



Hermantown City Council Meeting – December 6, 2021

Because of attendance considerations at the regular meeting location due to the health pandemic, Hermantown's upcoming, City Council Meeting will be conducted both remotely and with in-person access to Council Chambers.

The City Council meeting will utilize the platform "Zoom," which allows the public to view and/or hear the meeting from their phone or computer. Interested parties can also choose to attend the City Council Meeting in person at City Hall. Current Minnesota Department of Health guidelines regarding the health pandemic will be observed during this meeting.

The 6:30 p.m. City Council Meeting will be available at:

<https://us02web.zoom.us/j/8381611121?pwd=d0NyVmhXMHRFVmRIYVI5S25zeThOUT09>

and/or by calling the number (312) 626-6799 and utilizing the meeting ID number of 838-1611-1121 and the passcode of 223673.

Public comment may be possible, but difficult, during the meeting, but any public comments, questions, or concerns can be e-mailed to Community Engagement Manager, Joe Wicklund, at jwicklund@hermantownmn.com up to 3:30 p.m. the day of the meeting with the e-mail title "City Council Meeting." It is important to note that all comments regarding this aforementioned, meeting are public data.

A few important tips regarding the Zoom platform:

- If your computer does not support audio, you can still watch the meeting on your computer and call in on your phone to hear the meeting
- It is a challenging situation for all of us, so grace and understanding are appreciated

The 4:30 p.m. Pre-Agenda Meeting will be available in-person only at City Hall. Public comment is not a factor in the pre-agenda meeting, but the meeting is open and members of the public are invited and welcome to attend to this meeting. Attendees of the Pre-Agenda Meeting should expect to follow the current social distancing and mask guidelines.



AGENDA

Pre-Agenda Meeting Monday, December 6, 2021 at 4:30 p.m. Council Chambers City Hall - Hermantown Governmental Services Building

Pre-agenda: The Pre-agenda meeting is a work session between the City Council and City staff to review the upcoming City Council meeting and future meetings. The agenda is the same document as the upcoming City Council meeting, but does not follow the same format as the City Council meeting. It is a time for the City Council and City staff to have discussions about the agenda items, and asking and answering questions. Traditionally it is not a time for public comment on the agenda items, as the public can listen to the conversation and ask questions or provide input at the upcoming City Council meeting.

City Council Meeting December 6, 2021 at 6:30 p.m. Council Chambers City Hall - Hermantown Governmental Services Building

Invitation to participate:

The Hermantown City Council welcomes your thoughts, input and opinions to this meeting. The agenda for this meeting contains a brief description of each item to be considered, and the City Council encourages your participation. If you wish to speak on an item contained in the agenda, you will be allowed to address the Council when a motion is on the floor. If you wish to speak on a matter that does not appear on the agenda, you may do so during the public comment period regularly scheduled and set for the beginning of the meeting.

When addressing the City Council, please state your name and address for the record. Please address the City Council as a whole through the Mayor. Comments to individual Council Members or staff are not permitted. Speakers will be limited to three (3) minutes.

Order of discussion

- 1. Reading of the resolution title by Mayor**
- 2. Motion/Second**
- 3. Staff Explanation**
- 4. Initial Discussion by City Council**
- 5. Mayor invites public to speak to the motion (3 minute rule)**
- 6. Follow up staff explanation and/or discussion by City Council**
- 7. Call of the vote**

**CITY OF HERMANTOWN
AGENDA**

**Pre-Agenda Meeting Monday, December 6, 2021 at 4:30 p.m.
Council Chambers
Hermantown Governmental Services Building**

**City Council Meeting December 6, 2021 at 6:30 p.m.
Council Chambers
Hermantown Governmental Services Building**

1. **CALL TO ORDER**
2. **PLEDGE OF ALLEGIANCE**
3. **ROLL CALL**
4. **ANNOUNCEMENTS** *(Council Members may make announcements as needed.)*
5. **PUBLIC HEARING** – *(Only when necessary. The rule adopted three minutes per person if necessary. Any action required after the public hearing will be taken immediately following the closing of the public hearing.)*
 - A. **Truth In Taxation Hearing**

2021-150 Resolution Adopting The Final 2021 Property Tax Levy Collectible In 2022 In The Amount Of \$7,114,641

(motion, roll call)

2021-151 Resolution Adopting The Final 2022 City General Fund Budget In The Amount Of \$6,732,986 And Overall Budget Of \$19,958,157

(motion, roll call)
6. **COMMUNICATIONS**
7. **PRESENTATIONS** *(Department Heads may give reports if necessary.)*
 - A. David Bolf, City Engineer *(Pre-Agenda Only)*
RE: Revised Richard Lindgren Road Project
8. **PUBLIC DISCUSSION** *(This is the time for individuals to address the Council about any item not on the agenda. The time limit is three minutes per person.)*
9. **CONSENT AGENDA** *(All items on the Consent Agenda are items which are considered routine by the City Council and will be approved by one motion via voice vote. There will be no discussion of these items unless a Council Member or citizen so requests, in which event the item*

will be removed from the Consent Agenda and considered at the end of the Consent Agenda.)

