not make any payments whatsoever in respect to any of

the Junior Indebtedness (including, without limitation, any prepayments of principal on the Junior Indebtedness) and Junior Lender shall not demand payment of any Junior Indebtedness, including the Junior Loans. Until the occurrence of a Subordination Termination Event, each Junior Lender agrees to and does hereby subordinate its claim and right to receive payment of the Junior Indebtedness, or any part thereof, to Senior Lender's claim and right to receive payment in full of the Senior Indebtedness, in the manner and to the extent set forth in this Agreement, and hereby agrees not to accept payment of the Junior Indebtedness, whether any such payment is made by or received from Borrower, until the occurrence of a Subordination Termination Event. Should any payment or distribution of any kind or character be received by Junior Lender on the Junior Indebtedness prior to the occurrence of a Subordination Termination Event, Junior Lender shall receive and hold the same in trust, as trustee, for the benefit of Senior Lender and shall forthwith deliver the same to Senior Lender in precisely the form received (except for the endorsement or assignment by Junior Lender where necessary) for application against the Senior Indebtedness, whether due or not due, and, until so delivered, the same shall be held in trust by Junior Lender as the property of Senior Lender.

- (ii) Notwithstanding subsection (i) above, Senior Lender consents to payments of principal and/or interest by the Borrower under the Junior Loans prior to the occurrence of an Event of Default under the Senior Loan Documents. From and after any such Event of Default under the Senior Loan Documents, no further payments may be made under any of the Junior Loans, except as otherwise provided on subsection (iii) below.
- (iii) Notwithstanding subsections (i) or (ii) above or any other provision of this Agreement, in the event that Borrower does not meet the job creation, wage level commitments and business operations requirements, pursuant to the Minnesota Business Subsidy Act, as contained in the applicable Junior Loan Documents, by October 15, 2017, or such later date as may be set by the Junior Lenders after holding a public hearing and approval of the State of Minnesota, or the Borrower ceases business operations within the City of Winona, Minnesota, within 5 years from May 14, 2015, the Junior Lenders shall be authorized to take such action as authorized by the Junior Loan Documents and the laws of the State of Minnesota, including the Minnesota Business Subsidy Act, to recover the amount due, subject to the rights of Senior Lender in the Senior Lender Collateral.

- (c) **Bankruptcy.** In the event of any Insolvency Proceeding with respect to any Borrower or any significant part of such Borrower's properties or assets or any assignment for the benefit of such Borrower's creditors, any other marshalling of its assets, then and in any such event, the Senior Indebtedness shall be paid in full or otherwise satisfied by agreement with Senior Lender before any payment or distribution of any character, whether in cash, securities or other property, shall be made on account of the Junior Indebtedness, Each Junior Lender

further agrees that, until the occurrence of a Subordination Termination Event, it shall not object to or oppose any efforts by Senior Lender to obtain relief from the automatic stay under Section 362 of the United States Bankruptcy Code, and each Junior Lender hereby waives any said right to object to any request or motion by Senior Lender for an order establishing that proceeds, products, rents and/or profits of any of Borrower's property shall constitute cash collateral under §363 of the Bankruptcy Code ("Cash Collateral") and each Junior Lender hereby consents to any application by Senior Lender to have such Cash Collateral applied as a permanent repayment of the Senior Indebtedness prior to the application of any such sums to the Junior Indebtedness. If Senior Lender objects to the use of any so-called "cash collateral", each Junior Lender shall also object and Senior Lender agrees that it shall notify Junior Lenders of Senior Lender's consent or objection not later than five (5) days prior to the expiration of the period provided by applicable laws or by court order to so consent or object.

(d) **Miscellaneous.** Borrower and each Junior Lender shall cause all instruments, if any, evidencing any of the Junior Indebtedness to be marked in such manner as shall be effective to give proper notice of the provisions of this Agreement.

4. **Prohibition of Subsequent Rights.** From and after the date hereof, Junior Lenders shall not acquire, by subrogation, contract or otherwise, any lien upon or other estate, right or interest in any property of any Borrower (including, without limitation, any lien, estate, right or interest that may arise with respect to real estate taxes, assessments, or other governmental charges) or any rents or revenues therefrom that is or may be prior in right to or on parity with the Senior Lender Collateral.

5. **Junior indebtedness.** The Junior Indebtedness consists of three loans, each loan evidenced by a Promissory Note, a Loan Agreement, and a Minnesota Business Subsidy Act Agreement by and between the Lenders described below and the Borrower, Beneficial Reuse Management, LLC dba Gypsoil Pelletized Products, as follows:

(a) **Junior Lender: Port Authority of Winona.** The original principal amount of the Note is \$140,000. The term of the Loan is seven (7) years. Interest on this Note accrues at a rate of three percent (3%) per annum. The first payment of principal and interest is due on or before September 1, 2015, and the final payment is due on or before August 1, 2022. The Loan Agreement requires the Borrower to create a minimum of twenty (20) full time equivalent jobs within two years of the Benefit Date and provide documentation of said job creation. The Jobs created must pay an hourly wage of at least \$18.00 including benefits. In addition, the Borrower must continue operations in the City of Winona at least five (5) years from the Benefit Date. The Benefit Date is May 14, 2015.

(b) **Junior Lender: Southern Minnesota Initiative Foundation.** The original principal amount of the Note is \$140,000. The term of the Loan is seven (7) years. Interest on this Note accrues at a rate of four and on-half percent (4.5%) per annum. Pursuant to the terms of a Modification Agreement, an interest payment is due September 1, 2015, and the first payment of principal and interest is due on or before October 1, 2015, and the final payment is due on or before June 1, 2022.

(c) **Junior Lender: City of Winona (funds received from the State of Minnesota Initiative Fund).** The original principal amount of the Note will be \$300,000. Up to \$100,000 of the Loan principal will be forgiven upon satisfaction by the Borrower of the terms of the Loan Agreement, specifically job creation, wages, and business operation goals. The repayable

portion of the Loan, \$200,000, shall bear interest at a rate of three percent (3%) per annum. Interest shall begin to accrue as of the Initial Disbursement Date, The Initial Disbursement Date means the date of the first disbursement of any Loan Proceeds by the Lender to the Borrower. The term of the Loan is seven (7) years. Payments of principal and interest on the non-forgiveable portion of the Loan shall commence on the first day of the first month immediately following the Final Disbursement Date and shall continue on the first day of each and every month thereafter until the Loan is paid in full. The Final Disbursement Date means the date of the final disbursement of the Loan proceeds by the Lender to the Borrower, In accordance with the applicable loan documents, if the Borrower fails to meet the job creation and wage goals stated therein by the Compliance Date and the Lender has not extended the Compliance Date for one year after public hearing and approval of the State of Minnesota, the Borrower will be required to repay the Lender a pro rata share of the \$100,000 at \$15,000 per job not created, plus interest from the Initial Disbursement Date, which interest shall be computed as follows. If the implicit price deflator for government consumption expenditures and gross investment for state and local governments prepared by the Bureau of Economic Analysis of the United States Department' of Commerce for the 12-month period ending March 31st of the previous year, exceeds three percent (3%) on the date of default, the Borrower shall, in addition to any other payment required under the Note, pay to the Lender the difference between the present value of the interest actually paid and accrued on the Loan and the amount of interest that would have been paid and accrued on the Loan if the interest rate of the Loan at all times had been equal to the implicit price deflator on the date of the date of default.

6. **Default Notice.** Each Junior Lender agrees that it will provide Senior Lender with 30 days advance written notice of a Junior Debt Default prior to sending to Senior Lender a Junior Debt Default Notice or commencing any collection action or proceeding against Borrower. Senior Lender agrees to provide each Junior Lender with written notice of any Senior Debt Default promptly after sending Borrower notice of such default. However, the failure of Senior Lender to give such notice shall not affect, release or impair any of Senior Lender's rights hereunder,

#### **7. Miscellaneous Provisions.**

(a) Notices. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery or refusal of delivery, if delivered in person, (ii) one (1) Business Day after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed to the addresses set forth below in this section or as such party may from time to time designate by written notice to the other parties. Any party by notice to the other in the manner provided herein may designate additional or different addresses for subsequent notices or communication:

If to Borrower:

Beneficial Reuse Management LLC  
372 West Ontario, Suite 501  
Chicago, IL 60654  
Attention: \_\_\_\_\_

If to Junior Lender:

Southern Minnesota Initiative Foundation  
525 Florence Avenue  
Owatonna, MN 55060  
Attention: \_\_\_\_\_

and

City of Winona, Minnesota  
207 Lafayette Street  
Winona, MN 55987  
Attention: Mayor Scott D. Sherman

and

Port Authority of Winona  
207 Lafayette Street  
Winona, MN 55987  
Attention: President Michael Cichanowski

If to Senior Lender:

Context Credit Holdings, LP  
One Belmont Avenue, Suite 630  
Bala Cynwyd, PA 19004  
Attn: Meredith Carter, Chief Executive Officer

(b) **Event of Default.** A breach of any of the terms or conditions contained in this Agreement shall constitute an Event of Default under the Senior Loan Documents.

(c) **Continuing Validity.** Except as provided in this Agreement the terms and provisions of the Junior Loan Documents and the Senior Loan Documents shall remain in full force and effect.

(d) **Further Agreements.** Borrower and Senior Lender may at any time, and from time to time, without the consent of Junior Lenders and without incurring liability or responsibility to Junior Lenders, and without impairing or releasing any of Senior Lender's rights hereunder, alter the terms of the Senior Loan Documents or any other instrument or agreement in any way relating to the Senior Indebtedness. Each Junior Lender hereby assumes responsibility for keeping itself informed of the financial condition of the Borrower and any and all guarantors of the Senior Indebtedness and the Junior Indebtedness, and of all other circumstances bearing upon the risk of nonpayment of the Senior Indebtedness and the Junior Indebtedness that diligent inquiry would reveal, and the Junior Lenders hereby agree that the Senior Lender shall have no duty to advise the Junior Lenders of information known to the Senior Lender regarding such condition or any such circumstances or to undertake any investigation.

(e) **Obligations of Borrower Absolute.** Nothing contained in this Agreement is intended to or shall impair, as between Borrower and its creditors other than Senior Lender, the obligations of Borrower to Junior Lenders to pay any Junior Indebtedness as and when such Junior Indebtedness shall become due and payable in accordance with its terms, or to affect the relative rights of the Junior Lenders and creditors of Borrower other than the Senior Lender.

(f) **Payment Set Aside.** To the extent any payment under the Senior Loan Documents (whether by or on behalf of Borrower, as proceeds of Collateral or enforcement of any right of set-off or otherwise) is declared to be fraudulent or preferential, set aside or required to be paid to a trustee, receiver or other similar party under any Insolvency Proceeding, then if such payment is recovered by, or paid over to, such trustee, receiver or other similar party, the Senior Loan or part thereof originally intended to be satisfied by such payment shall be deemed to be reinstated and outstanding by the amount thereof as if such payment had not occurred. This Section shall survive the termination of this Agreement.

(g) **Blinding Effect.** This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns. All obligations of Junior Lender hereunder are joint and several.

(h) **Applicable Law; Specific Performance.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois and the State of Minnesota and any litigation with respect to the same involving a Junior Lender as a party thereto shall be venued in the state or federal courts located within the State of Minnesota, and in such event and in the event of a conflict of laws, the laws of the State of Minnesota shall govern. Each party hereto acknowledges that to the extent that no adequate remedy at law exists for breach of its obligations under this Agreement, in the event such party fails to comply with its obligations hereunder, the other party or parties shall have the right to obtain specific performance of the obligations of such defaulting party, injunctive relief or such other equitable relief as may be available.

(i) **Counterparts.** This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

(j) **Further Assurances.** Junior Lender and/or Borrower, as applicable, will do, execute, acknowledge, and deliver, or cause to be done, executed, acknowledged and delivered, all such further acts, deeds, conveyances, mortgages, assignments, transfers, pledges and assurances as Senior Lender reasonably may require or deem desirable for the better assuring and confirming the subordination as described herein.

(k) **Exhibits.** All exhibits referenced herein, if any, are incorporated in this Agreement by reference.

(l) **Terminology.** All personal pronouns used in this Agreement whether used in the masculine, feminine or neuter gender shall include all other genders. The singular shall include the plural, and vice versa. Titles of sections hereof are for convenience only and neither limit nor amplify the substantive provision of this Agreement itself.

(m) **No Third-Party Beneficiary.** All of the undertakings, agreements, representations and warranties contained herein are solely for the benefit of Senior Lender and Junior Lender and there are no other persons (including Borrower) who are intended to be benefitted, in any way, by this Agreement. A breach of this Agreement by either Senior Lender or any one or more of Junior Lenders shall not allow Borrower or any third party to assert such breach in any action by either Senior Lender or any Junior Lender, or as a counterclaim or basis for setoff or recoupment against either Senior Lender or any Junior Lender.

*[Signature page follows]*

**IN WITNESS WHEREOF**, Borrower, Senior Lender and Junior Lenders have executed and delivered this Subordination and Intercreditor Agreement as of the date first above written.

**BORROWERS:**

**BENEFICIAL REUSE MANAGEMENT LLC.**

By: \_\_\_\_\_  
David Schuurman, Manager

By: \_\_\_\_\_  
Robert Spoerri, Manager

**GYPSOIL, LLC**

By: \_\_\_\_\_  
David Schuurman, Manager

By: \_\_\_\_\_  
Robert Spoerri, Manager

**SENIOR LENDER:**

**CONTEXT CREDIT HOLDINGS, LP**  
By: CBC GP I, LLC, its sole general partner

By: \_\_\_\_\_  
Meredith Carter, Authorized Signer

**JUNIOR LENDER:**

**Attest:**

**City of Winona**, Minnesota, a Minnesota municipal Corporation,

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_  
Scott D. Sherman

**Attest:**

**PORT AUTHORITY OF WINONA**, a body politic and corporate under the laws of the State of Minnesota

By: \_\_\_\_\_  
Steven T. Sarvi, Executive Secretary

By: \_\_\_\_\_  
Michael Cichanowski, President

**SOUTHERN MINNESOTA INITIATIVE  
FOUNDATION**

By: \_\_\_\_\_

Title: \_\_\_\_\_

# REQUEST FOR COUNCIL ACTION

Agenda Section: New Business

Originating Department:

Date:

No: 5

Community Development

04/19/21

Item: Water's Edge Apartments LLC—Tax Abatement Agreement

No. 5.2

## SUMMARY OF REQUESTED ACTION:

### Background:

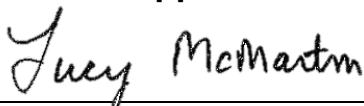
The City of Winona has been working with the Water's Edge Apartments LLC for the past 24 months to construct a rental housing development, featuring 41 income and rent restricted units; 9 units being set aside for those with disabilities or facing homelessness. Beginning in April 2019, Community Development staff worked with the Developer in submitting their application to Minnesota Housing Finance Agency (MHFA) for an allocation of Housing Tax Credits (HTCs) in June 2019. The HTC program is very competitive and it often takes more than one submission of an application to be selected by the state. The state did not select the developer's application in 2019, but did in December 2020.

The Port Authority initially reviewed the project and unanimously recommended approval to the City Council. On May 4, 2020, City Council approved by Resolution, the Developer's request for tax abatement for up to 15 years and not to exceed \$135,674 and directed staff to enter into a Tax Abatement Agreement with the Developer, provided the Developer received low income tax credits for the Project, which the Developer received from MHFA in December 2020.

The Developer and the City have shown a commitment to workforce housing by:

- At the request of the Developer, the Planning Commission recommended and the Council approved rezoning 602 Mankato Avenue from R-2 to R-3 as recommended in the Future Land Use Plan of the 2007 Comprehensive Plan.
- Community Development staff and the Developer conducted a public input session.
- City Council passed a Resolution of Support for the Developer's application to MHFA.
- The Developer received letters of support from local businesses.

Department Approval:

 Lucy McMartin

City Manager Approval:

 St. J. S.

## **Tax Abatement Agreement – Water's Edge Apartments LLC**

**Page 2**

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### **Current Request:**

The next step for Council is to review the Tax Abatement Agreement between the City of Winona and the Developer, which outlines the conditions of the Tax Abatement Agreement.

The Tax Abatement Agreement is attached for Council's review. A summary of key points in the agreement are:

1. The Developer will cause the project to be constructed in accordance with laws, zoning, and regulations.
2. Construction will commence no later than December 31, 2021 and be substantially completed by June 30, 2023.
3. The tax abatement is for up to 15 years and not to exceed \$135,674.
4. The City will continue to receive their share of the pre-development property tax.
5. The Developer will pay the full amount of the post-development property tax, but be rebated the full City share minus the share the City currently receives until the abatement period ends, at which point the City will collect and retain the full share of property tax.
6. This is the most conservative approach and if the tax structure rate would change or be compressed, it would alleviate risk on the part of the City.

If Council concurs, a motion to approve the attached tax abatement agreement and resolution would be appropriate.

### **Attachments:**

- Resolution
- Tax Abatement Agreement

**RESOLUTION  
AUTHORIZING EXECUTION  
OF A TAX ABATEMENT AGREEMENT**

**BE IT RESOLVED** by the City Council (the "Council") of the City of Winona, Minnesota (the "City"), as follows:

1. Recitals.

- a) The City has been requested to assist in financing the construction of 41 workforce rental housing units located in the City (the "Project") by Water's Edge Apartments LLC (the "Developer").
- b) On May 4, 2020, following a public hearing the Council approved the abatement for the Project pursuant to Minnesota Statutes, Sections 469.1812 through 469.1815, as amended (the "Abatement Law"), from the property taxes to be levied by the City on Parcel Identification Numbers 32.320.4250 and 32.315.0010 in an amount not to exceed \$135,674 for a term of up to fifteen (15) years beginning with real estate taxes payable in 2024 and continuing through 2038, inclusive (the "Abatement").
- c) The City approved the use of tax abatements subject to the Developer receiving Housing Tax Credits (the "Housing Tax Credits") for the Project.
- d) The Developer has received an allocation of Housing Tax Credits for the Project in the City.
- e) It is proposed that the City will enter into a Tax Abatement Agreement with the Developer (the "Tax Abatement Agreement"), which provides for the use of the Abatement to finance the Project.

2. Approval of Tax Abatement Agreement.

- a) The City Council hereby approves a Tax Abatement Agreement providing for payment of the Abatement in substantially the form submitted, and the Mayor and City Clerk are hereby authorized and directed to execute the Tax Abatement Agreement on behalf of the City.
- b) The approval hereby given to the Tax Abatement Agreement includes approval of such additional details therein as may be necessary and appropriate and such modifications thereof, deletions therefrom and additions thereto as may be necessary and appropriate and approved by the City officials authorized by this resolution to execute the Tax Abatement Agreement. The execution of the Tax Abatement Agreement by the appropriate officer or officers of the City shall be conclusive evidence of the

approval of the Tax Abatement Agreement in accordance with the terms hereof.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

---

Scott D. Sherman  
Mayor

Attest:

---

Monica Hennessy Mohan  
City Clerk

TAX ABATEMENT AGREEMENT

BY AND BETWEEN

CITY OF WINONA, MINNESOTA

AND

WATER'S EDGE APARTMENTS LLC

This document drafted by:

TAFT STETTINIUS & HOLLISTER LLP  
2200 IDS Center  
80 South 8th Street  
Minneapolis, MN 55402

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## TAX ABATEMENT AGREEMENT

THIS AGREEMENT, made as of the 16<sup>th</sup> day of April, 2021 ("Effective Date"), by and between City of Winona, Minnesota (the "City"), a municipal corporation existing under the laws of the State of Minnesota, and Water's Edge Apartments LLC, a Wisconsin limited liability company (the "Developer").

### WITNESSETH:

WHEREAS, pursuant to Minnesota Statutes, Sections 469.1812 through 469.1815, as amended, the City has established a Tax Abatement Program; and

WHEREAS, the City believes that the development and construction of a certain Project (as defined herein), and fulfillment of this Agreement are vital and are in the best interests of the City, will result in preservation and enhancement of the tax base and are in accordance with the public purpose and provisions of the applicable state and local laws and requirements under which the Project has been undertaken and is being assisted; and

WHEREAS, the requirements of the Business Subsidy Law, Minnesota Statutes, Section 116J.993 through 116J.995, do not apply to this Agreement pursuant to an exemption for housing; and

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

### ARTICLE I

#### DEFINITIONS

Section 1.1 Definitions. All capitalized terms used and not otherwise defined herein shall have the following meanings unless a different meaning clearly appears from the context:

Agreement means this Tax Abatement Agreement, as the same may be from time to time modified, amended or supplemented;

City means the City of Winona, Minnesota;

County means Winona County, Minnesota;

Developer means Water's Edge Apartments LLC, a Wisconsin limited liability company, its successors and assigns;

Development Property means the real property described in Exhibit A attached to this Agreement;

Event of Default means any of the events described in Section 4.1;

Project means the construction by the Developer of an approximately 41 unit multi-family housing project by the Developer to be located on the Tax Abatement Property;

State means the State of Minnesota;

Tax Abatement Act means Minnesota Statutes, Sections 469.1812 through 469.1815, as amended;

Tax Abatement Program means the actions by the City pursuant to Minnesota Statutes, Section 469.1812 through 469.1815, as amended, and undertaken in support of the Project;

Tax Abatement Property means the real property described on Exhibit A attached hereto;

Tax Abatements means the City's share of real estate taxes derived from the Tax Abatement Property, abated in accordance with the Tax Abatement Program and this Agreement in an aggregate amount of \$135,674;

Term means the period in which this Agreement shall remain in effect, commencing on the Effective Date and continuing until the earlier of (i) the date the Developer receives the Reimbursement Amount (as defined herein), or (ii) February 1, 2039, unless earlier terminated or rescinded in accordance with the terms contained herein;

Unavoidable Delays means delays, outside the control of the party claiming its occurrence, including strikes, other labor troubles, unusually severe or prolonged bad weather, acts of God, fire or other casualty to the Project, litigation commenced by third parties which, by injunction or other similar judicial action or by the exercise of reasonable discretion, directly results in delays, or acts of any federal, state or local governmental unit (other than the City or the County) which directly result in delays.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations and Warranties of the City. The City makes the following representations and warranties:

(1) The City is a home rule charter city and political subdivision of the State and has the power to enter into this Agreement and carry out its obligations hereunder.

(2) The Tax Abatement Program was created, adopted and approved in accordance with the terms of the Tax Abatement Act.

(3) To finance the costs of the Project to be undertaken by the Developer, the City shall, subject to the further provisions of this Agreement, apply the Tax Abatements to reimburse the Developer for a portion of the costs of the Project as further provided in this Agreement.

(4) The City has made the findings required by the Tax Abatement Act for the Tax Abatement Program.

Section 2.2 Representations and Warranties of the Developer. The Developer makes the following representations and warranties:

(1) The Developer has the power to enter into this Agreement and to perform its obligations hereunder and is not in violation of its article of organization, member control agreement or any local, state or federal laws.

(2) The Developer is a Wisconsin limited liability company, duly organized, existing and in good standing under the laws of the State and has the power to enter into this Agreement and to perform its obligations hereunder and carry out the covenants contained herein.

(3) The Developer will cause the Project to be constructed in accordance with the terms of this Agreement and all City, County, state and federal laws and regulations (including, but not limited to, environmental, zoning, energy conservation, building code and public health laws and regulations), including the Americans With Disabilities Act.

(4) The Developer will obtain or cause to be obtained, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, state, and federal laws and regulations which must be obtained or met before the Project may be lawfully constructed.

(5) The construction of the Project would not be undertaken by the Developer, and in the opinion of the Developer would not be economically feasible within the reasonably foreseeable future, without the assistance and benefit to the Developer provided for in this Agreement.

(6) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of, the terms, conditions or provisions of any contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which the Developer is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(7) The Developer will cooperate fully with the City with respect to any litigation commenced with respect to the Project.

(8) The Developer will cooperate fully with the City in resolution of any traffic, parking, trash removal or public safety problems which may arise in connection with the construction and operation of the Project.

(9) The construction of the Project shall commence no later than December 31, 2021 and barring Unavoidable Delays, will be substantially completed by June 30, 2023.

## ARTICLE III

### UNDERTAKINGS BY DEVELOPER AND CITY

#### Section 3.1 Construction of Project; Reimbursement of Construction Costs.

(1) The Developer agrees that it will substantially complete the construction of the Project by June 30, 2023, subject to Unavoidable Delays, in accordance with the terms of this Agreement and in compliance with all local, state and federal laws and regulations (including, but not limited to, environmental, zoning, energy conservation, building code and public health laws and regulations). The Developer will obtain or cause to be obtained, in a timely manner (subject to factors outside the control of Developer), all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, state, and federal laws and regulations which must be obtained or met before the Project may be lawfully constructed. The Developer will, at all times prior to the termination of this Agreement, operate and maintain, preserve and keep the Project or cause the Project to be maintained, preserved and kept with the appurtenances and every part and parcel thereof, in good repair and condition.

(2) Upon submission to the City of invoices related to the costs of the construction of the Project in an amount not less than \$135,674, the City shall reimburse the Developer for such cost pursuant to the Abatement Program as provided in Section 3.7 (the "Project Reimbursement Amount").

**Section 3.2 Limitations on Undertaking of the City.** Notwithstanding the provisions of Section 3.1, the City shall have no obligation to the Developer, under this Agreement, to reimburse the Developer for a portion of the construction of the Project, if the City, at the time or times such payment is to be made, is entitled under Section 4.2 to exercise any of the remedies set forth therein as a result of an Event of Default which has not been cured. Notwithstanding any other provisions of the Agreement, the City shall have no obligation to the Developer under this Agreement to reimburse the Developer for the construction of the Project in an amount greater than \$135,674.

**Section 3.3 Damage and Destruction.** In the event of damage or destruction of the Project that (i) Developer chooses not to repair or rebuild, or (ii) Developer does not commence and diligently pursue such repair or rebuilding within one hundred eighty (180) days after such event of damage or destruction, the City may, with written notice to Developer, terminate this Agreement and discontinue such Tax Abatement Program for the Project as of the date of such event of damage or destruction and the final Reimbursement Amount payment shall be prorated to the date of such damage/destruction. In the event of such termination of this Agreement, in no circumstance shall Developer be required to return or reimburse the City for any Reimbursement Amount payments made hereunder prior to such termination.

**Section 3.4 Change in Use of Project.** The City's obligations pursuant to this Agreement shall be subject to the continued operation of the Project by the Developer, or any successors or assigns of Developer approved by the City as set forth in Section 3.5 below, during the Term.

**Section 3.5 Transfer the Project and Assignment of Agreement.** The Developer represents and agrees that prior to the expiration or earlier termination of this Agreement, the Developer shall not assign this Agreement in conjunction with a transfer of the Project or any part thereof or any interest therein, without the prior written approval of the City, which approval shall not be unreasonably withheld, conditioned or delayed. The City shall be entitled to require as conditions to any such approval that:

(1) Any proposed transferee shall have the qualifications and financial responsibility, in the reasonable judgment of the City, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Developer.

(2) Any proposed transferee, by instrument in writing reasonably satisfactory to the City shall, for itself and its successors and assigns, and expressly for the benefit of the City, have expressly assumed all of the obligations of the Developer under this Agreement and agreed to be subject to all the conditions and restrictions to which the Developer is subject.

Developer may not assign its rights under this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, the City's consent shall not be required in connection with an assignment of Developer's rights and obligations under this Agreement to an "Affiliate" in which the Affiliate assumes all obligations of the Developer hereunder that accrue from and after the effective date of the assignment in an instrument that may be enforced at law by the other party and in which notice of the occurrence and effect of such assignment is delivered to the other party together with a copy of such agreement of assumption. As used herein, the term "Affiliate" means an entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Developer. City acknowledges that Developer intends to collaterally assign this Agreement, and its payments rights hereunder, to a mortgage lender in connection with the financing for the Project, subject to the City's consent, which shall not be unreasonably, withheld, conditioned or delayed.

Section 3.6 Real Property Taxes. The Developer shall, so long as this Agreement remains in effect, pay all real property taxes with respect to all parts of the Tax Abatement Property owned by it which are payable pursuant to any statutory or contractual duty that shall accrue until title to the property is vested in another person. The Developer agrees that for tax assessments so long as this Agreement remains in effect:

(a) It will not challenge the market value of the Tax Abatement Property and the Project with any governmental entities.

(b) It will not seek administrative review or judicial review of the applicability of any tax statute relating to the ad valorem property taxation of real property contained on the Tax Abatement Property determined by any tax official to be applicable to the Project or the Developer or raise the inapplicability of any such tax statute as a defense in any proceedings with respect to the Tax Abatement Property, including delinquent tax proceedings; provided, however, "tax statute" does not include any local ordinance or resolution levying a tax;

(c) It will not seek administrative review or judicial review of the constitutionality of any tax statute relating to the taxation of real property contained on the Tax Abatement Property determined by any tax official to be applicable to the Project or the Developer or raise the unconstitutionality of any such tax statute as a defense in any proceedings, including delinquent tax proceedings with respect to the Tax Abatement Property; provided, however, "tax statute" does not include any local ordinance or resolution levying a tax;

(d) It will not seek any tax deferral or abatement, either presently or prospectively authorized under Minnesota Statutes, Section 469.181, or any other State or federal law, of the ad valorem property taxation of the Tax Abatement Property so long as this Agreement remains in effect.

Section 3.7 Duration of Abatement Program. The Tax Abatement Program shall exist for a period of up to fifteen (15) years beginning with real estate taxes payable in 2024 through 2038. On or before February 1 and August 1 of each year commencing August 1, 2024 until the earlier of the date that the Developer shall have received the Reimbursement Amount or February 1, 2039, the City shall pay the Developer the amount of the Tax Abatements received by the City in the previous six month period. The City may terminate the Tax Abatement Program and this Agreement at an earlier date if an Event of Default occurs and the City rescinds or cancels this Agreement as more fully set forth in Article IV herein.

## ARTICLE IV

### EVENTS OF DEFAULT

Section 4.1 Events of Default Defined. The following shall be "Events of Default" under this Agreement and the term "Event of Default" shall mean whenever it is used in this Agreement any one or more of the following events:

(1) Failure by the Developer to timely pay any ad valorem real property taxes, special assessments, utility charges or other governmental impositions with respect to the Project.

(2) Failure by the Developer to cause the construction of the Project to be completed pursuant to the terms, conditions and limitations of this Agreement.

(3) Failure by the Developer to observe or perform any other covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement within thirty (30) days of written notice by the City.

(4) If the Developer shall:

(a) file any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act of 1978, as amended or under any similar federal or state law; or

(b) make an assignment for the benefit of its creditors; or

(c) admit in writing its inability to pay its debts generally as they become due; or

(d) be adjudicated as bankrupt or insolvent; or if a petition or answer proposing the adjudication of the Developer as bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within sixty (60) days after the filing thereof; or a receiver, trustee or liquidator of the Developer, or of the Project, or

part thereof, shall be appointed in any proceeding brought against the Developer, and shall not be discharged within sixty (60) days after such appointment, or if the Developer, shall consent to or acquiesce in such appointment.

(5) The holder of any mortgage on the Tax Abatement Property or any improvements thereon, or any portion thereof, commences foreclosure proceedings as a result of any default under the applicable mortgage documents.

**Section 4.2 Remedies on Default.** Whenever any Event of Default referred to in Section 4.1 occurs and is continuing, the City, as specified below, may take any one or more of the following actions after the giving of thirty (30) days' written notice to the Developer citing with specificity the item or items of default and notifying the Developer that it has thirty (30) days within which to cure said Event of Default (or commence and diligently pursue such Event of Default if Developer is unable to cure within such thirty (30) day period and Developer is diligently pursuing and can demonstrate progress toward curing the default). If the Developer is unable to cure or commence a cure for the Event of Default within said thirty (30) days as required above:

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

(b) The City may cancel and rescind this Agreement.

(c) The City may take any action, including legal or administrative action, in law or equity, which may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of the Developer under this Agreement.

**Section 4.3 No Remedy Exclusive.** No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof but any such right and power may be exercised from time to time and as often as may be deemed expedient.

**Section 4.4 No Implied Waiver.** In the event any agreement contained in this Agreement should be breached by any party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

**Section 4.5 Agreement to Pay Attorney's Fees and Expenses.** In the event litigation is commenced for purposes of enforcing the terms and conditions of this Agreement, the prevailing party in relation to said litigation shall be reimbursed by the non-prevailing party for all of the prevailing party's reasonable attorneys' fees and costs associated with said litigation.

#### Section 4.6 Release and Indemnification Covenants.

(1) Except for any misrepresentation or any willful or wanton misconduct or negligence of the City or the governing body members, officers, agents, servants, consultants, and employees thereof (the "Indemnified Parties"), and except for any breach by the Indemnified Parties of their representative's obligations under this Agreement, the Indemnified Parties shall not be liable for and the Developer shall indemnify and hold harmless the Indemnified Parties against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Project.

(2) Except for any willful misrepresentation, any willful or wanton misconduct, recklessness, or negligence of the Indemnified Parties, the Developer agrees to protect and defend the City and its governing body members, officers, agents, servants and employees, now or forever, and further agrees to hold the aforesaid harmless from any claim, demand, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from a breach of the obligations of the Developer under this Agreement, or the transactions contemplated hereby or the acquisition, construction, ownership, maintenance and operation of the Project.

(3) Except for any misrepresentation or any willful or wanton misconduct or negligence of the Indemnified Parties, and except for any breach by any of the Indemnified Parties of their representation and obligations under this Agreement, the Indemnified Parties shall not be liable for any damage or injury to the persons or property of the Developer or its officers, agents, servants or employees or any other person who may be about the Project.

(4) All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of any governing body member, officer, agent, servant or employee of the City in the individual capacity thereof.

### ARTICLE V

#### ADDITIONAL PROVISIONS

**Section 5.1 Restrictions on Use.** The Developer agrees for itself, its successors and assigns and every successor in interest to the Development Property, or any part thereof, that during the term of this Agreement the Developer and such successors and assigns shall operate, or cause to be operated, the Project as a multifamily rental housing facility, and shall devote the Development Property to, and in accordance with, the uses specified in this Agreement.

**Section 5.2 Conflicts of Interest.** No member of the governing body or other official of the City shall participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested. No member, official or employee of the City shall be personally liable to the City in the event of any default or breach by the Developer or successor or on any obligations under the terms of this Agreement.

Section 5.3 Titles of Articles and Sections. Any titles of the several parts, articles and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 5.4 Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand or other communication under this Agreement by any party to any other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

- (1) in the case of the Developer is addressed to or delivered personally to:

Water's Edge Apartments LLC  
7447 University Avenue Suite 210  
Middleton, WI 53562  
Attention: Kristi Morgan

With a copy to:

Foley & Lardner LLP  
150 E. Gilman Street  
Madison, WI 53703  
Attn: Katherine R. Rist

- (2) in the case of the City is addressed to or delivered personally to the City at:

City of Winona, Minnesota  
Attention: City Clerk  
Winona City Hall  
207 Lafayette St  
Winona, MN 55987

with a copy addressed to or delivered personally to:

Mary L. Ippel  
Taft Stettinius & Hollister LLP  
2200 IDS Center  
80 South 8<sup>th</sup> Street  
Minneapolis, MN 55402

or at such other address with respect to any such party as that party may, from time to time, designate in writing and forward to the other, as provided in this Section.

Section 5.5 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 5.6 Law Governing. This Agreement will be governed and construed in accordance with the laws of the State of Minnesota.

Section 5.7 Term. This Agreement shall remain in effect commencing on the Effective Date until the earlier of (i) the date the Developer receives the Reimbursement Amount, or (ii) February 1, 2039, unless earlier terminated or rescinded in accordance with its terms.

Section 5.8 Provisions Surviving Rescission or Expiration. Sections 4.5 and 4.6 shall survive any rescission, termination or expiration of this Agreement with respect to or arising out of any event, occurrence or circumstance existing prior to the date thereof.

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

**WATER'S EDGE APARTMENTS LLC, a  
Wisconsin limited liability company**

By: Water's Edge Apartments MM, LLC  
Its: Managing Member  
By: Commonwealth Holdings II, LLC  
Its: Sole Member

By: \_\_\_\_\_  
\_\_\_\_\_, Manager

This is a signature page to the Tax Abatement Agreement by and between City of Winona, Minnesota and Water's Edge Apartments LLC.

**CITY OF WINONA, MINNESOTA**

By \_\_\_\_\_  
Its Mayor

By \_\_\_\_\_  
Its City Clerk

This is a signature page to the Tax Abatement Agreement by and between City of Winona, Minnesota and Water's Edge Apartments LLC.

## **EXHIBIT A**

### **DESCRIPTION OF TAX ABATEMENT PROPERTY**

The real property situated in the City of Winona, County of Winona, State of Minnesota, currently described as follows:

Property Identification Numbers: 32.320.4250 and 32.315.0010

#### **Parcel 32.320.4250**

All that portion of the East Sixteen and one-half (16 1/2) feet of Lot One (1), Lake-Side Out-Lots to Winona, in the Southeast quarter of the Southeast quarter (SE 1/4 of SE 1/4) of Section Twenty-six (26), Township One Hundred Seven (107) North, of Range Seven (7), West of the Fifth Principal Meridian, Winona County, Minnesota, lying Southerly of the Southerly line of Block "B" of E.C. Hamilton's Third Addition to Winona if extended Westerly, and lying Northerly of the Outlet to Lake Winona;

ALSO, that part of the Southwest Quarter of the Southwest Quarter (SW 1/4 of SW 1/4) of Section Twenty-five (25), Township One Hundred Seven (107) North, of Range Seven (7), West of the Fifth Principal Meridian, Winona County, Minnesota, more particularly described as follows: Beginning at a point on the north line of the Outlet to Lake Winona Six Hundred Thirty-three and one-half (633 1/2) feet westerly of the east line of the NE 1/4 of SW 1/4 of SW 1/4 of said Section 25, as measured along the northerly line of said Ditch; thence North 91 degrees West a distance of Thirty-three and one-half (33 1/2) feet to the West line of said Section; thence north a distance of Two Hundred Fifteen (215) feet; thence North 78 degrees 30' East to a point directly North of the place of beginning; thence South and parallel to the West line of said Section 25 to the place of beginning.

#### **Parcel 32.315.0010**

A parcel of land fronting two hundred forty-eight and eighty-three one-hundredths (248.83) feet on the Easterly line of Mankato Avenue, being a part of Out Lot 1 of Lake-Side Out-Lots to Winona, in the Southeast quarter (SE 1/4) of the Southeast quarter (SE 1/4) of Section Twenty-six (26), Township One Hundred Seven (107) North, of Range Seven (7), West of the Fifth Principal Meridian, Winona County, Minnesota, more particularly described as follows, to-wit: Commencing at the point of intersection of the easterly line of Mankato Avenue with the southerly line of Bellevue Street in the City of Winona, Minnesota; thence running Southerly along the easterly line of said Mankato Avenue a distance of two hundred forty-eight and eighty-three one-hundredths (248.83) feet; thence easterly interior angle 86°49' a distance of three hundred sixty-six and four tenths (366.4) feet to the east line of said Section Twenty-six (26); thence North along said east line of said Section Twenty-six (26) a distance of one hundred eighty-three and six one-hundredths (183.06) feet to the intersection with the extension of the southerly line of Bellevue

Street; thence westerly along said southerly line of Bellevue Street and the easterly extension thereof a distance of three hundred sixty-nine and nine tenths (369.9) feet more or less, to the point of beginning; excepting from said described parcel of land the easterly sixteen and five tenths (16.5) feet thereof.

# REQUEST FOR COUNCIL ACTION

<i>Agenda Section:</i> New Business	<i>Originating Department:</i>	<i>Date</i>
No: 5	City Clerk	04/19/21
<i>Item:</i> Reduce Liquor License Fees for 2021		
No. 5.3		

## SUMMARY OF REQUESTED ACTION:

Last year, the City Council approved a credit on the liquor license fees for the period of time that all businesses were closed in the State of Minnesota due to the Covid19 pandemic. Later during the year, the Council approved a 25% reduction in the fees for the 2020-21 license term. The Council also approved a payment plan for the annual fees to be split into 2 payments, one paid in early June, and the second payment due December 1.

Winona bars and restaurants continue to operate under restrictions due to the Covid 19 virus. Staff is proposing a reduction of 10% in license fees for the 2021-2022 license term, and also extend the payment plan again for this year. The estimated impact of this fee reduction is approximately \$12,500.

Attached for the Council's review is a list of the approved 2021 Liquor License fees. If the Council concurs, a motion to approve the amended fee schedule and payment plan for 2021 would be in order.

Department Approval:



City Manager Approval:





# Liquor License Fee Schedule 2021

- **New License Processing Fee**

- **On-Sale Intoxicating Liquor:**

	<u>Annual Fee</u>	<u>2021 Fee Reduction</u>	<u>Revised Annual Fee</u>	<u>First Half Payment</u>	<u># of Licenses</u>	<u>Total reduction</u>
	\$240	-10%				
• Restaurant/Hotel	\$3,251	(\$325.10)	\$2,925.90	\$1,462.95	12	-\$3,901.20
• Exclusive Liquor Store	\$3,251	(\$325.10)	\$2,925.90	\$1,462.95	23	-\$7,477.30
• Microdistillery cocktail room	\$3,251	(\$325.10)	\$2,925.90	\$1,462.95	0	\$0.00
• Brewer taproom	\$1,155	(\$115.50)	\$1,039.50	\$519.75	1	-\$115.50

- **On-Sale Sunday Intoxicating Liquor**

- **On-Sale Club Intoxicating Liquor**

• Up to 200 Members	\$300	(\$30.00)	\$270.00	\$135.00	1	-\$30.00
• 201 to 500 Members	\$475	(\$47.50)	\$427.50	\$213.75	1	-\$47.50
• 501 and up	\$650	(\$65.00)	\$585.00	\$292.50	1	-\$65.00

- **On-Sale Wine**

- **On-Sale 3.2 Percent Malt Liquor**

	\$200	(\$20.00)	\$180.00	\$90.00	36	-\$720.00
	\$300	(\$30.00)	\$270.00	\$135.00	1	-\$30.00
	\$475	(\$47.50)	\$427.50	\$213.75	1	-\$47.50
	\$650	(\$65.00)	\$585.00	\$292.50	1	-\$65.00
	\$680	(\$68.00)	\$612.00	\$306.00	1	-\$68.00
	\$460	(\$46.00)	\$414.00	\$207.00	1	-\$46.00

- **Consumption and display permit**

\$103

- **Off-Sale Intoxicating Liquor**

\$335

- **Off-Sale Microdistillery**

\$335

- **Off-Sale Small brewer tap room**

\$335

- **Off-Sale Brewpub malt liquor**

\$230

- **Off-Sale 3.2 Percent Malt Liquor**

\$76

\$0.00  
-\$12,470.50

- **Late Fee**

3% of balance

- **Mechanical Amusement Device**

\$15.00 per location and \$15.00 per machine

**Issue checks payable to:**

**City of Winona**

# REQUEST FOR COUNCIL ACTION

Agenda Section: <b>New Business</b>	Originating Department:	Date
No: 5	<b>City Engineer</b>	<b>04/19/21</b>
<b>Item: Amendment to Right-of-Way Ordinance and Small Cell Wireless Facilities Aesthetics Policy</b>		
<b>No 5.4</b>		

## SUMMARY OF REQUESTED ACTION:

Due to Federal Communications Commission (FCC) changes in regulations on small cell wireless facilities, the City Right-of-Way ordinance needs to be amended for compliance with applicable law. The purpose of the attached ordinance with amendments to Chapter 66 of City Code and the re-adoption of the aesthetic standards guidelines and template collocation agreement are to update the same based on changes promulgated to the law and FCC regulations since 2019 when the City first took actions to amend Chapter 66 to establish a regulatory framework for location of small cell wireless facilities in the City's rights-of-way.