- A. **Minutes** - Approval or correction of November 15, 2021 City Council Continuation Minutes and the November 29, 2021 Work Session.
- B. **Accounts Payable** – Approve general city warrants from November 16, 2021 through November 30, 2021 in the amount of \$434,137.54

(motion, roll call)

10. MOTIONS

11. ORDINANCES

- A. **2021-10** An Ordinance Amending Hermantown Code Of Ordinances By Amending Section 850.5, Particular Speed Limits Designated

(first reading)

12. RESOLUTIONS *(Roll call will be taken only on items required by law and items requiring 4/5's votes, all others can be done by voice vote.)*

- A. **2021-152** Resolution Approving Preliminary Planned Unit Development For The Arbors At Maple Grove Development

(motion, roll call)

- B. **2021-153** Resolution Approving A Special Use Permit For Parking As A Primary Use At 4918 Lightning Drive

(motion, roll call)

- C. **2021-154** Resolution Approving A Special Use Permit For A Contractor's Shop And Storage Yard/Lawn And Garden Material Supplies At 5350 And 5396 Miller Trunk Highway

(motion, roll call)

- D. **2021-155** Resolution Approving A Grant Agreement Between The Minnesota Department Of Natural Resources And The City Of Hermantown And Authorizing And Directing The Mayor And City Clerk To Execute And Deliver Such Grant Agreement On Behalf Of The City Of Hermantown

(motion, roll call)

- E. **2021-156** Resolution Authorizing And Directing Mayor And City Clerk To Execute And Deliver A Subgrant Agreement With Hermantown Night Riders Snowmobile Club

(motion, roll call)

- F. 2021-157** Resolution Approving Final Compensating Change Order And Final Pay Request For Road Improvement District No. 537 (Lavaque Junction Road) To Ulland Brothers, Inc. In The Amount Of \$150,000.79
- (motion, roll call)
- G. 2021-158** Resolution Approving Final Plans And Specifications And Ordering Advertisement For Bids For Reconditioning Of Highway 53 Water Tower Water Improvement District No. 318 Resolution
- (motion, roll call)
- H. 2021-159** Resolution Authorizing And Directing Mayor And City Clerk To Execute And Deliver Agreement With Troy's Towing D/B/A USA Towing & Recovery For Wrecker Service And Vehicle Storage For The City Of Hermantown Police Department
- (motion, roll call)
- I. 2021-160** Resolution Approving The 2022 Toward Zero Deaths Enforcement Grant Agreement
- (motion, roll call)
- J. 2021-161** Resolution Authorizing And Directing The Mayor And City Clerk To Execute And Deliver The State Of Minnesota Joint Powers Agreement With The City Of Hermantown On Behalf Of Its City Attorney And Police Department
- (motion, roll call)
- K. 2021-162** Resolution Authorizing And Directing The Mayor And City Clerk To Execute And Deliver The Court Data Services Subscriber Amendment With The City Of Hermantown On Behalf Of Its Police Department
- (motion, roll call)
- L. 2021-163** Resolution Approving Tentative Agreements And Authorizing And Directing Mayor And City Clerk To Execute And Deliver Agreements With AFSCME Local 66 For The Period Of January 1, 2022 Through December 31, 2024
- (motion, roll call)
- M. 2021-164** Resolution Of The City Of Hermantown Accepting Supplemental Distribution Of The American Rescue Plan Act Funds
- (motion, roll call)
- 13. RECESS**

RESOLUTION NO. 2021-150

**RESOLUTION ADOPTING THE FINAL 2021 PROPERTY TAX LEVY
COLLECTIBLE IN 2022 IN THE AMOUNT OF \$7,114,641**

BE IT RESOLVED by the City Council of the City of Hermantown, County of St. Louis, Minnesota, that the following sums of money be levied for the current year, collectible in 2022 upon the taxable property in the City of Hermantown, for the following purposes:

General Fund	\$6,408,585
General Obligation	\$ 415,234
Miscellaneous – HEDA	\$ 150,000
Other Debt	\$
Abatement – Fleet Farm	\$ 140,822
 Total Levy	 \$7,114,641

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Hermantown, Minnesota, as follows:

1. The City Clerk is hereby instructed to transmit a certified copy of this resolution to the county auditor of St. Louis County, Minnesota.

Councilor ____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor _____ and, upon a vote being taken thereon, the following voted in favor thereof:

Councilors

and the following voted in opposition thereto:

WHEREUPON, such resolution was declared duly passed and adopted December 6, 2021.