Along with the proposed ordinance to amend, Chapter 66, the Right-of-Way ordinance, the City would also be adopting an updated Collocation Agreement and Aesthetic Standards for placement of small cell wireless facilities in City rights-of-way.

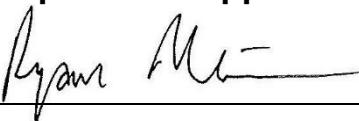
Attached are the following:

1. Small Wireless Facility Ordinance Amendments to Chapter 66 of City Code; and
2. Resolution Adopting Aesthetic Standards and Template Collocation Agreement for small wireless facilities located in the ROW with attached exhibits as follows:
  - a. Exhibit A: City of Winona Small Wireless Facility Design Guidelines, containing aesthetic standards for placement of small wireless facilities; and
  - b. Exhibit B: Small Wireless Facility Collocation Agreement Template.

If Council concurs with the foregoing, two separate actions would be in order, as follows:

1. A motion to give first reading to the attached ordinance; and
2. A motion to adopt the attached resolution and exhibits containing the aesthetic guidelines and template collocation agreement.

**Department Approval:**



**City Manager Approval:**



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING WINONA CITY CODE,  
CHAPTER 66 – RIGHT-OF-WAY MANAGEMENT

THE CITY OF WINONA DOES ORDAIN (new material is underlined; deleted material is lined out; sections which are not proposed to be amended are omitted; sections which are only proposed to be re-numbered are only set forth below as to their number and title):

SECTION 1. That Winona City Code, Chapter 66 - Right-Of-Way Management, Section 66.01 – Findings, Purpose, and Intent, is hereby amended as follows:

**SEC. 66.01 FINDINGS, PURPOSE, AND INTENT**

To provide for the health, safety and welfare of its citizens, and to ensure the integrity of its streets and the appropriate use of the rights-of-way, the city strives to keep its rights-of-way in a state of good repair and free from unnecessary encumbrances.

Accordingly, the city enacts this chapter of this code relating to right-of-way permits and administration. This chapter imposes reasonable regulation on the placement and maintenance of facilities and equipment currently within its rights-of-way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies. Under this chapter, persons excavating the rights-of-way shall bear financial responsibility for their work. Finally, this chapter provides for recovery of out-of-pocket and projected costs from persons using the public rights-of-way.

This chapter shall be interpreted consistently with ~~1997 Session Laws, Chapter 123, substantially codified in Minnesota Statutes, Sections 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (the "Act"), 2017 Minn. Laws, ch. 94, art. 9, amending the Act, and the other laws governing applicable rights of the city and users of the right-of-way.~~ This chapter shall also be interpreted consistent with Minnesota Rules 7819.0050 – 7819.9950 and Minnesota Rules Chapter 7560 where possible. To the extent any provision of this chapter cannot be interpreted consistently with the Minnesota Rules, that interpretation most consistent with the Act and other applicable statutory and case law is intended. This chapter shall not be interpreted to limit the regulatory and police powers of the city to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

SECTION 2. That Winona City Code, Chapter 66 - Right-Of-Way Management, Section 66.03 – Definitions, the following definitions therein are hereby amended as follows (existing definitions in Section 66.03 that are not proposed herein to be amended shall remain and are omitted below for purposes of brevity only):

**SEC. 66.03 DEFINITIONS**

**"Applicant"** means any person requesting permission to excavate, or obstruct, or otherwise place facilities in a right-of-way.

**"Commission"** means the State of Minnesota Public Utilities Commission.

**"Congested Right-of-Way"** means a crowded condition in the subsurface of the public right-of-way that occurs when the maximum lateral spacing between existing underground facilities does not allow for construction of new underground facilities without using hand digging to expose the existing lateral facilities in conformance with Minnesota Statutes, section 2160.04, subdivision 3, over a continuous length in excess of 500 feet.

**"Facility or Facilities"** means any tangible asset in the right-of-way required used to provide Utility or Telecommunications Service.

**"High Density Corridor"** means a designated portion of the public right-of-way within which telecommunications right-of-way users having multiple and competing facilities may be required to build and install facilities in a common conduit system or other common structure.

**"Hole"** means an excavation in the right-of-way, with the excavation having a length less than the width of the right-of-way. Ord. 3463 09/05/00

**"Obstruct"** means to place any tangible object in a right-of-way so as to hinder free and open passage over that or any part of the right-of-way, or as to hinder maintenance of any city asset.

**"Permit"** has the meaning given "right-of-way permit" in Minnesota Statutes, section 237.162 this ordinance.

**"Public Right-of-Way"** means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane and public sidewalk in which the city has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the city. A public right-of-way does not include the airwaves above a public right-of-way with regard to cellular or other nonwire telecommunications or broadcast service.

**"Right-of-Way Permit"** means a permit required by this chapter to perform work in a public right-of-way. Includes the excavation permit, the obstruction permit, or the small wireless facility permit or any combination thereof depending on the context either the excavation permit or the obstruction permit, or both, depending on the context, required by this chapter.

SECTION 3. That Winona City Code, Chapter 66 - Right-Of-Way Management, Section 66.05 – Registration and Right-of-Way Occupancy, Subd. 1, Registration, is hereby amended as follows:

#### **SEC. 66.05 REGISTRATION AND RIGHT-OF-WAY OCCUPANCY**

Subd. 1. Registration. Each person who occupies authorized to occupy, uses, or who seeks to occupy or use, the right-of-way or place any equipment or facilities in or on the right-of-way, including persons with installation and maintenance responsibilities by lease, sublease or assignment, must register with the city. Registration will consist of providing application information and paying a registration fee.

SECTION 4. That Winona City Code, Chapter 66 - Right-Of-Way Management, Section 66.06 – Registration Information, Subd. 1 is hereby amended as follows:

## **SEC. 66.06 REGISTRATION INFORMATION**

**Subd. 1. Information Required.** Registration with the city is required. The information provided to the city at the time of registration shall include, but not be limited to:

(g) Any other information deemed necessary by the City Engineer to adequately protect the health, safety, and welfare of the City.

SECTION 5. That Winona City Code, Chapter 66 - Right-Of-Way Management, Section 66.09 – Permit Applications, is hereby amended as follows:

## **SEC. 66.09 PERMIT APPLICATIONS**

Application for a permit is made to the city on forms approved by the City Engineer or the City Engineer's designee. Right-of-way permit applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

(b) Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities and all other information deemed relevant by the City Engineer.

(d) Payment of money due the city for:

(1) Application fees, permit fees, estimated restoration costs and other management costs;

SECTION 6. That Winona City Code, Chapter 66 - Right-Of-Way Management, Section 66.10 – Issuance of Permit; Conditions, is hereby amended as follows:

## **SEC. 66.10 ISSUANCE OF PERMIT; CONDITIONS**

**Subd. 2. Conditions.** The city may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety and welfare or when necessary to protect the right-of-way and its current use. In addition, a permittee shall comply with all requirements of local, state, and federal laws, including but not limited to Minn. Stat. §§ 216D.01 - .09 (Gopher One Call Excavation Notice System) and Minn. R., ch. 7560.

All permits and all registrations made under this section shall be subject to the following requirements:

(a) All permits issued under this section or a copy of the permit shall be conspicuously displayed or otherwise available at all times at the indicated project work site and shall be available for inspection immediately upon request by the director or his/her designee.

(b) If the obstruction or excavation of the public right-of-way begins later or ends sooner than the dates specified in the permit, the permittee shall promptly notify the

director.

(c) Installation, placement, location, and relocation of equipment and facilities shall comply with all federal, state and local laws.

(d) Public right-of-way restoration shall be in accordance with the restoration regulations set forth in this Chapter.

(e) Installation of all underground utilities shall be in accordance with the underground utilities regulations set forth in this Chapter and all other applicable federal, state and local laws.

(f) A permittee shall not obstruct a public right-of-way, except as expressly authorized by the permit, so as to hinder the natural free and clear passage of water through the gutters or other waterways. Personal vehicles of those doing work in the public right-of-way may not be parked within or next to a permit area, unless parked in conformance with city parking regulations. The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit.

(g) The permittee shall comply with all conditions of the permit.

(h) When any trail or drive has been cut, the appropriate signage must be kept in place and maintained until restoration is complete.

(i) The permittee shall coordinate project work and installation of facilities in co-locations involving other public right-of-way users.

(j) The permittee shall complete restoration of the public right-of-way and easements across private property in conformance with this Chapter.

(k) The permittee shall obtain all other necessary permits, licenses and approvals, pay all required fees therefor and comply with all requirements of local, state and federal laws.

(l) The permittee shall not do any work outside the project area as specified in the permit.

**Subd. 3. Small Wireless Facility Conditions.** Subject to a required city issued permit and pursuant to Minn. Stat. Sec. 237.163, subd. 2(f), the placement of small wireless facilities and wireless support structures to accommodate small wireless facilities is a permitted use in a public right-of-way, provided however that a conditional land use permit shall also be required to install a new wireless support structure for the siting of a small wireless facility in a right-of-way in a district or area zoned for single-family residential use or within a historic district established by federal or state law or city ordinance as of the date of application for a small wireless facility permit. This paragraph does not apply to areas outside a public right-of-way that are zoned and used exclusively for single-family residential use.

In addition to the above paragraph of this subdivision 3, as applicable, and to subdivision 2 above, the erection or installation of a wireless support structure, the collocation of a small wireless facility, or other installation of a small wireless facility in the right-of-way, shall be subject to both the City's adopted Small Wireless Facility Design Guidelines Policy, which is

incorporated herein by reference as the same may be amended from time to time, and the following conditions:

- (d) Where an applicant proposes to install a new wireless support structure in the right-of-way after May 31, 2017, the city may impose separation requirements between such structure and any existing other wireless support structure or other facilities in and around the right-of-way for purposes of the public health, safety and welfare, reasonable City right-of-way management, or protection of the right-of-way and its uses.
- (e) Where an applicant proposes collocation on a decorative wireless support structure, sign or other structure not intended to support small wireless facilities, such equipment shall be consistent with the City's above-referenced aesthetic standards regarding wireless equipment. Such standards shall ensure that wireless equipment is installed with a stealth design and that equipment does not detract from the character of the area in which it is installed. In addition, the City Engineer shall adopt standards that ensure city assets can continue to effectively perform their intended function. Standards shall be made available with the application required for a small cell permit. the city may impose reasonable requirements to accommodate the particular design, appearance or intended purpose of such structure.
- (h) A permit will be deemed void if the approved equipment is not installed within one year of issuance of the permit.
- (i) No wireless facility constructed in the right-of-way shall be permitted to cause radio frequency interference in excess of any local, state, or federal standards, to any other communication facilities, including any public safety communications facilities, located near the proposed wireless facility.

SECTION 7. That Winona City Code, Chapter 66 - Right-Of-Way Management, Section 66.10.1 – Action on Small Wireless Facility Permit Applications, is hereby amended as follows:

#### **SEC. 66.10.1 ACTION ON SMALL WIRELESS FACILITY PERMIT APPLICATIONS**

**Subd. 1. Deadline for Action.** Pursuant to Minnesota Statutes, Section 237.163, subd. 3c, the The city shall approve or deny a small wireless facility permit application for collocation of a small wireless facility using a preexisting structure within 90 60 days after (1) the applicant takes the first procedural step that the City requires as part of its Section 6409(a) regulatory review process, and (2) to the extent that the applicant has not done so as part of the first required procedural step, the applicant submits written documentation that addresses the eligible facilities request criteria and indicates that the proposed modification will not cause a substantial change to an existing structure, filing of such application. The city shall approve or deny a small wireless facility permit application for attachment of a small wireless facility using a new structure within 90 days after submission of such application. The small wireless facility permit, and any associated building permit application, shall be deemed approved if the city fails to approve or deny the application within the review periods established in this section.

**Subd. 3. Completeness Determination and Tolling of Deadline.** The 60-day and 90-day deadlines for action on a small wireless facility permit application may be tolled/halted if:

- (a) The city determines a small wireless facility permit application is incomplete and

~~follows the following procedure: receives applications from one or more applicants seeking approval of permits for more than 30 small wireless facilities within a seven-day period. In such case, the city may extend the deadline for all such applications by 30 days by informing the affected applicants in writing of such extension.~~

- (1) Upon receiving an application to deploy a small wireless facility, the city has ten (10) days from the submission of the application to determine whether the application is incomplete. In the event the city determines the application is incomplete, the city shall provide written notice to the applicant of any required information which is missing or incomplete.
- (2) Upon submission of additional documents or information, the 60-day or 90-day shot clock, as respectively provided in subdivision (1) of this section, shall reset.
- (3) Upon submission of additional documents or information, the city shall have ten (10) days to notify the applicant in writing of any still-missing information. In the event a subsequent determination of incompleteness is made by the city, the 60-day or 90-day shot clock, as respectively provided in subdivision (1) of this section, shall toll until completeness is determined by the city.
- (4) If an applicant fails to respond to the city's notice of incompleteness within ninety (90) days, the application shall be deemed expired and no small wireless facility permit shall be issued.

(b) The applicant fails to submit all required documents or information and the city provides written notice of incompleteness to the applicant within 30 days of receipt the application. Upon submission of additional documents or information, the city shall have ten days to notify the applicant in writing of any still-missing information.

(c)(b) The city and a small wireless facility applicant agree in writing to toll the review period.

SECTION 8. That Winona City Code, Chapter 66 - Right-Of-Way Management, Section 66.11 – Permit Fees, is hereby amended as follows:

#### **SEC. 66.11 PERMIT FEES**

**Subd 3. Small Wireless Facility Permit Fee.** The city shall impose a small wireless facility permit fee in an amount sufficient to recover management costs:

- (a) management costs, and;
- (b) city engineering, make-ready, and construction costs associated with collocation of small wireless facilities.

**Subd. 4. Engineering Services Costs.** Any initial engineering survey and preparatory construction work associated with collocation must be paid by the cost causer in the form of a onetime, nonrecurring, commercially reasonable, nondiscriminatory, and competitively neutral

charge to recover the costs associated with a proposed attachment.

**Subd. 54. Payment of Permit Fees.** All permit fees shall be submitted to the city with the application. No excavation permit, obstruction permit, or small wireless facility permit shall be issued without payment of excavation permit all required fees. The city may allow Applicant to pay such fees within thirty (30) days of billing.

**Subd. 65. Non Refundable.** Permit fees that were paid for a permit that the city has revoked for a breach as stated in Section 66.21 are not refundable.

**Subd. 76. Application to Franchises.** Unless otherwise agreed to in a franchise, management costs may be charged separately from and in addition to the franchise fees imposed on a right-of-way user in the franchise.

SECTION 9. That Winona City Code, Chapter 66 - Right-Of-Way Management, Section 66.12 – Right-of-Way Patching and Restoration, is hereby amended as follows:

#### **SEC. 66.12 RIGHT-OF-WAY PATCHING AND RESTORATION**

**Subd. 3. Standards.** The permittee shall perform excavation, backfilling, patching and restoration according to the standards and with the materials specified by the city and shall comply with Minnesota Rule 7819.1100. The permittee shall guarantee the restoration of the public right-of-way for 24 months following its completion (twelve months for turf establishment). During the 24-month period, the permittee shall, upon written notification from the city, correct all non-complying restoration work, using the method required by the city. The correction work shall be completed within ten calendar days of the receipt of the notice from the city, not including days during which work cannot be done due to circumstances constituting force majeure. The permittee shall submit to the city "as-built" drawings in a format usable by the city within one year of completion of the project, as required by applicable law.

SECTION 10. That Winona City Code, Chapter 66 - Right-Of-Way Management, Section 66.16 – Denial of Permit, is hereby amended as follows:

#### **SEC. 66.16 DENIAL OF PERMIT**

**Subd. 1. Reasons for Denial.** The city may deny a permit for failure to meet the requirements and conditions of this chapter or if the city determines that the denial is necessary to protect the health, safety, and welfare of the public or when necessary to protect the right-of-way and its current use and any city asset or facility. The city may additionally deny a permit for the following reasons:

- (a) The applicant failed to fully comply with the application requirements herein.
- (b) Except for small wireless facilities permits, the city has initiated revocation of a prior permit issued under this Chapter against the applicant.
- (c) Except for small wireless facilities permits, the applicant has violated within the past two (2) years any requirements of this Chapter.

(d) The time schedule for the project will conflict or interfere with a community exhibition, celebration, festival or any other similar community event in the area of the project.

(e) The time schedule for the project conflicts with scheduled public improvement of the public right-of-way.

(f) The time schedule for the project conflicts with another applicant's previously approved project.

(g) The proposed project violates a provision of this Chapter or City Code.

(h) The proposed project is adverse to the public health, safety and welfare, by interfering with the safety and convenience of ordinary travel over the public right-of-way, or endangers the public right-of-way and its users based on one or more of the following factors:

- (1) The extent of public right-of-way area available;
- (2) The competing demands for the particular proposed area space in the public right-of-way;
- (3) The availability of other locations in the public right-of-way or in other public rights-of-way for the facility(s) or equipment of the permit applicant;
- (4) The applicability of an ordinance or other regulation that affect the location of a facility or equipment in the public right-of-way;
- (5) Except for small wireless facilities permits, the applicant's prior non-compliance with the terms and conditions of its franchise, this Chapter and other applicable ordinances and regulations;
- (6) The condition and age of the public right-of-way and the city's scheduled reconstruction thereof; and
- (7) The costs of disruption to the public and damage to the public right-of-way balanced against any benefits to the public served by an expansion into additional parts of the public right-of-way for facilities or equipment.

**Subd. 2. Right to Cure – Small Wireless Facilities.** Pursuant to Minn. Stat. § 237.163, subd. 4(f), for small wireless facilities permits, if a permit application is denied, the telecommunications right-of-way user may cure the deficiencies identified by the city and resubmit its application.

**Subd. 32. Procedural Requirements.** The denial or revocation of a permit must be made in writing and must document the basis for the denial. The city must notify the applicant or right-of-way user in writing within three business days of the decision to deny or revoke a permit. If an application is denied, the right-of-way user may address the reasons for denial identified by the city and resubmit its application. If the application is resubmitted within 30 days of receipt of the notice of denial, no additional application fee shall be imposed. The city must approve or deny the resubmitted application within 30 days after submission.

SECTION 11. That Winona City Code, Chapter 66 - Right-Of-Way Management, Section 66.18 – Inspection, is hereby amended as follows:

### **SEC. 66.18 INSPECTION**

**Subd. 1. Notice of Completion.** When the work under any permit hereunder is completed, the permittee shall furnish a Completion Certificate in accordance Minnesota Rule 7819.1300 or other “as built” documentation as deemed necessary by the City Engineer.

SECTION 12. That Winona City Code, Chapter 66 - Right-Of-Way Management, Section 66.19 – Work Done Without a Permit, is hereby amended as follows:

### **SEC. 66.19 WORK DONE WITHOUT A PERMIT**

**Subd. 1. Emergency Situations.** Each registrant shall immediately notify the director of any event regarding its facilities which it considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Excavators’ notification to Gopher State One Call regarding an emergency situation does not fulfill this requirement. Within two (2) business days after the occurrence of the emergency the registrant shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this chapter for the actions it took in response to the Emergency.

SECTION 13. That Winona City Code, Chapter 66 - Right-Of-Way Management, Section 66.20 – Supplementary Notification, is hereby amended as follows:

### **SEC. 66.20 SUPPLEMENTARY NOTIFICATION**

If the obstruction or excavation of the right-of-way begins later or ends sooner than the date given on the permit, permittee shall notify the city of the accurate information as soon as this information is known.

SECTION 14. That Winona City Code, Chapter 66 - Right-Of-Way Management, Section 66.21 – Revocation of Permits, is hereby amended as follows:

### **SEC. 66.21 REVOCATION OF PERMITS**

**Subd. 1. Substantial Breach.** The city reserves its right, as provided herein, to revoke any right-of-way permit, without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by permittee shall include, but shall not be limited to, the following:

- (a) The violation of any material provision of the right-of-way permit or City Code;
  
- (e) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to Sec. 66.18; or

(f) The failure to maintain the required bonds or other security and insurance.

SECTION 15. That Winona City Code, Chapter 66 - Right-Of-Way Management, Section 66.23 – Location and Relocation of Facilities, is hereby amended as follows:

## **SEC. 66.23 LOCATION AND RELOCATION OF FACILITIES**

**Subd. 1.** Placement, location, and relocation of facilities must comply with the Act, with other applicable law, with other applicable standards adopted by the City Engineer, and with Minnesota Rules 7819.3100, 7819.5000 and 7819.5100, to the extent the rules do not limit authority otherwise available to cities.

**Subd. 2. Undergrounding.** Unless otherwise agreed in a franchise or other agreement between the applicable right- of- way user and the City or unless otherwise excepted herein, any new non-replacement Facilities or equipment in the right of way must be located or relocated and maintained underground in accordance with Section 66.17.

The following exceptions to the strict application of this Subdivision 2 shall be allowed upon the conditions stated:

(a) Technical Feasibility; Promotion of Policy. Above-ground installation, construction, or placement of facilities shall be allowed in residential, commercial, and industrial areas where the Council, following consideration and recommendation by the planning commission, finds that:

(1) Underground placement is not technically feasible due to topographical, subsoil, or other existing conditions which significantly and adversely affect underground facilities placement; or

(2) Failure to promote the purposes of undergrounding. The city determines on its own review that undergrounding is not warranted based on the circumstances of the proposed undergrounding.

(b) Temporary Service. Above-ground installation, construction, or placement of temporary service lines shall only be allowed:

(1) During new construction of any project for a period not to exceed three (3) months.

(2) During an emergency in order to safeguard lives or property within the city.

(3) For a period of not more than seven (7) months when soil conditions make excavation impractical.

(c) Facilities Subject to Preemptive Public Utilities Commission Siting and Routing Jurisdiction. Facilities that are subject to certificate of need and siting and routing requirements of the Minnesota Public Utilities Commission are exempted from this section to the extent that the city's undergrounding authority is pre-empted by law.

(d) Collocation of Small Cell Wireless Facilities. Collocation of small wireless facilities and installation of wireless support structures, approved by the city and in compliance with Minn. Stat. §§ 237.162, 237.163, are exempted from this section.

**Subd. 32. Corridors.** The city may assign specific area within the right-of-way, or any particular segment thereof as may be necessary, for each type of facility that is or, pursuant to current technology, the city expects will someday be located within the right-of-way. All excavation, obstruction, or other permits issued by the city involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue.

Any registrant who has facilities in the right-of-way in a position at variance with the corridors established by the city shall, no later than at the time of the next reconstruction or excavation of the area where the facilities are located, move the facilities to the assigned position within the right-of-way, unless this requirement is waived by the city for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public safety, customer service needs and hardship to the registrant.

**Subd. 43. Nuisance.** One year after the passage of this chapter, any facilities found in a right-of-way that have not been registered shall be deemed to be a nuisance. The city may exercise any remedies or rights it has at law or in equity, including, but not limited to, abating the nuisance or taking possession of the facilities and restoring the right-of-way to a useable condition.

**Subd. 54. Limitation of Space.** To protect the health, safety, and welfare of the public or when necessary to protect the right-of-way and its current use, the city shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way. In making such decisions, the city shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular Utility Service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future city plans for public improvements and development projects which have been determined to be in the public interest.

SECTION 16. That Winona City Code, Chapter 66 - Right-Of-Way Management, Section 66.27 – Indemnification and Liability, is hereby amended as follows:

#### **SEC. 66.27 INDEMNIFICATION AND LIABILITY**

By registering with the city, or by accepting a permit under this chapter, a registrant or permittee agrees to defend and indemnify the city in accordance with the provisions of Minnesota Rules 7819.1250 and the same is incorporated herein by reference.

SECTION 17. That this ordinance shall take effect upon its publication.

Passed by the City Council of the City of Winona, Minnesota, this \_\_\_\_\_ day of  
\_\_\_\_\_, 2021.

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Mayor

Attested By:

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City Clerk

## RESOLUTION

**WHEREAS**, on \_\_\_\_\_, 2021, through Ordinance No. \_\_\_\_\_, the City of Winona, Minnesota (the "City"), amended City Code, Chapter 66 – Right of Way Management; and

**WHEREAS**, City Code, Section 66.17 and applicable law authorize the City to adopt aesthetic requirements and specifications for wireless support structures located within the City; and

**WHEREAS**, City staff have prepared City of Winona Small Wireless Facility Design Guidelines ("Guidelines"), attached hereto as Exhibit A, to regulate the aesthetic requirements and specifications of small wireless facilities located within the City; and

**WHEREAS**, it is in the best interests of the City to adopt the Guidelines; and

**WHEREAS**, various sections of City Code, Chapter 66 regulate and presume the collocation of small cell wireless facilities within the City Right-of-Way; and

**WHEREAS**, City staff have prepared a Small Wireless Facility Collocation Agreement template ("Collocation Agreement"), attached hereto as Exhibit B, for use in permitting the collocation of small cell wireless facilities within the City Right-of-Way; and

**WHEREAS**, it is in the best interests of the City to adopt the Collocation Agreement.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL THAT:** the Guidelines are hereby approved and adopted and shall hereby govern the aesthetic requirements and specifications of small wireless facilities within the City.

**BE IT FURTHER RESOLVED THAT:** the Collocation Agreement template is hereby approved as to form, and the mayor and city clerk, respectively, are authorized and directed to execute the Collocation Agreement with future small cell wireless facilities applicants, allowing for minor or technical changes as determined by the City Attorney, and following completion and approval thereof by the City Engineer with respective future Applicants/Lessees. The respective Lessees shall be responsible for and pay all applicable fees, including any recording fees.

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

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Scott D. Sherman, Mayor

Attest:

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Monica Hennessy Mohan, City Clerk

**EXHIBIT A**

**City of Winona Small Wireless Facility Design Guidelines**

**CITY OF WINONA**

**SMALL WIRELESS FACILITY DESIGN GUIDELINES**

**I. PURPOSE AND COMPLIANCE**

In implementing City Code, Chapter 66 and applicable law and regulations, the City Council of the City of Winona (the “City”) finds that in order to protect the public health, safety and welfare of its citizens and to reasonably manage and protect the public rights-of-way (the “ROW”) and its uses in the City, it is in the best interest of the City and its residents and businesses to establish Small Wireless Facility Design Guidelines (the “Guidelines”) to provide the aesthetic requirements and other specifications and reasonable conditions that small wireless facilities and wireless support structures installed within the public ROW must meet prior to and following installation.

The objective of these Guidelines is to strike a balance between preserving and protecting the character of the City through careful design, siting, and camouflaging techniques to blend these facilities into their surrounding environment and provide other reasonable conditions upon such placement and use of the ROW, while enhancing the ability of small wireless facilities carriers to deploy small wireless facilities and wireless support structures in the City effectively and efficiently so that residents, businesses, and visitors benefit from ubiquitous and robust wireless service availability.

These Guidelines apply to requests to locate small wireless facilities in the ROW and ongoing use of the ROW for such purposes. These Guidelines are established pursuant to City Code, Section 66.17 and applicable law. These Guidelines are administered through the permitting process contained therein as conducted by the City Department of Public Works/Engineering.

Placement or modification of a small wireless facilities and/or wireless support structures shall comply with these Guidelines at the time the permit for installation or modification is approved and as amended from time to time. Wireless service providers and permittees are required to comply with City Code, Chapter 66 and applicable law and regulations.

**II. DEFINITIONS**

The definitions contained in Minn. Stat. § 237.162 are incorporated into this policy by reference as though fully set forth herein.

### **III. APPLICATION REQUIREMENTS**

Prior to placing, installing, modifying, relocating or removing a small wireless facility or wireless support structure in the ROW, or to collocating a wireless facility on an existing wireless support structure in the ROW, the operator shall apply for and receive a permit from the City. In addition to the application requirements established in City Code, Chapter 66 and applicable law and regulations, the information identified in this Section III must be included for the application to be considered complete, except that where such information is already in the City's possession from previous applications, or where the applicant previously filed information and specifications for standard materials that are being utilized in the new application, such information shall be referenced but need not be resubmitted. The City may require additional information as reasonably necessary to evaluate the application and the impact of the proposed installation(s) on the public health, safety and welfare or on use or management of the ROW.

#### **A. PROOF OF AGENT DESIGNATION (IF APPLICABLE):**

If the applicant is serving as an agent of a small wireless operator, the applicant must provide written documentation of the agent designation signed by the operator.

#### **B. MAP**

The applicant must include an aerial map showing the location of the proposed or existing support structure to which the small wireless facility is proposed to be attached, or from which a small wireless facility is proposed to be removed.

#### **C. PHOTO SIMULATIONS**

For all applications to locate small wireless facilities in the ROW, the applicant shall provide photo simulations from at least two reasonable line-of-site locations near the proposed project site. The photo simulations must be taken from the viewpoints of the greatest pedestrian or vehicular traffic.

#### **D. CONSOLIDATED APPLICATIONS**

An applicant seeking to construct, modify, collocate or replace more than one small wireless facility or more than one wireless support structure within the City may file a consolidated application for multiple small wireless facility requests or wireless support structure requests provided the requests grouped on a consolidated application only address substantially the same type of small wireless facilities or substantially the same type of wireless support structures. (Note: The City may treat each request individually during application review and processing and when issuing a determination or applying these guidelines.)

## **E. SITE AND OTHER PLANS AND STRUCTURAL CALCULATIONS**

The applicant must include fully dimensioned site plans, elevation drawings and structural calculations that depict any known existing wireless facilities with all existing transmission equipment and other improvements, the proposed facility with all proposed transmission equipment and other improvements, and the legal boundaries of the existing right-of-way and any associated access and utility easements. Fully dimensioned site plans shall indicate the spacing from existing curb, driveways, sidewalks, light poles and any other poles or appurtenances.

## **F. FULL DESCRIPTION OF NUMBER AND DIMENSIONS OF FACILITIES AND/OR STRUCTURES TO BE INSTALLED**

The applicant must include a full description of the number and dimensions of all small wireless facilities proposed to be installed and the wireless support structure, either new or existing, to be utilized for each small wireless facility. For all equipment proposed to be installed, the applicant must include: (1) the manufacturer's name and model number; (2) physical dimensions, including without limitation, height, width, depth and weight with mounts and other necessary hardware; and (3) the ambient noise level generated from the equipment, if any.

## **G. OWNER'S AUTHORIZATION**

For any application to attach a small wireless facility to a wireless support structure that is not owned by the City, the applicant must submit evidence sufficient to show that either: (1) applicant owns the proposed support structure; or (2) applicant has obtained the owner's written authorization to file the application.

# **IV. AESTHETIC REQUIREMENTS FOR SMALL WIRELESS FACILITIES**

## **A. ANTENNAS**

1. Each small wireless antenna shall be located entirely within a shroud or canister type enclosure.
2. The diameter of the antenna enclosure at its widest point should not be wider than two times the diameter of the top of the wireless support structure. The enclosure shall not exceed six cubic feet in volume.
3. All antenna enclosures shall either be mounted to the top of the wireless support structure pole and aligned with the centerline of the wireless support structure, or mounted to the side of the wireless support structure such that the vertical centerline of the antenna enclosure shall be parallel with the

wireless support structure with the height of the side mounted antenna being at a location on the wireless support structure noted in the application and approved by the City, but at least 10 feet above ground level at its lowest point.

4. Tree “topping” or the improper pruning of trees is prohibited. Any proposed pruning or removal of trees, shrubs or other landscaping already existing in the ROW must be noted in the application and must be approved by the City.

## B. CABLES AND WIRES

All cables, wires and connectors related to the small wireless facility must be fully concealed on the wireless support structure and shall match the color of the wireless support structure. There shall be no external cables and wires related to the small wireless facility hanging off or otherwise exposed on the wireless support structure.

## C. COLORS

All colors shall match the background of any wireless support structure that the facilities are located upon, including equipment cabinets. Notwithstanding the foregoing, in the case of existing wood utility poles, finishes of conduit shall be zinc, aluminum or stainless steel, or colored to match those metal finishes, and equipment cabinets shall be the color of brushed aluminum.

## D. EQUIPMENT ENCLOSURES/CONCEALMENT

1. Equipment enclosures, including electric meters, shall be as small as possible, but in no event larger than 28 cubic feet in volume. Ground-mounted equipment shall incorporate concealment elements into the proposed design matching color and materials of the wireless support structure, unless other materials or colors are approved by the City. Concealment may include, but shall not be limited to, landscaping, strategic placement in less obtrusive locations and placement within existing or replacement street furniture.
2. Radio equipment shall be fully enclosed within an equipment cabinet or concealed within the antenna shroud enclosure matching the color and materials of the wireless support structure, unless other materials or colors are approved by the City.
3. Landscaping concealing equipment enclosures shall be planted in such quantity and size such that 100% screening is achieved within two years of installation.

## E. SIGNAGE/LOGOS/LIGHTS/DECALS/COOLING FANS

1. Signage: The small wireless facility permittee shall post its name, location identifying information, and emergency telephone number in an area on the cabinet of the small wireless facility that is visible to the public. Signage required under this section shall not exceed 4 inches by 6 inches, unless otherwise required by law (e.g. radio-frequency (RF) ground notification signs) or the City. If no cabinet exists, the signage shall be placed at the base of the pole.
2. Lights: New small wireless facilities and wireless support structures shall not be illuminated, except in accord with state or federal regulations, or unless illumination is integral to the camouflaging strategy such as design intended to look like a street light pole.
3. Logos/Decals: The small wireless facility operator/permittee shall remove or paint over unnecessary equipment manufacturer decals. The color shall match or shall be as approved by the City. Small wireless facilities and wireless support structures shall not include advertisements and may only display information required by a federal, state or local agency. The small wireless facility operator/permittee shall utilize the smallest and lowest visibility RF warning sticker required by government or electric utility regulations. Placement of the RF sticker shall be as close to the antenna as possible.
4. Cooling Fans: In residential areas, the small wireless facility operator/permittee shall use a passive cooling system. In the event that a fan is needed, the small wireless facility operator/permittee shall use a cooling fan with a low noise profile.

## V. LOCATION REQUIREMENTS

### A. MOST PREFERABLE LOCATIONS

The following are the most preferred areas for new small wireless facilities in the order of preference (1 being most preferable):

1. *Industrial Districts* if not adjacent to a park, residential district or historic district.
2. *Highway Rights of Way* areas if not adjacent to a park, residential district, or historic district.

3. *Retail and Commercial Districts* if not adjacent to a park, residential district or historic district.

## B. COLLOCATION PREFERENCE

It is the City's strong preference that whenever an applicant proposes to place a new small wireless facility that the applicant collocate the same on existing wireless support structures.

## C. LEAST PREFERABLE LOCATIONS

The following are the least preferred areas for new small wireless facilities in the order of preference (3 being least preferable).

1. *Residential Districts*
2. *Parks*
3. *Historic Districts*

## D. CONSIDERATION OF ALTERNATE LOCATIONS

The City reserves the right to propose an alternate location for a small wireless facility and/or wireless support structure to the location proposed in the application within one hundred feet of the proposed location or within a distance that is equivalent to the width of the ROW in or on which the small wireless facility and/or wireless support structure is proposed, whichever is greater, which the operator shall use if it has the right to use the alternate location on reasonable terms and conditions and the alternate location does not impose technical limits or additional costs.

## E. GUIDELINES ON PLACEMENT

The City desires to promote cleanly organized and streamlined facilities using the smallest and least intrusive means available to provide wireless services to the community. Generally, a small wireless facility and/or wireless support structure shall match and be consistent with the materials and finish of the wireless support structure, adjacent City poles, and of the surrounding area adjacent to their location. In the absence of adjacent City poles, the wireless support structure shall match the materials and finish of the adjacent utility poles.

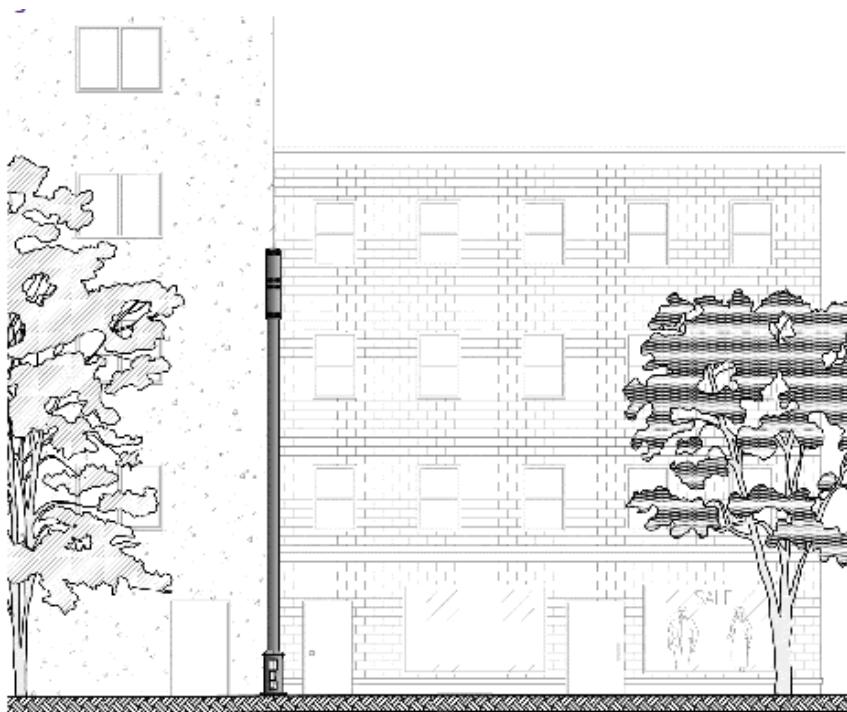
The following additional guidelines on placement shall apply:

1. Small wireless facilities and wireless support structures shall be located no closer than 150 feet away, radially, from another small wireless facility and wireless support structure.
2. A combination wireless support structure and streetlight pole should only be located where an existing pole (usually Xcel Energy) can be removed and replaced, or at a new location where it has been identified that a streetlight is necessary.
3. Small wireless facilities and wireless support structures shall be located in a manner that does not impede, obstruct, or hinder usual public pedestrian or vehicular travel or public safety on a ROW.
4. Small wireless facilities and wireless support structures shall be located in a manner that does not obstruct the legal use of a ROW by a utility provider.
5. Small wireless facilities and wireless support structures shall be located in a manner that does not violate or conflict with the City Code, Chapter 66, applicable law and regulations, or these Guidelines.
6. Small wireless facilities and wireless support structures shall be located in a manner that does not violate the federal Americans with Disabilities Act.
7. Small wireless facilities and wireless support structures shall be located in a manner that does not negatively impact the structural integrity of the associated wireless support structure.
8. Small wireless facilities and wireless support structures shall be located in alignment with existing trees, utility poles, and streetlights.
9. Small wireless facilities and wireless support structures shall be located equal distance between trees when possible, with a minimum of 15 feet separation such that no proposed disturbance shall occur within the critical root zone of any tree.
10. Small wireless facilities and wireless support structures shall be located with appropriate clearance from existing utilities.
11. Small wireless facilities and wireless support structures shall be located so as not to be located along the frontage of any building deemed to be of historic significance on a federal, state, or local level.
12. Small wireless facilities and wireless support structures shall be located not within sight triangles at street intersections.
13. New wireless support structures shall not be located directly in front of any existing residential, commercial or industrial structure.
14. To the greatest extent possible, new wireless support structures shall be located in line with existing lot lines or an equidistance from any two existing structures. In areas of the City where multiple structures abut each other and/or where no side lot setback requirements exist, new wireless support structures shall not be located directly in front of an entrance or window of any existing structure.

Figure 1 – Example of Acceptable Location Between Residential Homes:



Figure 2 – Example of Acceptable Location Between Commercial Buildings:



## VI. LIMITATIONS

While the City fully intends to apply the guidelines established in this policy uniformly to all small wireless facility applications, there may be circumstances where not every specific guideline may be met. In these cases, City staff will use its reasonable discretion in approving small wireless facilities permit applications that deviate from the strict application of this policy.

## **VII. EFFECTIVE DATE OF POLICY**

This Policy will be effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.  
Modifications of the Policy will be effective on the date said modifications are  
approved by the City Council.

**EXHIBIT B**

**Small Wireless Facility Collocation Agreement Template**

## SMALL WIRELESS FACILITY COLLOCATION AGREEMENT

This Small Wireless Facility Collocation Agreement (the “Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the City of Winona, a municipal corporation under the laws of the State of Minnesota, with its principal offices located at 207 Lafayette St, Winona, MN 55987, (hereinafter referred to as “City”), and \_\_\_\_\_ [Insert legal name of business], a \_\_\_\_\_ [e.g., corporation, limited liability company, limited liability limited partnership, etc.] under the laws of the State of \_\_\_\_\_ [e.g., Minnesota], (hereinafter referred to as “Lessee”). City and Lessee are at times collectively referred to hereinafter as the “Parties” or individually as the “Party.”

### RECITALS

WHEREAS, the Federal Communications Act of 1934, as amended, authorizes City to manage and control access to and use public rights-of-way within City limits; and

WHEREAS, City has elected to manage its rights-of-way as authorized by Minnesota Statutes, Sections 237.162-.163 and City’s municipal code of ordinances (the “Code”); and

WHEREAS, this Agreement shall apply to the collocation of Small Wireless Facilities (as hereinafter defined). “Collocate” or “collocation” means to install, mount, maintain, modify, operate, or replace a small wireless facility on, under, within, or adjacent to an existing Wireless Support Structure (as hereinafter defined) or utility pole that is owned privately or by a local government unit; and

WHEREAS, a “Small Wireless Facility” means: (1) a wireless facility, as defined by Minnesota Statutes, Section 237.162, subd. 13, that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than six (6) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all its exposed elements could fit within an enclosure of no more than six (6) cubic feet; and (ii) all other wireless equipment associated with the small wireless facility, excluding electric meters, concealment elements, telecommunications demarcation boxes, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cable, conduit, vertical cable runs for the connection of power and other services, and any equipment concealed from public view within or behind an existing structure or concealment, is in aggregate no more than twenty-eight (28) cubic feet in volume; or (2) a micro wireless facility as defined by Minnesota Statutes, Section 237.162, subd. 14; and

WHEREAS, City owns or controls existing structures in the public right-of-way that are designed to support or determined by City as capable of supporting a Small Wireless Facility (“Wireless Support Structure”), which are located within the geographic area of a license held by Lessee to provide wireless services; and

WHEREAS, City has elected to set forth the terms and conditions of collocation on its Wireless Support Structures, and Lessee desires to install, maintain and operate Small Wireless Facilities on City’s Wireless Support Structures; and

WHEREAS, City and Lessee desire to enter into this Agreement to define the general terms and conditions which will govern their relationship with respect to the particular sites at which Lessee will collocate its Small Wireless Facilities on City's Wireless Support Structures; and

WHEREAS, Lessee shall compensate City for the collocation of Small Wireless Facilities on City's Wireless Support Structures. The fees imposed by City are (1) based on the actual costs incurred by City in managing the public rights-of-way; (2) based on an allocation among all users of the public rights-of-way, including City, which shall reflect the proportionate costs imposed on City by each of the various types of uses of the public rights-of-way; (3) imposed on a competitively neutral basis; and (4) imposed in a manner so that above ground use of public rights-of-way do not bear costs incurred by City to regulate underground uses of public rights-of-way; and

WHEREAS, City and Lessee acknowledge that they will enter into an agreement supplement ("Supplement") in substantially the form attached hereto as Exhibit A, with respect to each particular Wireless Support Structure on which Lessee will collocate; and

WHEREAS, this Agreement is not exclusive and City reserves the right to grant permission to other eligible and qualified entities to collocate Small Wireless Facilities in City's rights-of-way.