Resolution 2021-151

**RESOLUTION ADOPTING THE FINAL 2022 CITY
GENERAL FUND BUDGET IN THE AMOUNT OF \$6,732,986
AND THE OVERALL BUDGET OF \$19,958,157**

Councilor _____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor _____ and, upon a vote being taken thereon, the following voted in favor thereof:

Councilors

and the following voted in opposition thereto:

WHEREUPON, such resolution was declared duly passed and adopted December 6, 2021.

DATE: 2021

TO: City Council Members

FROM: John Mulder, City Administrator

RE: Correspondence

In your packet is a correspondence summary log. This briefly summarizes and assigns a log number for written correspondence received at City Hall. You are provided with the summary so that you may request a full copy of any correspondence article of interest to you. I have copied only the correspondence that we believe to be of special interest.

JM

11/17/2021	21-196	John Mulder, City Administrator	Wallace Kucza, 5417 Lavaque Jct.	Assessment Objection	11/16/2021
11/17/2021	21-197	John Mulder, City Administrator	Sharlene Letchworth, 5228 Lavaque Jct. Rd.	Deferral of Special Assessment	11/17/2021
11/17/2021	21-198	John Mulder, City Administrator	Casey MacDonell, 5236 Lavaque Jct. Rd.	Deferral of Special Assessment	11/17/2021
11/17/2021	21-199	John Mulder, City Administrator	Constance Bloom, 5167 Lavaque Jct. Rd.	Deferral of Special Assessment	11/17/2021
11/17/2021	21-200	Eric Johnson, Comm. Dev. Dir.	Planning & Zoning Commission	SUP Maurice Bourdage, 4918 Lightning Dr.	11/16/2021
11/17/2021	21-201	Eric Johnson, Comm. Dev. Dir.	Planning & Zoning Commission	SUP Miller Creek Property Investment, 5350 & 5296 Miller Trunk Hwy.	11/16/2021
11/17/2021	21-202	Eric Johnson, Comm. Dev. Dir.	Planning & Zoning Commission	SUB Bryan & Marilee Malec, 4008 Stebner Rd.	11/16/2021
11/17/2021	21-203	Eric Johnson, Comm. Dev. Dir.	Planning & Zoning Commission	Prelim PUD JP Holding Company, 507X Maple Grove Rd.	11/16/2021
12/1/2021	21-204	Mark Becker, Fabranske, Westra, et al.	John Mulder, City Administrator	Settlement Re: State of MN v. Kleiber, et al., 62-CV-19-876	11/23/2021

CITY OF HERMANTOWN
CITY COUNCIL CONTINUATION MEETING
November 15, 2021
6:30 p.m.

MEETING CONDUCTED IN PERSON & VIA ZOOM

Pledge of Allegiance

ROLL CALL: Councilors Geissler, Hauschild, Nelson, Peterson, Mayor Boucher

CITY STAFF: John Mulder, City Administrator; Joe Wicklund, Communications Director; Gunnar Johnson, Incoming City Attorney; Steve Overom, City Attorney

ABSENT:

VISITORS: 1

ANNOUNCEMENTS

PUBLIC HEARING

COMMUNICATIONS

Communications 21-193 through and including 21-195 were read and placed on file.

PRESENTATIONS

PUBLIC DISCUSSION

CONSENT AGENDA

Motion made by Councilor Peterson, seconded by Councilor Hauschild to approve the Consent Agenda which includes the following items:

- A. Approve November 1, 2021 City Council Minutes
- B. Approve general city warrants from November 1, 2021 through November 15, 2021 in the amount of \$910,489.55.

Roll Call: Councilors Geissler, Hauschild, Nelson, Peterson, Mayor Boucher, aye. Motion carried.

MOTIONS

ORDINANCES

RESOLUTIONS

2021-139 Resolution Authorizing The Disposal Of Surplus City Property

Motion made by Councilor Geissler, seconded by Councilor Nelson to adopt Resolution 2021-139, Resolution Authorizing The Disposal Of Surplus City Property. Roll Call: Councilors Geissler, Hauschild, Nelson, Peterson, Mayor Boucher, aye. Motion carried.

2021-140 Resolution Adopting Assessment Roll For Road Improvement District No. 536 (Sundby Road & Swan Lake Road)

Motion made by Councilor Peterson, seconded by Councilor Hauschild, to adopt Resolution 2021-140, Resolution Adopting Assessment Roll For Road Improvement District No. 536 (Sundby Road & Swan Lake Road). Roll Call: Councilors Geissler, Hauschild, Nelson, Peterson, Mayor Boucher, aye. Motion carried.

2021-141 Resolution Adopting Assessment Roll For Road Improvement District No. 537 (Lavaque Junction Road)

Motion made by Councilor Hauschild, seconded by Councilor Geissler to adopt Resolution 2021-141, Resolution Adopting Assessment Roll For Road Improvement District No. 537(Lavaque Junction Road). Roll Call: Councilors Geissler, Hauschild, Nelson, Peterson, Mayor Boucher, aye. Motion carried.