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

1. **Premises.** Pursuant to all of the terms and conditions of this Agreement and the applicable Supplement, City agrees to lease to Lessee certain space described in the applicable Supplement upon City's Wireless Support Structure in the public right-of-way (City's Wireless Support Structure, personal property, public right-of-way and surrounding real property are hereinafter sometimes collectively referred to as the "Property"), for the installation, operation and maintenance of Small Wireless Facilities; together with the non-exclusive right of ingress and egress from a public right-of-way, seven (7) days a week, twenty four (24) hours a day, over, under and through the Property to and from the Premises (as hereinafter defined) for the purpose of installation, operation and maintenance of Lessee's Small Wireless Facilities. The space leased by City to Lessee described in the applicable Supplement is hereinafter collectively referred to as the "Premises." The Premises may include, without limitation, certain space on the ground (the "Equipment Space") on the Property, and space on the Wireless Support Structure sufficient for the installation, operation and maintenance of antennas and other equipment (the "Antenna Space") as described in the Supplement. Notwithstanding anything in the Supplement to the contrary, the Premises under each Supplement shall include such additional space necessary for the installation, operation and maintenance of wires, cables, conduits, and pipes (the "Cabling Space") running between and among the various portions of the Premises and to all necessary electrical and telephone utility, cable, and fiber sources located within the Property. If there are not sufficient electric and telephone utility, cable, or fiber sources located on the Property, City agrees to grant Lessee, or the local utility, or fiber or cable provider, upon Lessee's approval, the right to install any utilities, cable, and fiber on, through, over, and under other properties owned or controlled by City necessary for Lessee to operate its communications facility, provided the

location of those utilities, cable, and fiber shall be as reasonably designated by City. City's approval shall not be unreasonably withheld.

2. **PLANS AND DRAWINGS.** Before receiving approval from City to install a Small Wireless Facility on City's Wireless Support Structures in public rights-of-way, Lessee shall submit to the Director of Public Works or the Director's designee, detailed construction plans and drawings for each individual location, together with maps, showing specifically the Wireless Support Structures to be used, the number and character of the attachments to be placed on such Wireless Support Structures, equipment necessary for the use, proposed replacement of existing Wireless Support Structures and any new installations for transmission conduit, pull boxes, and related appurtenances. The City may additionally require Lessee to provide such other information deemed reasonably necessary by the City for the efficient administration of the public right-of-way and to submit to the City plans for construction and major maintenance that provide reasonable notice to the City of projects that the Lessee expects to undertake that may require excavation and obstruction of public rights-of-way, consistent with Minnesota Statutes, Section 237.162-.163. The Director or the Director's designee shall determine whether to give Lessee permission to proceed with the work as proposed by Lessee. Lessee shall perform all work at its own expense and make attachments in such manner as to not interfere with the services of City.

### **3. CONDITION OF PROPERTY: ENGINEERING STUDY.**

- a. The Parties acknowledge and agree that the Property is provided on an AS IS basis and City makes no warranties or representations, express or implied, including warranties of merchantability or fitness for a particular use, except those expressly set forth in this Agreement. Any expenses necessary to make the Premises ready for Lessee's construction of its improvements shall be the responsibility of Lessee.
- b. Lessee must obtain and submit to City a structural engineering study carried out by a qualified structural engineer showing the Wireless Support Structure and foundation is able to support the proposed Small Wireless Facility.

### **4. USE OF PUBLIC RIGHTS-OF-WAY.**

- a. City hereby grants to Lessee the right to use the municipal public right-of-way for the installation, maintenance and operation of Lessee's Small Wireless Facility in and on the Wireless Support Structure located within the public right-of-way.
- b. All Small Wireless Facilities shall be installed in accordance with applicable Laws (as hereinafter defined) and Lessee shall comply with all applicable laws, ordinances, rules and regulations adopted by City. Within the public rights-of-way, the location of the Small Wireless Facilities shall be subject to the reasonable and proper regulation, direction and control of the City, or the official to whom such duties have been delegated by City. Lessee shall have no ownership interest in any Wireless Support Structure owned by City.

- c. Lessee and its authorized contractors shall give City reasonable notice of the dates, location, and nature of all work to be performed on its Small Wireless Facilities within the public rights-of-way. This Agreement shall allow Lessee to perform all work on Lessee's Small Wireless Facilities within the public rights-of-way, and to park vehicles in the streets and other public rights-of-way when necessary for the installation, replacement, abandonment, operation or maintenance of Lessee's Small Wireless Facilities. Following completion of work in the public rights-of-way, Lessee shall repair any affected public rights-of-way as soon as possible, but no later than the time frame established in the applicable Supplement. Any affected public rights-of-way shall be restored to the same condition that existed before Lessee's work began. No street, alley, highway, or public place shall be encumbered for a longer period than shall be reasonably necessary to execute the work authorized by the applicable Supplement and this Agreement.
- d. Any damages to City's Wireless Support Structures, equipment thereon or other infrastructure caused by Lessee's installation or operations shall be repaired or replaced at Lessee's sole cost and to City's reasonable satisfaction.

## **5. STRUCTURE RECONDITIONING, REPAIR, REPLACEMENT.**

- a. From time to time, if City paints, reconditions, or otherwise improves or repairs the Wireless Support Structure in a substantial way ("Reconditioning Work"), City shall reasonably cooperate with Lessee to carry out Reconditioning Work activities in a manner that minimizes interference with Lessee's approved use of the Premises.
- b. Prior to commencing Reconditioning Work, City shall provide Lessee with not less than ninety (90) days' prior written notice. Upon receiving that notice, it shall be Lessee's sole responsibility to provide adequate measures to cover or otherwise protect Lessee's Small Wireless Facilities from the consequences of the Reconditioning Work, including but not limited to paint and debris fallout. City reserves the right to require Lessee to remove all of Lessee's Small Wireless Facilities from the Wireless Support Structure and Premises during Reconditioning Work, provided the requirement to remove Lessee's Small Wireless Facilities is contained in the written notice required by this Section.
- c. During City's Reconditioning Work, Lessee may maintain a temporary Small Wireless Facility on the Property, or after approval by City, on any land owned or controlled by City in the vicinity of the Property. If the Property will not accommodate Lessee's temporary Small Wireless Facility, or if the Parties cannot agree on a temporary location, the Lessee, at its sole option, shall have the right to terminate the applicable Supplement upon thirty (30) days written notice to City.
- d. Lessee may request a modification of City's procedures for carrying out Reconditioning Work in order to reduce the interference with Lessee's use of the Premises. If City agrees to the modification, Lessee shall be responsible for all reasonable incremental cost related to the modification.

- e. If City intends to replace a Wireless Support Structure (“Replacement Work”), City shall provide Lessee with at least ninety (90) days' written notice, and it shall be Lessee's sole responsibility, to remove its Small Wireless Facility. City shall also promptly notify Lessee when the Wireless Support Structure has been replaced and Lessee may re-install its Small Wireless Facility. During City's Replacement Work, Lessee may maintain a temporary Small Wireless Facility on the Property, or after approval by City, on any land owned or controlled by City in the vicinity of the Property. If the Property will not accommodate Lessee's temporary Small Wireless Facility or if the Parties cannot agree on a temporary location, the Lessee, at its sole option, shall have the right to terminate the applicable Supplement upon thirty (30) days written notice to City.
- f. If City intends to repair a Wireless Support Structure due to storm or other damage (“Repair Work”), City shall notify Lessee, and it shall be Lessee's sole responsibility, to remove its Small Wireless Facility as soon as possible. In the event of an emergency, City shall contact Lessee by telephone call to Lessee's \_\_\_\_\_ [insert specific division, e.g., Network Operations Center] at \_\_\_\_\_ [insert phone number] prior to removing Lessee's Small Wireless Facility. Once the Wireless Support Structure has been replaced or repaired, City will promptly notify Lessee it can reinstall its Small Wireless Facility. During City's Repair Work, Lessee may maintain a temporary Small Wireless Facility on the Property, or after approval by City, on any land owned or controlled by City in the vicinity of the Property. If the Property will not accommodate Lessee's temporary Small Wireless Facility, or if the Parties cannot agree on a temporary location, or if the Wireless Support Structure cannot be repaired or replaced within thirty (30) days, Lessee, at its sole discretion, shall have the right to terminate the applicable Supplement upon thirty (30) days' written notice to City. However, at Lessee's sole option to agree to the replacement Supplement, within thirty (30) days after the casualty damage, City must provide Lessee with a replacement Supplement to lease space at a new location upon which the Parties mutually agree. The monthly rental payable under the new replacement Supplement will not be greater than the monthly rental payable under the terminated Supplement.
- g. If Lessee's installation requires a new Wireless Support Structure to be constructed or an existing Wireless Support Structure to be replaced by Lessee (the “Replacement Wireless Support Structure”) then, any such Replacement Wireless Support Structure, shall be deemed to be a fixture on the Property and the Replacement Wireless Support Structure shall be and remain the property of the City with exclusive ownership by the City, without further consideration to or from the City. The Replacement Wireless Support Structure must meet the specifications of the City, including but not limited to, as to its height, color, materials, and decorative appearance. Lessee shall be responsible for installation of the Replacement Wireless Support Structure, including all costs associated with the purchasing of the Replacement Wireless Support Structure and the installation process. Lessee shall install the Replacement Wireless Support Structure based on plans approved by the City Engineer and to the satisfaction of the City Engineer. Upon completion of Lessee's installation, City shall be responsible for any and all costs relating to the operation,

maintenance, repair and disposal of the Replacement Wireless Support Structure, except to the extent such costs are due to the improper or negligent installation by Lessee or contractor hired by Lessee. If the Replacement Wireless Support Structure replaces an existing structure, then also as part of Lessee's installation, Lessee shall remove, dispose, salvage and or discard the existing structure at Lessee's sole discretion.

**6. TERM; RENTAL.**

- a. Consistent with Minnesota Statutes, Sections 237.162-.163, the term of each Supplement shall be equal to the length of time that the Small Wireless Facility is in use (the "Term"), unless the Supplement is terminated pursuant to this Agreement.
- b. Each Supplement shall be effective as of the date of execution by both Parties (the "Effective Date"), provided, however, the term of each Supplement shall commence on the first day of the month following the day that Licensee commences installation of its equipment on the Premises (the "Commencement Date"). Commencement of installation of the equipment on the Premises shall occur within 180 days of the Effective Date unless agreed to in writing by the City which agreement will not be unreasonably withheld.
- c. Upon the Commencement Date, rental payments shall commence and be due at a total annual rental of \$175.00 (the "Annual Rental"), representing \$150.00 per year for rent to occupy space on a Wireless Support Structure and \$25.00 per year for maintenance associated with the space occupied on a Wireless Support Structure, and all other right-of-way management costs.
- d. The Annual Rental for each Supplement shall be set forth in the Supplement and shall be paid in advance annually on each anniversary of the Commencement Date, to the payee designated by City in the Supplement, or to such other person, firm or place as City may, from time to time, designate in writing at least thirty (30) days in advance of any rental payment date by notice given in accordance with Paragraph 19 below.
- e. Upon agreement of the Parties, Lessee may pay rent by electronic funds transfer. City hereby agrees to provide to Lessee the reasonable documentation required for Lessee to pay all rent payments due to City.

**7. ELECTRICAL.** City shall, at all times during the Term of each Supplement, provide electrical service and telephone service access within the Premises. As provided by Minnesota Statutes, Sections 237.162-.163, an annual fee for electricity used to operate the Small Wireless Facility, if not purchased directly from a utility, shall be paid with the annual rent due under each Supplement at the rate of:

- a. \$876.00 per radio node less than or equal to 100 max watts;
- b. \$2,184.00 per radio node over 100 max watts;

- c. The actual costs of electricity, if the actual costs exceed the amount in item (a) or (b) or
- d. As agreed upon by City and Lessee.

The amount of any such annual fee shall be set forth in each Supplement.

Lessee shall be permitted at any time during the Term of each Supplement, to install, maintain, and/or provide access to and use of, as necessary (during any power interruption at the Premises), a temporary power source and a temporary installation of any other services and equipment required to keep Lessee's Small Wireless Facilities operational, along with all related equipment and appurtenances within the Premises, or elsewhere on the Property in such locations as reasonably approved by City. Lessee shall have the right to install conduits connecting the temporary power source, and the temporary installation of any other services and equipment required to keep Lessee's Small Wireless Facilities operational, and related appurtenances to the Premises.

Alternatively, Lessee may purchase electricity directly from a utility provider.

8. **APPLICATION FEES AND ENGINEERING COSTS.** The Parties acknowledge and agree that, pursuant to the FCC Order and Minnesota Statutes, Sections 237.162-.163, City may charge non-recurring application fee not to exceed \$500 for an application to collocate on existing structures for up to five facilities and \$100 for each additional facility beyond five (the "Application Fee"). The Application Fee includes the City's engineering fees, which are the actual costs of the initial engineering and preparatory construction work associated with Lessee's collocation in the form of a onetime, nonrecurring, commercially reasonable, nondiscriminatory, and competitively neutral charge. Lessee shall pay the Application Fee at the time of application for the Supplement.
9. **USE.** Lessee shall use the Premises for the purpose of constructing, maintaining, repairing and operating Small Wireless Facilities and uses incidental thereto. As long as the modified installation meets the definition of a Small Wireless Facility, and remains in compliance with applicable law, Code and this Agreement, Lessee shall have the right, without any increase in rent, to replace, repair, or otherwise modify its utilities, fiber or cable, equipment, antennas and/or conduits or any portion thereof, and the frequencies over which the equipment operates. Any additions shall require City's written approval, which shall not be unreasonably conditioned, withheld or delayed.
10. **GOVERNMENTAL APPROVALS: PERMITS.** It is understood and agreed that Lessee's ability to use the Premises is contingent upon Lessee obtaining all of the certificates, permits and other approvals (collectively the "Government Approvals") that may be required by any Federal, State or Local authorities, as well as a satisfactory structural analysis that will permit Lessee's use of the Premises as set forth above. City shall cooperate with Lessee in its effort to obtain the Governmental Approvals, and shall take no action which would adversely affect the status of the Property with respect to the proposed use thereof by Lessee. Lessee shall have the right to terminate the applicable Supplement if: (i) any of the applications for Governmental Approvals is

finally rejected; (ii) any Governmental Approval issued to Lessee is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; (iii) Lessee determines that the Governmental Approvals may not be obtained in a timely manner; (iv) Lessee determines that the Premises is no longer technically compatible for its use; or (v) Lessee, in its sole discretion, determines that the use of the Premises is obsolete or unnecessary. Notice of Lessee's exercise of its right to terminate shall be given to City in accordance with the notice provisions set forth herein below and shall be effective upon the mailing of that notice by Lessee, or upon such later date as designated by Lessee. All rentals paid to the termination date shall be retained by City. Upon such termination, the applicable Supplement shall be of no further force or effect except to the extent of the representations, warranties, and indemnities made by each Party to the other thereunder. Otherwise, the Lessee shall have no further obligations for the payment of rent to City for the terminated Supplement.

**11. INDEMNIFICATION.** To the fullest extent permitted by law, Lessee agrees to defend, indemnify, save and hold harmless City, and its employees, officials, and agents from and against all claims, actions, damages, losses and expenses, including reasonable attorney fees, to the extent caused by Lessee's use of the Premises or Lessee's breach of this Agreement. Lessee's indemnification obligation shall apply to Lessee's contractors, subcontractors, or anyone directly or indirectly employed or hired by Lessee, or anyone for whose acts Lessee may be liable. Lessee's indemnification obligation shall not apply to any liability resulting from the negligence or willful misconduct of City or other indemnified party. City will provide Lessee with prompt, written notice of any written claim covered by this indemnification provision; provided that any failure of City to provide any such notice, or to provide it promptly, shall not relieve Lessee from its indemnification obligations in respect of such claim, except to the extent Lessee can establish actual prejudice and direct damages as a result thereof. City will cooperate with Lessee in connection with Lessee's defense of such claim. Lessee shall not settle or compromise any such claim or consent to the entry of any judgment without the prior written consent of City and without an unconditional release of all claims by each claimant or plaintiff in favor of City. The indemnity obligation shall survive the completion or termination of this Agreement.

**12. INSURANCE.**

- a. **Waiver of Subrogation.** To the extent allowed by law, each party hereby waives and releases any and all rights of action for negligence against the other party which may hereafter arise on account of damage to property, resulting from any fire, or other casualty of the kind covered by standard fire insurance policies with extended coverage, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by each party. This waiver and release shall apply between the Parties and shall also apply to any claim asserted as a right of subrogation. All such policies of insurance obtained by each party concerning its property shall waive the insurer's right of subrogation against the other party.
- b. **General Liability.** Lessee agrees to procure and maintain, at Lessee's expense, the following insurance policies, including the coverages and limits of liability specified below, or as otherwise required by law, whichever is greater: commercial general liability

insurance with limits of \$2,000,000 per occurrence for bodily injury (including death) and property damage; \$4,000,000 annual aggregate including premises operations, products-completed operations, personal injury and advertising injury, and contractual liability. Lessee shall include City as an additional insured as their interest may appear under this Agreement.

- c. **Automobile Liability.** Lessee shall maintain commercial automobile liability Insurance, covering all owned, hired, and non-owned automobiles, with a combined single limit of \$2,000,000 each accident for bodily injury and property damage.
- d. **Workers' Compensation.** Lessee agrees to provide workers' compensation insurance for all its employees in accordance with the statutory requirements of the State of Minnesota and employers' liability insurance with limits as follows: \$500,000 each accident for bodily injury; \$500,000 disease each employee; \$500,000 disease policy limit.
- e. **Additional Insurance Conditions.**
  - i. Lessee shall deliver to City a certificate of insurance as evidence that the above coverages are in full force and effect.
  - ii. Lessee's policies shall be primary insurance and non-contributory to any other valid and collectible insurance available to City with respect to any claim arising under this Agreement.
  - iii. Upon receipt of notice from its insurer(s), Lessee shall provide the City with thirty (30) days' advanced written notice of cancellation of any required coverage.

13. **LIMITATION OF LIABILITY.** Except for indemnification obligations pursuant to Paragraph 11, neither Party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise. Lessee shall not be liable or responsible for addressing environmental conditions that do not result from the activities of Lessee.

14. **INTERFERENCE.**

- a. Lessee agrees that Lessee's use of Lessee's Small Wireless Facilities will not cause radio frequency interference in excess of FCC standards ("Interference") to any communication facilities, including any public safety communications facilities, located on or near the Wireless Support Structure, provided such systems are lawfully installed and properly operated.
- b. If there are any current communications facilities that are located on or near a Wireless Support Structure prior to (i) Lessee's attachment of its equipment to a Wireless Support

Structure or (ii) Lessee's modification of or additions to its equipment attached to a Wireless Support Structure, and at the City's request, Lessee shall at its cost obtain a radio frequency interference study carried out by a professional radio frequency engineer showing that Lessee's equipment and Lessee's intended use will not interfere with such existing use(s).

- c. When applicable, Lessee shall not transmit or receive radio waves at the Premises until such evaluation has been satisfactorily completed and approved by City, such approval shall not be unreasonably upheld, conditioned or delayed.
- d. Lessee agrees to install equipment of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to any equipment of City or other users of the Property which existed on the Property prior to the date the applicable Supplement is executed by the Parties.
- e. In the event any Small Wireless Facility or associated equipment installed by Lessee causes such Interference, and after City has notified Lessee of such interference by telephone call to Lessee's \_\_\_\_\_ [insert specific division, e.g., Network Operations Center] at \_\_\_\_\_ [insert phone number], Lessee, at its cost, will take all commercially reasonable steps necessary to correct and eliminate the Interference, including but not limited to, at Lessee's option, powering down such interfering equipment and later powering up such interfering equipment for intermittent testing. If the Interference continues for a period in excess of 48 hours following such notification, City shall have the right to require Lessee to reduce power, and/or cease operations until such time Lessee can make repairs to the interfering equipment.
- f. In no event will City be entitled to terminate a Supplement or relocate the equipment as long as Lessee is making a good faith effort to remedy the interference issue, provided however that Lessee must remedy the Interference issue identified no more than 30 days following notice thereof to City's reasonable satisfaction. In the event the Interference is not remedied within 30 days following notice thereof, City may consider the Interference to be a nuisance and may take appropriate action to abate such nuisance.
- g. City agrees that City and/or any other users of the Property who currently have or in the future take possession of the Property will be permitted to install only such new equipment that is of the type and frequency which will not cause harmful Interference which is measurable in accordance with then existing industry standards to the then existing equipment of Lessee.
- h. If Lessee determines, in its reasonable discretion, that any equipment installed by City subsequent to the installation of Lessee's Small Wireless Facility is causing Interference, City shall, upon written communication from Lessee to City, take all reasonable steps necessary to remedy the Interference.
- i. If Lessee determines, in its reasonable discretion, that any equipment permitted by City and installed by any user other than City subsequent to the installation of Lessee's Small

Wireless Facility is causing Interference, City shall, upon written communication from Lessee to City, take reasonable steps to notify other users of the Property of the Interference, and coordinate remediation of Interference among the Lessee and other users of the Property.

- j. If the Interference caused by equipment installed subsequent to Lessee's Small Wireless Facility by either City or another user continues for a period in excess of 48 hours following the notification, City shall, or shall require any other user to, reduce power and/or cease operations until such time as City, or the other user, can make repairs to the interfering equipment.
- k. City does not guarantee to Lessee non-interference to the operation of Lessee's Small Wireless Facility by equipment operated by City or other current users on the Property at the time Lessee installs its Small Wireless Facility.
1. The Parties acknowledge that there will not be an adequate remedy at law for noncompliance with the provisions of this Paragraph and therefore, either Party shall have the right to equitable remedies, such as, without limitation, injunctive relief and specific performance.

15. **REMOVAL.** Lessee shall, within sixty (60) days after expiration of the Term, or any earlier termination of a Supplement, or an abandonment of its facilities, remove its equipment, conduits, fixtures and all personal property and restore the Premises to its original condition, reasonable wear and tear excepted, at Lessee's sole cost and expense. If Lessee is unable to complete such removal within the sixty (60) day time period, prior to the expiration of such time period, Lessee shall request an extension of up to thirty (30) days. City's approval of the extension shall not be unreasonably withheld, conditioned, or delayed. City agrees and acknowledges that all of the equipment, conduits, fixtures and personal property of Lessee shall remain the personal property of Lessee and Lessee shall have the right to remove the same at any time during the Term, whether or not said items are considered fixtures and attachments to real property under applicable Laws. If the time for removal causes Lessee to remain on the Premises after termination of the Supplement, Lessee shall pay rent at the then-existing monthly rate, until such time as the removal of the equipment, fixtures and all personal property are completed. If Lessee fails to remove its facilities within the required time period, City reserves the right to remove the facilities and charge Lessee for the full cost of the removal and storage or disposal charges, and Lessee shall reimburse City for the same within sixty (60) days of the date of the City's invoice.

16. **RIGHTS UPON SALE.** If, at any time during the Term of any Supplement, City decides: (i) to sell or transfer all or any part of the Property or the Wireless Support Structure thereon to a purchaser other than Lessee, or (ii) to grant to a third party by easement or other legal instrument an interest in that portion of the Property occupied by Lessee, or a larger portion thereof, for the purpose of operating and maintaining communications facilities or the management thereof, that sale or grant of an easement or interest therein shall be subject to the applicable Supplement, and any such purchaser or transferee must recognize Lessee's rights hereunder and under the terms of the affected Supplement(s). If City completes any such sale, transfer, or grant described in this paragraph without executing an assignment of the applicable Supplement in which the third party

agrees in writing to assume all obligations of City under the applicable Supplement, then City shall not be released from its obligations to Lessee under the applicable Supplement, and Lessee shall have the right to look to City and the third party for the full performance of the applicable Supplement.

17. **QUIET ENJOYMENT AND REPRESENTATIONS.** City covenants that Lessee, on paying the Annual Rent and performing the covenants herein and in an applicable Supplement, shall peaceably and quietly have, hold and enjoy the Premises. City represents and warrants to Lessee as of the execution date of each Supplement, and covenants during the Term, that City has good and sufficient title and interest to the Property, and has full authority to enter into and execute the Supplement. City further covenants during the Term that there are no liens, judgments or impediments of title on the Property, or affecting City's title to the same and that there are no covenants, easements or restrictions that prevent or adversely affect the use or occupancy of the Premises by Lessee as provided in this Agreement and in the applicable Supplement(s).
18. **ASSIGNMENT.** This Agreement and each Supplement under it may be sold, assigned or transferred by the Lessee without any approval or consent of City to the Lessee's principal, affiliates, subsidiaries of its principal, or to any entity which acquires all or substantially all of Lessee's assets in the market defined by the FCC in which the Property is located by reason of a merger, acquisition or other business reorganization. As to other parties, this Agreement and each Supplement may not be sold, assigned or transferred without the written consent of City, which consent will not be unreasonably withheld, delayed or conditioned.
19. **NOTICES.** All notices hereunder must be in writing and are validly given if sent by certified mail, return receipt requested, or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows or to any other address that the Party to be notified may have designated:

City:                   City of Winona  
Attention: \_\_\_\_\_  
207 Lafayette St  
Winona, Minnesota 55987

Lessee:                [Company name]  
[Address]  
[City, State, Zip]

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

20. **DEFAULT.** If there is a breach by a Party with respect to any of the provisions of this Agreement, or under the provisions of an individual Supplement, the non-breaching Party shall give the breaching Party written notice of that breach. After receipt of the written notice, the breaching Party shall have thirty (30) days in which to cure the breach, provided the breaching Party shall have such extended period as may be required beyond the thirty (30) days if the breaching Party commences the cure within the thirty (30) day period and thereafter continuously and diligently

pursues the cure to completion, but in no event more than ninety (90) calendar days after receipt of written notice. The non-breaching Party may not maintain any action or effect any remedies for default against the breaching Party unless and until the breaching Party has failed to cure the breach within the time periods provided in this Paragraph. Notwithstanding the foregoing to the contrary, it shall be a default under this Agreement, or under an individual Supplement if City fails, within five (5) days after receipt of written notice of such breach, to perform an obligation required to be performed by City, and if the failure to perform that obligation interferes with Lessee's ability to conduct its business in the Premises; provided, however, that if the nature of City's obligation is such that more than five (5) days after notice is reasonably required for its performance, then it shall not be a default under this Agreement or the applicable Supplement if performance is commenced within such five (5) day period and thereafter diligently pursued to completion, but in no event more than fifteen (15) calendar days after receipt of written notice. City and Lessee agree that a default under an individual Supplement does not constitute a default under this Agreement

21. **DISPUTE RESOLUTION.** Subject to the provisions of Paragraph 20, the Parties shall cooperate and use their best efforts to ensure that the various provisions of the Agreement are fulfilled. The Parties agree to act in good faith to undertake resolution of disputes, in an equitable and timely manner and in accordance with the provisions of this Agreement.

If the dispute is not resolved within thirty (30) days, the Parties may pursue any legal or equitable remedy available to them at that time.

22. **CASUALTY.** In the event of damage by fire or other casualty to the Property that cannot reasonably be expected to be repaired within forty-five (45) days following same or, if the Property is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt Lessee's operations at the Premises for more than forty-five (45) days, then Lessee may, at any time following such fire or other casualty, provided City has not completed the restoration required to permit Lessee to resume its operation at the Premises, terminate the Supplement upon fifteen (15) days' prior written notice to City. Any such notice of termination shall cause the applicable Supplement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of the Supplement and the Parties shall make an appropriate adjustment, as of such termination date, with respect to payments due under the applicable Supplement. Notwithstanding the foregoing, the Annual Rent shall abate during the period of repair following such fire or other casualty in proportion to the degree to which Lessee's use of the Premises is impaired.

23. **APPLICABLE LAWS.** Laws means any and all laws, regulations, ordinances, resolutions, judicial decisions, rules, permits and approvals applicable to the subject of this Agreement or Lessee's use that are in force during the term of this Agreement, as lawfully amended including, without limitation, City's city Code and the rules, regulations and orders of the Federal Communications Commission ("FCC"), including but not limited to FCC 18-133 issued by the FCC adopted September 26, 2018 and released September 27, 2018 (the "FCC Order") or as the same is amended or modified in the future. Lessee and City shall comply with all applicable Laws. This Agreement does not limit any rights Lessee may have in accordance with Laws to

install its own poles in the right of way or to attach Lessee's equipment to third-party poles located in the right of way. This Agreement shall in no way limit or waive either party's present or future rights under Laws. If, after the date of this Agreement, the rights or obligations of either Party are materially altered, preempted, or superseded by changes in Laws, the parties agree to amend the Agreement and/or Supplement to reflect the change in Laws.

**24. GOVERNMENT DATA.** The Parties acknowledge and agree that this Agreement is considered public data not on individuals and is accessible to the public under Minnesota Statutes, Section 13.03. Lessee and City agrees to abide by the applicable provisions of the Minnesota Government Data Practice Act, Minnesota Statues, Chapter 13, and all other applicable state or federal rules, regulations or orders pertaining to privacy or confidentiality.

**25. GENERAL PROVISIONS.**

- a. **Entire Agreement.** This Agreement supersedes any prior or contemporaneous representations or agreements, whether written or oral, between the Parties and contains the entire agreement.
- b. **Recitals.** The recitals hereto are made a part hereof by reference.
- c. **Captions.** Captions contained in this Agreement are for reference only, and therefore, have no effect in construing this Agreement.
- d. **Ambiguities.** If any term of this Agreement is ambiguous, it shall not be construed for or against any Party on the basis that the Party did or did not write it.
- e. **Amendments.** Any modification or amendment to this Agreement shall require a written agreement signed by both Parties.
- f. **Third Party Rights.** This Agreement is not a third party beneficiary contract and shall not in any respect whatsoever create any rights on behalf of any person or entity not expressly a party to this Agreement.
- g. **Nondiscrimination.** In the hiring of employees or contractors to perform work under this Agreement, Lessee shall not discriminate against any person by reason of any characteristic or classification protected by State or Federal law.
- h. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Minnesota. The venue for all proceedings related to this Agreement shall be in Winona County, Minnesota.
- i. **Waiver.** The failure of either Party to insist upon strict performance of any of the terms or conditions of this Agreement or the waiver by either Party of any breach or failure to comply with any provision of this Agreement by the other Party shall not be construed as or constitute a continuing waiver of such provision or a waiver of any other breach of or

failure to comply with any other provision of this Agreement.

- j. **Force Majeure.** Except for payment of sums due, neither Party shall be liable to the other or deemed in default under this Agreement, if and to the extent that a Party's performance is prevented by reason of force majeure. "Force majeure" includes war, an act of terrorism, fire, earthquake, flood and other circumstances which are beyond the control and without the fault or negligence of the Party affected and which by the exercise of reasonable diligence the Party affected was unable to prevent.
- k. **Further Assurances.** From and after the execution of this Agreement, the parties shall fully cooperate with each other and perform any further act(s) and execute and deliver any further documents which may be necessary in order to carry out the purposes and intentions of this Agreement.
- l. **Savings Clause.** If any court finds any portion of this Agreement to be contrary to law, invalid, or unenforceable, the remainder of the Agreement will remain in full force and effect.
- m. **Counterparts.** This Agreement may be signed in counterparts, each of which shall be deemed an original, and which taken together shall be deemed to be one and the same document.
- n. **Conflicts with the Code.** In the event of a conflict between this Agreement and the Code, this Agreement shall control.

*[Remainder of page left intentionally blank.]*

IN WITNESS WHEREOF, the Parties, have caused this Agreement to be approved on the date above.

**CITY:**  
**City of Winona**

By: \_\_\_\_\_  
\_\_\_\_\_, Its Mayor

By: \_\_\_\_\_  
\_\_\_\_\_, Its City Clerk

STATE OF MINNESOTA      )  
                                  ) ss.  
COUNTY OF WINONA      )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_, as Mayor, and \_\_\_\_\_, as City Clerk, for and on behalf of the City of Winona, a Minnesota municipal corporation.

\_\_\_\_\_  
Notary Public

**LESSEE:**  
**[Business name]**

By: \_\_\_\_\_  
\_\_\_\_\_, Its \_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_, Its \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
                  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_\_, by\_\_\_\_\_, as\_\_\_\_\_, and\_\_\_\_\_, as  
\_\_\_\_\_, for and on behalf of\_\_\_\_\_, Lessee.

\_\_\_\_\_  
Notary Public

## **EXHIBIT A**

### **COLLOCATION AGREEMENT SUPPLEMENT**

This Collocation Agreement Supplement (“Supplement”), is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ between the City of Winona, a municipal corporation under the laws of the State of Minnesota, with its principal offices located at 207 Lafayette St, Winona, MN 55987, (“City”) and \_\_\_\_\_ [Insert legal name of business], a \_\_\_\_\_ [e.g., corporation, limited liability company, limited liability limited partnership, etc.] under the laws of the State of \_\_\_\_\_ [e.g., Minnesota], (“Lessee”).

1. **SMALL WIRELESS FACILITY COLLOCATION AGREEMENT.** This Supplement is a Supplement as referenced in that certain Small Wireless Facility Collocation Agreement between the City of \_\_\_\_\_ and \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_\_\_, (the “Agreement”). All of the terms and conditions of the Agreement are incorporated herein by reference and made a part hereof without the necessity of repeating or attaching the Agreement. In the event of a contradiction, modification or inconsistency between the terms of the Agreement and this Supplement, the terms of this Supplement shall govern. Capitalized terms used in this Supplement shall have the same meaning described for them in the Agreement unless otherwise indicated herein.
2. **PREMISES.** City hereby leases to Lessee certain spaces on and within City's Property located at \_\_\_\_\_ (site address), including the location of the Wireless Support Structure on the Property as indicated in Lessee's Application for Right-of-Way Permit, which is shown on Exhibit 1 attached hereto and made a part hereof. The Equipment Space, Antenna Space and Cabling Space are as shown on Exhibit 2, attached hereto and made a part hereof. Exhibit 2 shall further include plans and specifications for the Small Wireless Facility including, but not limited to, placement, dimensions, materials, color, decorative appearance, type of equipment, and screening to be used. The Equipment Space, Antenna Space, Cabling Space, plans and specifications to be included in Exhibit 2 shall be shown through pictures, drawings, and written descriptions.
3. **TERM.** The Commencement Date and the Term of this Supplement shall be as set forth in the Agreement.
4. **CONSIDERATION.** Rent under this Supplement shall be \$175.00 per year, payable to the City of \_\_\_\_\_ at \_\_\_\_\_ as set forth in the Agreement. If City is providing electricity pursuant to Paragraph 7 of the Agreement, an annual electrical service fee shall be added to the annual rent due under this Supplement.
5. **SITE SPECIFIC TERMS.**

(include any site-specific terms, including whether Lessee will be installing a Replacement Wireless Support Structure)

IN WITNESS WHEREOF, the Parties, have caused this Agreement to be approved on the date above.

**CITY:**  
**City of Winona**

By: \_\_\_\_\_  
\_\_\_\_\_, Its Mayor

By: \_\_\_\_\_  
\_\_\_\_\_, Its City Clerk

STATE OF MINNESOTA    )  
                            )  
                            ) ss.  
COUNTY OF WINONA    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as Mayor, and \_\_\_\_\_, as City Clerk, for and on behalf of the City of Winona, a Minnesota municipal corporation.

\_\_\_\_\_  
Notary Public

**LESSEE:**  
**[Business name]**

By: \_\_\_\_\_  
\_\_\_\_\_, Its \_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_, Its \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
                  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_\_, by\_\_\_\_\_, as\_\_\_\_\_, and\_\_\_\_\_, as  
\_\_\_\_\_, for and on behalf of\_\_\_\_\_, Lessee.

\_\_\_\_\_  
Notary Public

**EXHIBIT 1**  
**Site Plan of Property**

**EXHIBIT 2**

**Equipment Space (if any), Antenna Space, Cabling Space, Plans and  
Specifications**

# REQUEST FOR COUNCIL ACTION

Agenda Section: <b>New Business</b>	Originating Department:	Date
No: 5	Public Works	04/19/21
<b>Item: Amendment to Chapter 25.22 - Trees</b>		
<b>No. 5.5</b>		

## SUMMARY OF REQUESTED ACTION:

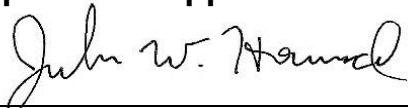
The City's Natural Resources and Sustainability Coordinator initiated a review of City Code section 25.22, which regulates tree and shrub planting in public property, when informed that various native tree species being planned for restoration work were not allowed under this section of code. The City's Attorney, Public Works, Engineering, Tree Crew, and Park & Recreation departments participated in the review and provided input. The following ordinance reflects amendments agreed upon by staff to modernize and clarify this section of code (last modified in 1976).

The key changes include:

- Adding a definition of Public Right-of-Way and specifically including boulevards, sidewalks, trails and easements.
- Replacing "street, road or alley" throughout with "Right-of-Way". Right-of-Way is the more applicable term
- Allowing Dutch Elm resistant American Elms to be planted as boulevard and park trees.
- Allowing native trees not well suited to boulevards, such as willows and cottonwoods, to be planted in natural and park areas on public property. These species tend to thrive in wetter environments where few other trees excel. As with all other trees and shrubs, these plantings still need to be authorized by the Tree Superintendent.

If Council concurs with the amendments suggested by staff, a motion to introduce the attached ordinance would be in order.

**Department Approval:**



**City Manager Approval:**



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING WINONA CITY CODE,  
CHAPTER 25 – STREETS AND SIDEWALKS

THE CITY OF WINONA DOES ORDAIN (new material is underlined, deleted material is lined out; sections which are not proposed to be amended are omitted; sections which are only proposed to be re-numbered are only set forth below as to their number and title):

SECTION 1. That Winona City Code, Chapter 25 – Streets and Sidewalks, Section 25.22 Trees, Subsections (b) and (c)(4), TREES, are hereby amended as follows:

(b) Definitions. For the purposes of this section the following words and phrases shall have the meanings respectively ascribed to them in this section:

Bush or Shrub: A low-spreading woody plant with several permanent stems.

Public Right-of-Way. As defined in Winona City Code, Section 66.03, and also including but not limited to, boulevards, sidewalks, trails and easements contained therein.

Tree: A woody perennial plant with one main stem or trunk having a diameter of at least 2 inches one foot above the ground and which is capable of attaining a height in excess of 10 feet above the ground.

Tree Superintendent: "Tree Superintendent" shall mean the tree superintendent or his authorized representative.

(c) Planting of Bushes and Trees in Street the Public Right-of-Way or Parks.

(1) Except as otherwise provided in this Chapter or Chapter 28, No person shall plant any bush or shrub in any public street, road or alley right-of-way or park without having first secured a permit therefor from the tree superintendent. Each permit shall be valid for a period of not more than 60 days.

(2) Except as otherwise provided in this Chapter or Chapter 28, No person shall plant any tree in any public street, road or alley right-of-way or park without having first secured a permit therefor from the tree superintendent. Each permit shall be valid for a period of not more than 60 days.

(3) Unless otherwise authorized in writing by the tree superintendent, any tree so planted shall be of a kind approved by the tree superintendent, and with respect to right-of-way trees, shall be planted not less than 45 feet from any other tree in such public street, road or alley right-of-way, shall be planted in a location approved by the tree superintendent, shall have a ratio of two-thirds clear stem to one-third crown, which ratio shall

be maintained until such time as a clear stem is 8 feet higher than the surrounding ground level.

- (4) No person shall plant any of the following kinds of trees in or on any public ~~property~~right-of-way: conifers, cottonwood, box elder, willow, poplar, black locust, Chinese elm, American elms that are not resistant to Dutch Elm Disease, catalpa, multi-stem birch and any tree of the fast-growing and nondurable variety.
- (5) No person shall plant a tree within 25 feet of a street, road or highway intersection or within 10 feet of an alley, nor under a power line, without the express written consent of the tree superintendent.

SECTION 2. That this ordinance shall take effect upon its publication.

Passed by the City Council of the City of Winona, Minnesota, this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

---

Mayor

ATTEST:

---

City Clerk

# REQUEST FOR COUNCIL ACTION

Agenda Section: <b>New Business</b>	Originating Department:	Date
No: 5	Planning	4/19/2021
<b>Item: Comprehensive Plan RFP Review and Approval</b>		
<b>No. 5.6</b>		

## **SUMMARY OF REQUESTED ACTION:**

The City of Winona is preparing its Request for Proposals (RFP) to distribute over the coming six weeks before selection of a consultant to proceed with the Comprehensive Plan 2045 update. The Comprehensive Plan was last updated in 2007.

The RFP was developed by the Comprehensive Plan RFP Committee appointed by Mayor Sherman, consisting of City Council Member Michelle Alexander, City Manager Steve Sarvi, Planning Commission Chair Brian Buelow, Community Development Director Lucy McMartin, City Planner Carlos Espinosa, and Assistant City Planner Luke Sims. The RFP was based around the ten core topic areas reviewed by the Planning Commission and City Council and preliminary Engagement Plan from Engage Winona reviewed by City Council in January and February, 2021, respectively. The draft RFP was reviewed by the Planning Commission on April 12, 2021 with only minor edits.

The City Council may suggest final changes at this meeting.

Should the City Council approve of the RFP's content, a motion to proceed with the RFP would be in order.

The upcoming preliminary timeline as outlined in the RFP will be:

- Distribute RFP: April 20, 2021
- Proposals Deadline: June 4, 2021
- Consultant Selection: June, 2021
- Launch: July – October, 2021
- Key Directions: October, 2021 – January, 2022
- Policy Approaches and Priorities: January – June, 2022
- 1<sup>st</sup> Draft: July – August, 2022
- 2<sup>nd</sup> Draft: September – October, 2022
- Adoption: November – December, 2022

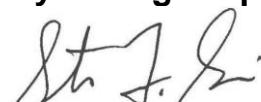
### Attachments

- 1) Draft Comprehensive Plan RFP

**Department Approval:**



**City Manager Approval:**





**City of Winona, Minnesota  
Request for Proposals  
Comprehensive Plan Update**

**Date Issued: April 20, 2021**

**Deadline for Submittals: June 4, 2021**



## Community Background

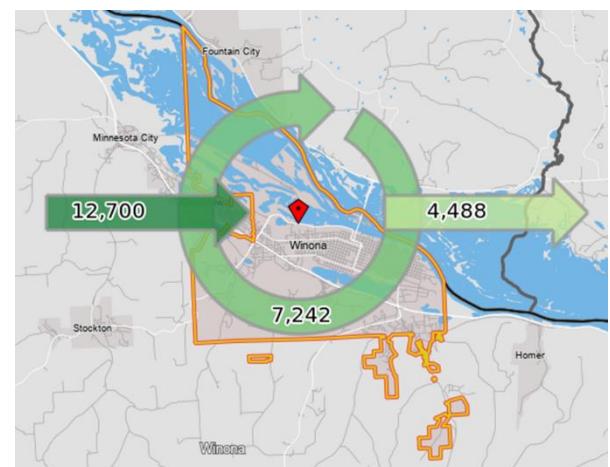
The City of Winona is located in Southeastern Minnesota along the banks of the Mississippi River. Known as the *Island City*, Winona covers 24 square miles, with much of the area being composed of bluff land. Winona's population is 27,592 with a robust 12,000 student population attending Winona State University, St. Mary's University, and Minnesota State College Southeast. Winona is a regional employment and education center with a vibrant downtown, strong manufacturing sector, diverse housing market, and burgeoning tourism and outdoor recreation industry.



With deep cultural roots, there are multiple arts and recreational opportunities for those living and visiting the area. The Minnesota Marine Art Museum features art Inspired by Water and showcases works by Picasso, VanGough, Monet, and O'Keeffe. Winona is also home to the Great River Shakespeare Festival, Minnesota Beethoven Festival, Frozen River Film Festival, Boats and Bluegrass Festival, Midwest Music Festival, and Big Muddy Brew and Que.

For those looking for outdoor adventure, the water and bluffs are home to miles of hiking and biking trails, pristine canoeing and boating opportunities, and excellent hunting and fishing in Winona's surrounding forests, bluffs lakes, the river, and trout streams. Outdoor enthusiasts recognize Winona as home to world class outfitting manufacturers including Wenonah Canoe, Current Design Kayaks, Enlightened Equipment, and Sanborn Canoe.

Winona has a rich entrepreneurial history that continues today. The City is a key regional employment center and provides the foundation for nation and industry-leading businesses in the manufacturing and service sectors including Fastenal Corporation, Coda Bow, WinCraft, and Peerless Chain. Uniquely situated along the Mississippi River, Winona's commercial harbor is the third largest on the Mississippi River in Minnesota and transports 2.2 million tons of commodities annually. The Port Authority of Winona promotes the river and commerce and serves as the economic development arm of the City. Winona draws talent from across Southeastern Minnesota and Western Wisconsin, bringing in over 12,000 daily commuters.



The City of Winona has recently completed multiple planning efforts to inform the Comprehensive Plan and guide the future growth of the city, including: The 2017 Complete Streets and Bicycle

and Pedestrian Plan, 2018 Parks Plan, 2018/2019 East Side Neighborhood Plan, 2020 Downtown Strategic Plan, and the ongoing Arts and Culture Plan and Sustainability Plan.

Situated between soaring bluffs, Winona faces unique challenges for future development. Winona is a regional hub in the Driftless region, balancing continued development in the city with respect for the ecological and geologic diversity of the Karst region that is unique to the state of Minnesota. Geographic and topographic considerations are top of mind when considering limited greenfield opportunities, relationships with surrounding townships sitting on prime soils, and context-sensitive development abutting the bluffs. Winona has a continued commitment to preservation and growth must be cognizant of the shifting waterways and changes to flood maps that will impact development.

Winona's historic core presents potential for future reinvestment and growth. Winona has recently seen significant investment in the core of the City, including adaptive reuse of historic buildings, new multi-use developments on former parking lots, and investment in new office buildings from Winona's largest employers, including Fastenal. The adoption of the City's 2017 Unified Development Code has opened the door for re-investment across the community, legalizing mixed-use buildings, allowing property owners to decide how much parking to provide, and directing investment back to the core of the city.

The next 20 years offer an opportunity for Winona to reinvest in the core of the city, reestablish its traditional, diverse development pattern, and build on its rich history. Winona's population has plateaued since the mid-1900s but there has been substantial reinvestment in the city from private and public sources as the City seeks to grow. To ensure Winona's next chapter is as vibrant as its earlier history, Winona's Comprehensive Plan must provide a strong platform to bring in workforce for its businesses and entrepreneurs and housing to promote its diverse arts and recreation scene.

## **Project Overview**

The purpose of the project is to update the City of Winona's Comprehensive Plan, last updated in 2007, looking to the year 2045. The Comprehensive Plan update will focus on:

- Developing a Vision for Winona
  - A picture of Winona after successful implementation of the Comprehensive Plan
  - What does Winona grow into in 2045 and what is the associated growth plan to achieve that vision?
- Identify City Values and Develop a City Values Statement
  - What are Winonans' cherished values and principles?

The Consultant will need to address 10 key topics in the plan (with equity, technology and sustainability incorporated into each):

1. **Land Use and Development** (e.g. Updated growth and density; Potential Expansion in Township areas (complementary development; future public buildings); Mankato/Menards/Walmart area, Junctions St, etc; Downtown - build off DT strategic plan, continued development of riverfront and riverfront trail; note potential redevelopment areas; address available land for industrial development)
2. **Housing and Neighborhoods** (e.g. Updated Demographics; increased housing choice; Neighborhood character areas – e.g. West End, West Central, Winona State University area, East Central, East End, Lakes Area, Valley and Heights Subdivisions)
3. **Economic Development** (e.g. competitive edge, workforce, childcare, recreation, livability, alternative energy, physical development; riverfront development; commercial harbor; diversified business base)
4. **Environment** (e.g. Reference Natural Resource and Sustainability Plan, Alternative energy; climate change; water resources, stormwater management, open space, etc.)
5. **Transportation** (e.g. Reference Complete Street Plan; update for projects completed; include Mn/DOT projects; focus on ability to implement; transit, airport, water traffic; pedestrian safety; city streets; rail and impact on other transportation systems; reinvestment in aging infrastructure)
6. **Historic Preservation** (e.g. Intrinsic value of historic resources in our community, connection to economic development and reinvestment in core, connection to neighborhood identities and development practices)
7. **Accessible Government** (e.g. Increasing participation and representation on City Boards/Council; Incorporating technology to increase efficiency and access; Vision, mission, and values statement for Winona City government and individual departments)
8. **Arts and Culture** (Reference Arts Plan)
9. **Park and Recreation** (Reference Parks Plan and Bluffs Traverse plan; minor updates for park development/maintenance, connections through the community; the City's role in recreation)
10. **Transformative Projects** (Large/Complex projects that cover multiple sections and may be time and place specific)

A minimum of two additional sections are anticipated to be included through the public engagement process and as budget permits. Various sub plans (e.g. Arts Plan, Parks Plan) are to be referenced in topic areas. The City desires the ability to make changes to these plans without needing to formally amend the Comprehensive Plan. The topic areas are interrelated and outcomes should be supportive across topic areas. Winona's unique elements such as its commercial harbor and marinas, environmentally sensitive Karst geology and bluffscape of the Driftless region, and its aging infrastructure, housing stock, and historic resources should be considered throughout.

Public engagement will be in partnership with Engage Winona, a local non-profit focusing on community response and engagement whose seminal 2015 Engage Winona Report has spurred change in the community. A summary describing Engage Winona's role in the project is attached to this document. [Engage Winona's work may be accessed at their website: engagewinona.org](http://engagewinona.org)

## **Scope of Services & Deliverables**

### **Public Participation**

The consultant shall work with Engage Winona to provide broad-based public participation that specifies how and when the public will be engaged throughout the Comprehensive Plan Update process to address the key components listed in the project overview. An engagement report to be included in the Comprehensive Plan final document shall be developed.

### **Project Orientation**

At the beginning of the project, the Consultant shall meet with City Staff, Engage Winona, and the Planning Commission for a project orientation meeting. The meeting shall provide an understanding of project process, goals, and schedule.

### **Issue Identification**

The Consultant shall describe its approach for gathering broad-based input in partnership with Engage Winona to develop a vision for Winona, identify and orient toward the community's cherished values and principles, and to address the key topic areas. Input shall be obtained from the City Council, City boards, Commissions, Committees, City Staff, the general public, associated stakeholders, and others.

### **Growth Plan, Future Land Use Map, and Fiscal Sustainability Analysis**

In addressing the City's cherished values and principles and the vision for the 2045, the Consultant shall develop a growth plan with consideration of fiscal sustainability to address the City's future land development to ensure that the final plan is achievable. Education of the fiscal sustainability shall be provided in the documentation and at meetings with the Planning Commission and City Council. Each topic section should address sustainable, actionable outcomes.

### **Meetings and Presentation**

The Consultant shall meet with the steering committee, representatives from stakeholders in the community, Planning Commission, and City Council on a regular basis. Quarterly meetings shall be made to the Council to provide updates throughout the project. Additional meetings may be necessary as the project progresses. Proposals shall provide a cost per meeting for virtual and in-person.

### **Comprehensive Plan Document**

- Forty (40) bound hardcopy submissions
- One (1) electronic submission consisting of all plan elements in native, web-ready software formats editable by the City (MS Office, mxd, shp, dwg, pdf, etc.)

## **Preliminary Timeline for Consultant Services**

- Launch: July – October, 2021
- Key Directions: October, 2021 – January, 2022
- Policy Approaches and Priorities: January – June, 2022
- 1<sup>st</sup> Draft: July – August, 2022
- 2<sup>nd</sup> Draft: September – October, 2022
- Adoption: November – December, 2022

### **Proposal Submission Requirements**

- Provide seven (7) printed copies of the proposal and one (1) electronic version to the City of Winona Community Development Office at the address below
- Contact information: Names and contact information of authorized representatives and key partners
- Cover Letter: A letter of interest including a narrative description of the project proposal
- Project Team Experience:
  - Identify the project team, including sub-consultants, and provide a statement of qualifications for all individuals to include credentials such as: education, professional registration, area of expertise, and years of service in their respective fields
  - Provide a project organizational chart that identifies the project manager, as well as the role of each individual team member, including sub-consultants
  - Address work that has been done for other geographically-constrained communities and communities that have had plateaued populations
- Timeline: A proposed timeline for the project following the preliminary timeline proposed in the section above.
- Past Project Examples: Provide up to five (5) examples of similar work done in the past with other communities
  - Past comprehensive plan work examples should be provided via one (1) electronic copy
  - Provide a list of references along with contact information for municipal officials involved in the preparation and implementation of the comprehensive plan work samples provided
- Methodology and Approach: Provide a description of the method and approach your firm intends to utilize when developing the Comprehensive Plan, which shall include:
  - Strategies to address community engagement with Engage Winona as a partner
  - Citizen and staff steering committee roles
  - Proposed maps and graphics
  - Meetings facilitation tools and techniques
  - Plan drafting, review, and revision processes
  - Other techniques unique to your firm
- Cost: Describe in detail the costs associated with conducting the project
  - The City will finance the Comprehensive Plan over the course of two fiscal years
  - Provide a detailed fee schedule based on a percentage of completion of the project, excluding public engagement to be conducted by Engage Winona which will be paid in a separate contract by the City
  - Rates for subcontractors and team members shall be provided
- Supporting Information

- At your discretion, provide additional supporting information not otherwise requested (industry awards, certifications, publications, etc.)

## **Evaluation and Consultant Selection**

### Evaluation Criteria

Proposals that comply with the instructions set forth in this RFP will be evaluated by the City. The City reserves the right to reject any and all proposals. At its sole discretion, the City may choose to waive non-material irregularities or deviations from the RFP instructions. All proposals received will be evaluated based on the best value for the City as determined by the RFP Committee appointed by the Mayor. The committee includes a City Council Representative, the Planning Commission Chair, the City Manager, the Community Development Director, and two planning staff. In determining best value, the City may consider:

- Proposed cost
- Reputation of consultant and consultant's services
- The extent to which the services meet the City's needs
- Any relevant criteria specifically listed in the RFP

The RFP Committee appointed by the Mayor will review each submittal and assign an aggregate score based on the following weighted criteria:

Project Team Qualifications and Experience:	30 Points
Proposed Approach to Project:	20 Points
Proposed Growth Plan	20 Points
Performance Record (Work Samples, References)	15 Points
<u>Proposed Cost:</u>	<u>15 Points</u>
<b>Total Points Available:</b>	<b>100 Points</b>

### Selection Process

All proposals must be received by June 4 2021. City Staff is available for pre-submission meetings from April through May, 2021. Pre-submission meetings may be organized by reaching out to Assistant City Planner Luke Sims at [lsims@ci.winona.mn.us](mailto:lsims@ci.winona.mn.us) or by contacting 507.457.8250.

The results of the review and evaluation of the responses to the criteria outlined in this document will be used to select up to three consultants to meet with the RFP Committee for interviews. The RFP Committee shall provide its recommendation to the City Council following the interviews. It is anticipated the City Council will make its consultant selection in June, 2021.

## **Conditions and Limitations**

- Proposals that do not include all the submittal requirements outlined herein shall not be considered.
- At the City's sole discretion, the City may choose to republish this RFP.
- Until such time the professional services agreement is executed, there are no express or implied obligations or commitments on the part of either the City or the Consultant concerning either this RFP or any proposal associated with it.
- At the City's sole discretion and with notice being provided to the Consultants, the City may amend the Selection Process and/or Tentative Project Schedule at any time.

- E. By submitting materials for the City's consideration pursuant to this RFP, the Consultant is waiving any claim of confidentiality, trade secrets or privilege with respect to materials submitted.
- F. If warranted, any updates, revisions or modifications to this RFP shall be posted on the City of Winona's website during the advertising period, and it shall be the responsibility of the Consultant to review the website during the advertising period to verify if any such updates, revisions or modifications have been made to this RFP.
- G. Any changes resulting from the questions submitted affecting specifications, the scope of work, or which may require an extension to the proposal due date will be reduced to writing in the form of an addendum to this RFP. Addenda will be posted on the City's website at the above link. It is the Consultant's responsibility to check the website to determine if the City has issued any addenda and/or schedule changes.
- H. The selection of a Consultant and the execution of a contract, while anticipated, is not guaranteed by the City. The City reserves the right to determine which Proposal represents the City's best interest and to award the contract on that basis.
- I. The City Council will consider the final contract for award to the selected Consultant.
- J. Proposals submitted to the City of Winona are a matter of public record and may become public in the future through the review and selection process or through data requests made by the public.

# REQUEST FOR COUNCIL ACTION

<i>Agenda Section:</i> <b>New Business</b>	<i>Originating Department:</i>	<i>Date</i>
No: 5	Planning	4/19/21
<b>Item: Plat Review – Kwik Trip Plat at 1058 Homer Road</b>		
<b>No. 5.7</b>		

## SUMMARY OF REQUESTED ACTION:

Staff requests Council review the attached plat for the Kwik Trip at 1058 Homer Road. The plat is related to construction of a new convenience store, gas pumps, and car wash. The site plan for this development was approved last year. The plat is required to combine four parcels so that buildings do not cross property lines.

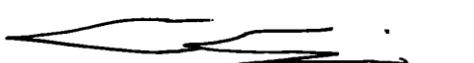
On April 12<sup>th</sup>, the Planning Commission unanimously recommended approval of this item.

Should Council concur with the plat, a motion to approve the attached resolution would be in order.

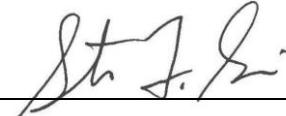
### Attachments:

- A) Resolution
- B) 4/12/21 Planning Commission Item and Plat

**Department Approval:**



**City Manager Approval:**



**RESOLUTION 2021 – \_\_\_\_\_**

**APPROVAL OF THE FINAL PLAT OF KWIK TRIP 746**

**WHEREAS**, Kwik Trip Inc., (“Petitioner” or “Applicant”) has submitted an application for Final Plat approval of the proposed Kwik Trip 746 (“Final Plat” or “Plat”), legally described in Exhibit A, which is attached hereto and incorporated herein by reference; and

**WHEREAS**, the Winona City Planning Commission (“Commission”) in accordance with provisions of the Winona City Code, Section 43.06.31 (B) held a required public hearing to consider said Plat on April 12, 2021; and

**WHEREAS**, following its full review and consideration of all information, the Commission found that the Plat for Kwik Trip 746 was consistent with the intent and purpose of the City of Winona Unified Development Code (“City Code”); and

**WHEREAS**, given its findings, the Commission unanimously recommended that the City Council of the City of Winona (“City Council”) approve the Final Plat; and

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

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL THAT**; the City Council concurs with the recommendation of the Commission and hereby approves the Final Plat for Kwik Trip 746 subject to the following condition(s):

1. The Final Plat shall comply with the provisions of all applicable State statutes and standard procedures for platting in Winona County.
2. That no Development Agreement is required as the subdivision does not involve installation or construction of new public improvements.
3. The Final Plat shall be recorded within 180 days of City Council approval or the City’s approval shall be deemed null and void.
4. The Applicant shall be responsible for and pay all fees, including recording fees.

Passed by the City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

Attest:

---

Scott D. Sherman  
Mayor

---

Monica Hennessy Mohan  
City Clerk

## **EXHIBIT A**

### **Legal Description of Kwik Trip 746**

That part of Lot 2, Plat of the Subdivision of the South Half of Section 35, and of the South Half of the Northeast Quarter of Section 35, Township 107, Range 7, Winona County, Minnesota, described as follows:

Commencing at the East Quarter corner of said Sec. 35; thence North along the East line of said Sec. 35 a distance of 300.96 feet; thence at a deflection angle to the left of 82° 55' a distance of 103.33 feet to the point of beginning; thence continuing Northwesterly along the last described course a distance of 280.47 feet; thence at a deflection angle to the right of 84° 50' a distance of 50.20 feet; thence at a deflection angle to the right of 90° a distance of 279.22 feet; thence at a deflection angle to the right of 90° a distance of 75.40 feet to the point of beginning.

Also, that part of Lot 2, Record Plat of the Subdivision of the South Half of Section 35 and of the South Half of the Northeast Quarter of Section 35, Township 107, Range 7, Winona County, Minnesota, described as follows:

Commencing at the East Quarter corner of said Section 35; thence Northerly along the East line of said Section 35 a distance of 300.96 feet; thence Westerly, deflecting to the left 82 degrees 55 minutes, 383.80 feet; thence Northerly, deflecting to the right 84 degrees 50 minutes, 0.84 feet to the Easterly right of way line of Minnesota Trunk Highway No. 43 and the point of beginning of the land to be described; thence continuing Northerly along said last described course, 49.36 feet, to the Northwest corner of the property described on page 1 in record deed Document No. 292008; thence Easterly deflecting to the right 90 degrees 00 minutes, along the North line of said property described in deed Document No. 292008, a distance of 159.33 feet; thence Northerly, deflecting to the left 90 degrees 00 minutes, 125.48 feet to the Southerly right of way line of U.S. Trunk Highway No. 14 & 61; thence Westerly deflecting to the left 82 degrees 14 minutes 12 seconds, along said Highway No. 14 & 61 right of way line, 218.56 feet to the Easterly right of way line of said Highway No. 43; thence Southerly, deflecting to the left 112 degrees 55 minutes 28 seconds, along said Highway No. 43 right of way line, 211.55 feet; thence Easterly deflecting to the left 69 degrees 32 minutes 49 seconds, along said Highway No. 43 right of way line, 1.90 feet to the point of beginning.

Also, that part of Lot 4 and that part of Lot 5 of Plat of the Subdivision of the S1/2 of Sec. 35 & S1/2 of NE1/4 of Sec. 35, Township 107, Range 7 West, City of Winona, Winona County, Minnesota, described as follows:

Commencing at the East quarter corner of Section 35, Township 107, Range 7, said Winona County; thence on an assumed bearing of North 23 degrees 19 minutes 42 seconds West, along the Westerly line of Lot 4 in Block 1 of Deones East Number 2, a distance of 173.42 feet to the Northerly line of Sugar Loaf View, a public street in the City of Winona, Minnesota, described in Document No. 415644 and the point of beginning of the land to be described; thence continue North 23 degrees 19 minutes 42 seconds West, along said Westerly line of Lot 4 in Block 1, a distance of 82.65 feet to the Northwesterly corner of said Lot 4 in Block 1; thence continue North 23 degrees 19 minutes 42 seconds West, along the Westerly line of Lot 2 in Block 1 of Deones East, 85.13 feet to the Southerly

line of the property described on Page 1, Document No. 292008; thence North 84 degrees 24 minutes 42 seconds West, along said Southerly line of the property described on Page 1, Document No. 292008, and its Westerly extension, 236.53 feet to the Easterly line of the Minnesota Department of Transportation Right of Way Plat No. 85-21; thence South 14 degrees 42 minutes 02 seconds East, along said Easterly line of Minnesota Department of Transportation Right of Way Plat No. 85-21, a distance of 262.83 feet to said Northerly line of Sugar Loaf View; thence North 75 degrees 02 minutes 53 seconds East, along said Northerly line of Sugar Loaf View, 178.92 feet; thence continue along said Northerly line of Sugar Loaf View, 17.12 feet along the arc of a tangential curve, concave Northerly, having a radius of 75.00 feet and a central angle of 13 degrees 04 minutes 44 seconds; thence North 61 degrees 58 minutes 09 seconds East, along said Northerly line of Sugar Loaf View, and tangent to said curve, 52.56 feet to the point of beginning.

# PLANNING COMMISSION

**AGENDA ITEM: 3. Public Hearing – Kwik Trip 1058 Homer Road Final Plat**

**PREPARED BY: Carlos Espinosa**

**DATE: April 12, 2021**

Construction of a new Kwik Trip at 1058 Homer Road requires combination of four existing parcels via final plat so the proposed building does not cross lot lines. Given the site plan for this project has been approved and the plat doesn't change anything physically about the development, staff recommends approval.

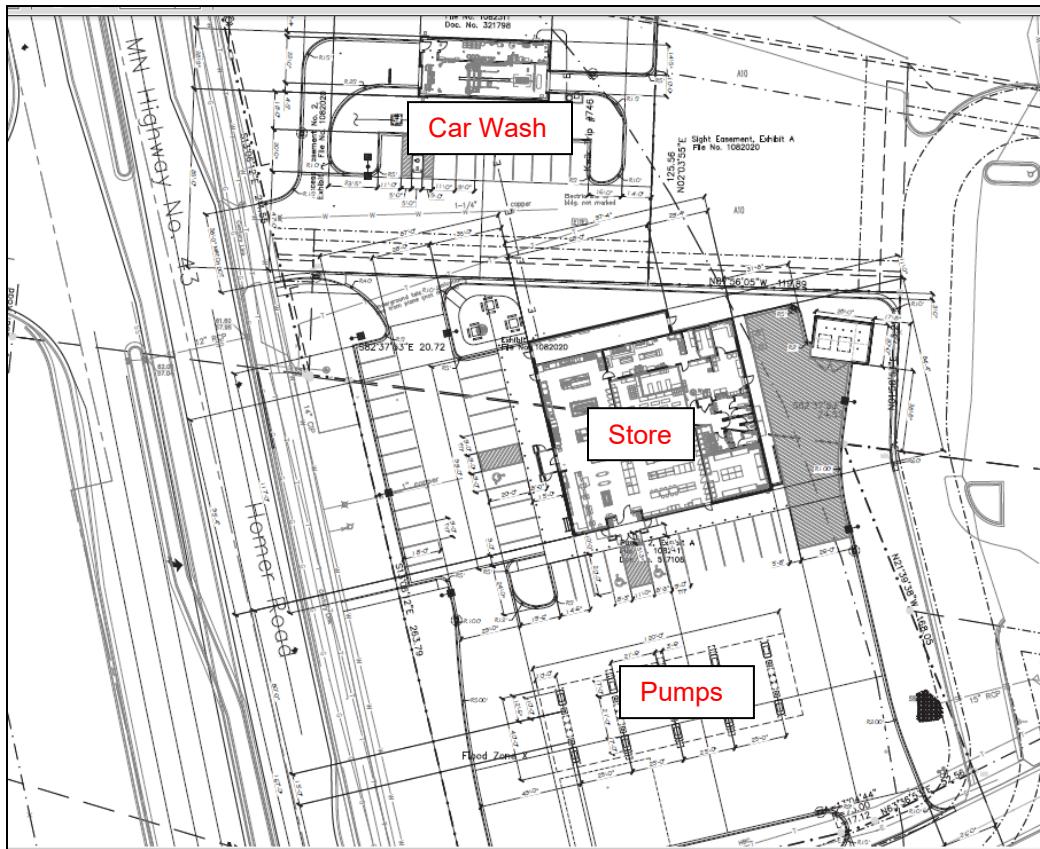
-Attachment: Kwik Trip 746 Final Plat

## Four Parcels to Be Combined at 1058 Homer Road



PLANNING COMMISSION  
3. PUBLIC HEARING – KWIK TRIP 1058 HOMER ROAD FINAL PLAT  
APRIL 12, 2021  
PAGE 2

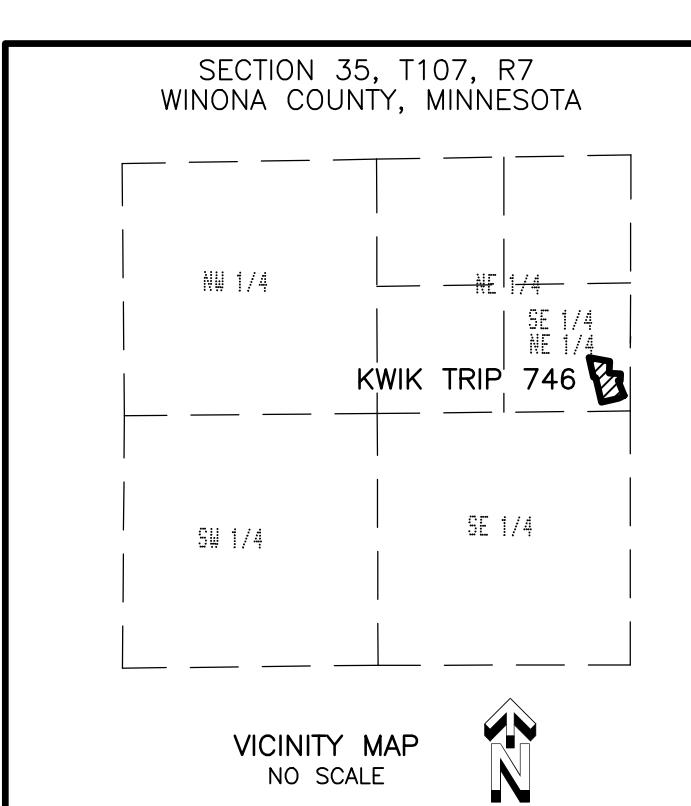
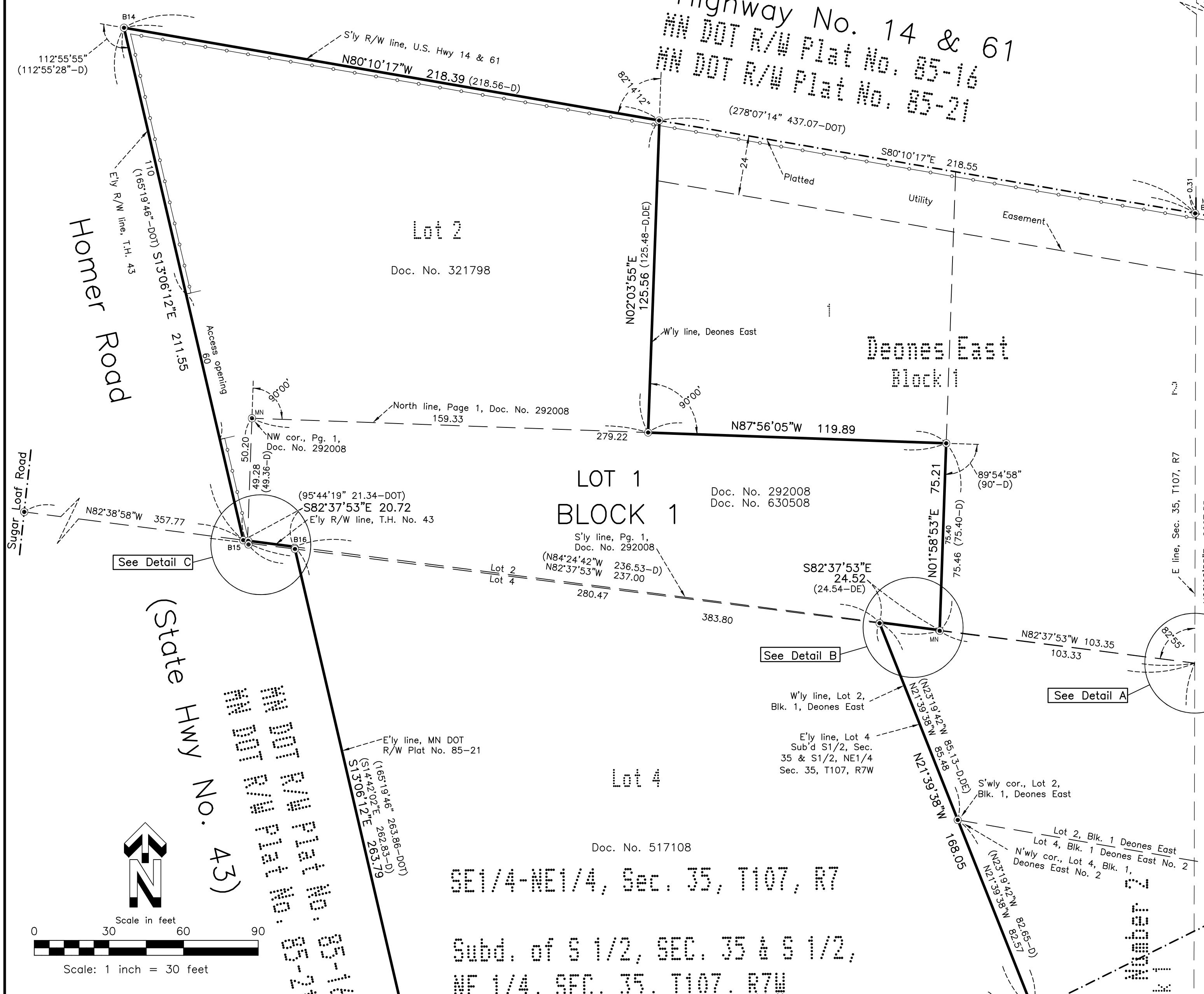
Approved Site Plan at 1058 Homer Road



# KWIK TRIP 746

U.S Highway No. 14 & 61  
MN DOT R/W Plat No. 85-16  
MN DOT R/W Plat No. 85-21

NE cor., Sec. 35, T107, R7



**JOHNSON & SCOFIELD INC.**  
**LAND SURVEYORS**  
4240 WEST FIFTH STREET  
WINONA-MN 55987 (507) 454-4134

X:\PLATS\KWIK TRIP 741\21-272 KWIK TRIP.DWG

Subd. of S 1/2, SEC. 35 & S 1/2,  
NE 1/4, SEC. 35, T107, R7W

South line, NE1/4, Sec. 35, T107, R7

East quarter cor.,  
Sec. 35, T107, R7

## DEDICATION

KNOW ALL PERSONS BY THESE PRESENTS: That, ZRH LLC, a Delaware limited liability company successor to ZRH LLP, a limited liability partnership a/k/a ZRH, a Wisconsin General Partnership and ZRH Partnership, owner of the following described property:

That part of Lot 2, Plat of the Subdivision of the South Half of Section 35, and of the South Half of the Northeast Quarter of Section 35, Township 107, Range 7, Winona County, Minnesota, described as follows:

Commencing at the East Quarter corner of said Sec. 35; thence North along the East line of said Sec. 35 a distance of 300.96 feet; thence at a deflection angle to the left of 82° 55' a distance of 103.33 feet to the point of beginning; thence continuing Northwesternly along the last described course a distance of 280.47 feet; thence at a deflection angle to the right of 84° 50' a distance of 50.20 feet; thence at a deflection angle to the right of 90° a distance of 279.22 feet; thence at a deflection angle to the right of 90° a distance of 75.40 feet to the point of beginning.

Also, that part of Lot 2, Record Plat of the Subdivision of the South Half of Section 35 and of the South Half of the Northeast Quarter of Section 35, Township 107, Range 7, Winona County, Minnesota, described as follows:

Commencing at the East Quarter corner of said Section 35; thence Northerly along the East line of said Section 35 a distance of 300.96 feet; thence Westerly, deflecting to the left 82 degrees 55 minutes, 383.80 feet; thence Northerly, deflecting to the right 84 degrees 50 minutes, 0.84 feet to the Easterly right of way line of Minnesota Trunk Highway No. 43 and the point of beginning of the land to be described; thence continuing Northerly along said last described course, 49.36 feet, to the Northwest corner of the property described on page 1 in record deed Document No. 292008; thence Easterly deflection to the right 90 degrees 00 minutes along the North line of the property described in deed Document No. 292008, a distance of 159.33 feet; thence Northerly, deflecting to the left 90 degrees 00 minutes, 125.48 feet to the Southerly right of way line of U.S. Trunk Highway No. 14 & 61; thence Westerly deflecting to the left 82 degrees 14 minutes 12 seconds, along said Highway No. 14 & 61 right of way line, 218.56 feet to the Easterly right of way line of said Highway No. 43; thence Southerly, deflecting to the left 112 degrees 55 minutes 28 seconds, along said Highway No. 43 right of way line, 211.55 feet; thence Easterly deflecting to the left 69 degrees 32 minutes 49 seconds, along said Highway No. 43 right of way line, 1.90 feet to the point of beginning.

Also, that part of Lot 4 and that part of Lot 5 of Plat of the Subdivision of the S1/2 of Sec. 35 & S1/2 of NE1/4 of Sec. 35, Township 107, Range 7 West, City of Winona, Winona County, Minnesota, described as follows:

Commencing at the East quarter corner of Section 35, Township 107, Range 7, said Winona County, Minnesota on the assessor's bearing of North 23 degrees 19 minutes 42 seconds West, along the Westerly line of Lot 4 in Block 1 of Deones East Number 2, a distance of 173.42 feet to the Northerly line of Sugar Loaf View, a public street in the City of Winona, Minnesota, described in Document No. 415644 and the point of beginning of the land to be described; thence continue North 23 degrees 19 minutes 42 seconds West, along said Westerly line of Lot 4 in Block 1, a distance of 82.65 feet to the Northwesternly corner of said Lot 4 in Block 1; thence continue North 23 degrees 19 minutes 42 seconds West, along the Westerly line of Lot 2 in Block 1 of Deones East, 85.13 feet to the Southerly line of the property described on Page 1, Document No. 292008; thence North 84 degrees 24 minutes 42 seconds West, along said Southerly line of the property described on Page 1, Document No. 292008 and its Westerly extension, 236.59 feet to the Easterly line of the Minnesota Department of Transportation Right of Way Plat No. 85-21, thence South 14 degrees 52 minutes 02 seconds West, along said Easterly line of Minnesota Department of Transportation Right of Way Plat No. 85-21, a distance of 262.83 feet to said Northerly line of Sugar Loaf View; thence North 75 degrees 02 minutes 53 seconds East, along said Northerly line of Sugar Loaf View, 17.12 feet along the arc of a tangential curve, concave Northerly, having a radius of 75.00 feet and a central angle of 13 degrees 04 minutes 44 seconds; thence North 61 degrees 58 minutes 09 seconds East, along said Northerly line of Sugar Loaf View, and tangent to said curve, 52.56 feet to the point of beginning.

Has caused the same to be surveyed and platted as KWIK TRIP 746.

In witness whereof, ZRH LLC, a Delaware limited liability company successor to ZRH LLP, a limited liability partnership a/k/a ZRH, a Wisconsin General Partnership and ZRH Partnership, has caused these presents to be signed by its proper officer this \_\_\_\_ day of \_\_\_\_.

Signed: ZRH LLC, a Delaware limited liability company successor to ZRH LLP, a limited liability partnership a/k/a ZRH, a Wisconsin General Partnership and ZRH Partnership.

Print officer's name  
Print officer's title

STATE OF  
COUNTY OF

This instrument was acknowledged before me on \_\_\_\_ day of \_\_\_\_ by  
(print officer's name)  
(print officer's title) of ZRH LLC, a Delaware limited liability company successor to ZRH LLP, a limited liability partnership a/k/a ZRH, a Wisconsin General Partnership and ZRH Partnership, on behalf of the company.

Notary signature:

Print Notary's name  
Notary Public, \_\_\_\_\_ County,  
My commission expires

## SURVEYOR

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

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Tony A. Blumentritt, Licensed Land Surveyor  
Minnesota License Number 18886

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_, by  
Tony A. Blumentritt.

Notary signature:  
Print Notary's name \_\_\_\_\_  
My commission expires \_\_\_\_\_

## CITY COUNCIL, CITY OF WINONA, MINNESOTA

This Plat of KWIK TRIP 746 was approved and accepted by the City Council of the City of Winona, Minnesota at a regular meeting thereof held this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and said plat is in compliance with the provisions of Minnesota Statutes, Section 505.03, Subd. 2.

City Council, City of Winona, Minnesota

By: \_\_\_\_\_, City Clerk

## COUNTY SURVEYOR

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

Brian K. Wodele, Winona County Surveyor  
Minnesota License No. 46559

## COUNTY AUDITOR/TREASURER, WINONA COUNTY, MINNESOTA

Pursuant to Minnesota Statutes, Section 505.021, Subd. 9, taxes payable in the year 20\_\_\_\_ on the land hereinbefore described have been paid. Also, pursuant to Minnesota Statutes, Section 272.12, there are no delinquent taxes and transfer entered this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Sandra J. Suchla, Winona County Auditor/Treasurer

## COUNTY RECORDER, COUNTY OF WINONA, STATE OF MINNESOTA

I hereby certify that this plat of KWIK TRIP 746 was filed in the office of the County Recorder for public record on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_ o'clock \_\_\_\_\_ M. and was duly filed as Document No. \_\_\_\_\_.

Robert J. Bambenek, Winona County Recorder

By: \_\_\_\_\_ Deputy

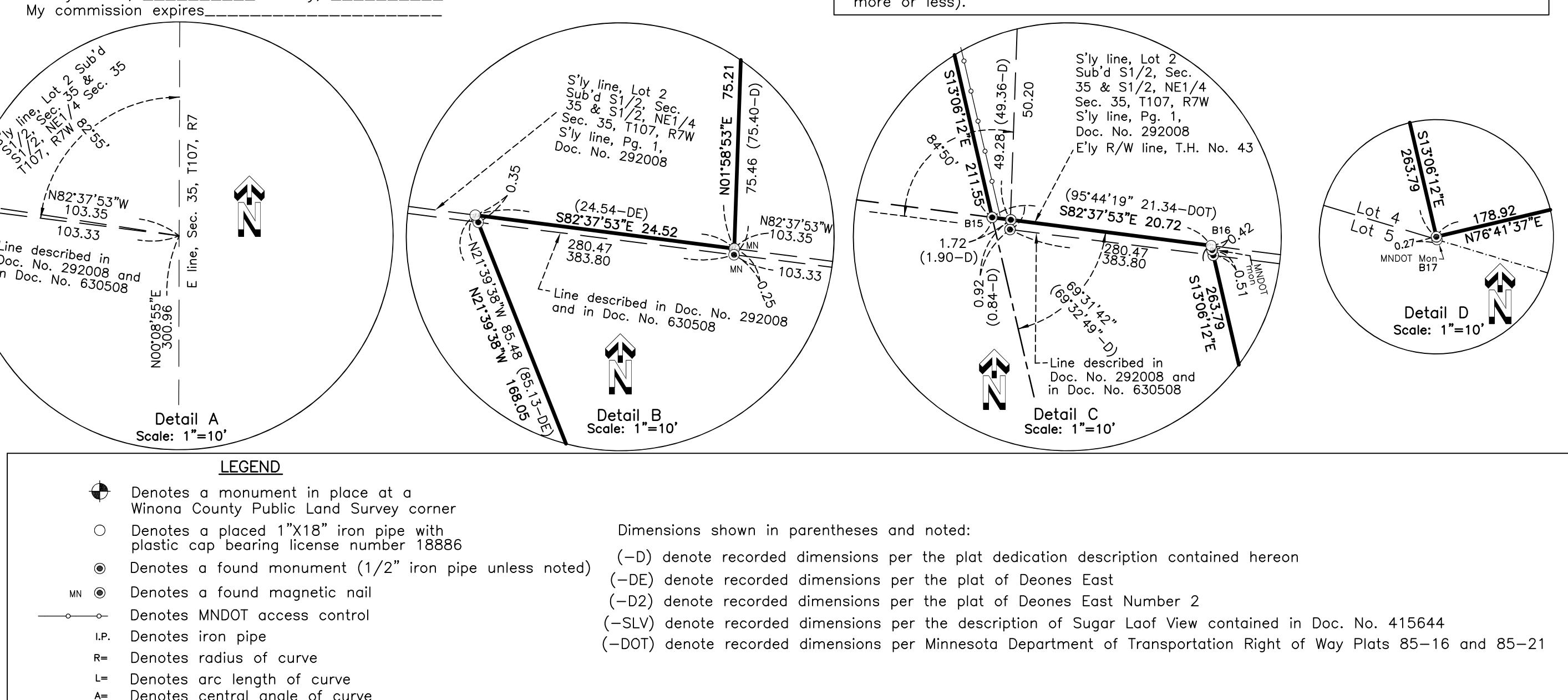
## NOTES:

The basis of bearings shown on this survey is the Winona County Coordinate System, NAD 1983, (1996 adjustment). Based on that system, the east quarter corner of Section 35, Township 107, Range 7, Winona County, Minnesota has a coordinate of North 165593.223 feet and East 499118.076 feet.

Controlled access is shown hereon according to Minnesota Department of Transportation Right of Way Plats No. 85-16 and 85-21.

Platted easements dedicated with the plats of Deones East and Deones East Number 2 are shown. Other easements may exist which affect this plat.

The plat of KWIK TRIP 746 contains 96187 square feet, more or less (2.21 acres more or less).

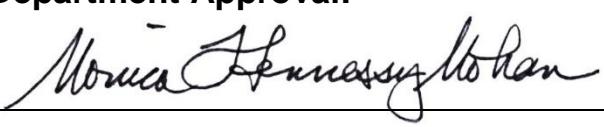
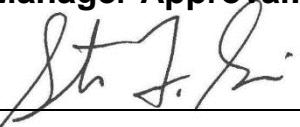


# REQUEST FOR COUNCIL ACTION

Agenda Section: <b>Council Concerns</b>	Originating Department: <b>City Clerk</b>	Date: <b>04/19/21</b>
No: <b>7</b>		
<b>Item: Council Concerns</b>		
No. <b>7.1</b>		

## SUMMARY OF REQUESTED ACTION:

Time is reserved for Council Concerns.

Department Approval: 	City Manager Approval: 
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# REQUEST FOR COUNCIL ACTION

Agenda Section: <b>Consent Agenda</b>	Originating Department:	Date:
No: <b>8</b>	<b>City Clerk</b>	<b>04/19/21</b>
<b>Item: Consent Agenda</b>		
<b>No. 8.</b>		

## SUMMARY OF REQUESTED ACTION:

**City Clerk: Item No. 8.1: Approval of Minutes – April 5, 2021**

Minutes of the April 5, 2021 City Council meeting have been distributed. If the minutes are satisfactory, a motion to approve same would be in order.

**City Clerk: Item No. 8.2: Claim Against the City by Steve Jorde**

Steve Jorde has filed a claim against the city for damages due to a sewer 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:**



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**City Manager Approval:**