2021-142 Resolution Approving Application Of Assessment Roll Number 537A-9 For Deferral Of Assessment Against The Property For The Construction Of Road Improvement District No. 537 (“Hardship Deferral”)

Motion made by Councilor Peterson, seconded by Councilor Nelson to adopt Resolution 2021-142, Resolution Approving Application Of Assessment Roll Number 537A-9 For Deferral Of Assessment Against The Property For The Construction Of Road Improvement District No. 537 (“Hardship Deferral”). Roll Call: Councilors Geissler, Hauschild, Nelson, Peterson, Mayor Boucher, aye. Motion carried.

2021-143 Resolution Approving Application Of Assessment Roll Number 537A-27 For Deferral Of Assessment Against The Property For The Construction Of Road Improvement District No. 537 (“Hardship Deferral”)

Motion made by Councilor Nelson, seconded by Councilor Hauschild to adopt Resolution 2021-143, Resolution Approving Application Of Assessment Roll Number 537A-27 For Deferral Of Assessment Against The Property For The Construction Of Road Improvement District No. 537 (“Hardship Deferral”). Roll Call: Councilors Geissler, Hauschild, Nelson, Peterson, Mayor Boucher, aye. Motion carried.

2021-144 Resolution Approving Application Of Assessment Roll Number 537A-29 For Deferral Of Assessment Against The Property For The Construction Of Road Improvement District No. 537 (“Hardship Deferral”)

Motion made by Councilor Peterson, seconded by Councilor Geissler to adopt Resolution 2021-144, Resolution Approving Application Of Assessment Roll Number 537A-29 For Deferral Of Assessment Against The Property For The Construction Of Road Improvement District No. 537 (“Hardship Deferral”). Roll Call: Councilors Geissler, Hauschild, Nelson, Peterson, Mayor Boucher, aye. Motion carried.

2021-145 Resolution Approving Final Pay Request For Sewer Improvement District No. 448 To Utility Systems Of America, Inc. In The Amount Of \$111,146.68

Motion made by Councilor Nelson, seconded by Councilor Hauschild to adopt Resolution 2021-145, Resolution Approving Final Pay Request For Sewer Improvement District No. 448 To Utility Systems Of America, Inc. In The Amount Of \$111,146.68. Roll Call: Councilors Geissler, Hauschild, Nelson, Peterson, Mayor Boucher, aye. Motion carried.

2021-146 Resolution Adopting Assessment Roll For Delinquent Utility Charges For 2021

Motion made by Councilor Peterson, seconded by Councilor Nelson to adopt Resolution 2021-146, Resolution Adopting Assessment Roll For Delinquent Utility Charges For 2021. Roll Call: Councilors Geissler, Hauschild, Nelson, Peterson, Mayor Boucher, aye. Motion carried.

2021-147 Resolution Authorizing And Directing The Mayor And City Clerk To Execute And Deliver A Cooperative Agreement Between St. Louis County And The City Of Hermantown For Letter Of Map Revision (LOMR) For Keene Creek

Motion made by Councilor Hauschild, seconded by Councilor Geissler to adopt Resolution 2021-147, Resolution Authorizing And Directing The Mayor And City Clerk To Execute And Deliver A Cooperative Agreement Between St. Louis County And The City Of Hermantown For Letter Of Map Revision (LOMR) For Keene Creek. Roll Call: Councilors Geissler, Hauschild, Nelson, Peterson, Mayor Boucher, aye. Motion carried.

2021-148 Resolution Approving Tentative Agreement And Authorizing And Directing Mayor And City Clerk To Execute And Deliver Agreements With Operating Engineers Local 49 For The Period Of January 1, 2022 Through December 31, 2024

Motion made by Councilor Hauschild, seconded by Councilor Geissler to adopt Resolution 2021-148, Resolution Approving Tentative Agreement And Authorizing And Directing Mayor And City Clerk To Execute And Deliver Agreements With Operating Engineers Local 49 For The Period Of January 1, 2022 Through December 31, 2024. Roll Call: Councilors Geissler, Hauschild, Nelson, Peterson, Mayor Boucher, aye. Motion carried.

2021-149 Resolution Approving Wage Adjustment For Part Time Custodian

Motion made by Councilor Peterson, seconded by Councilor Nelson to adopt Resolution 2021-149, Resolution Approving Wage Adjustment For Part Time Custodian. Roll Call: Councilors Geissler, Hauschild, Nelson, Peterson, Mayor Boucher, aye. Motion carried.

Motion made by Councilor Hauschild, seconded by Councilor Nelson to recess the meeting at 6:53 p.m. Motion carried.

Mayor

ATTEST:

Acting City Clerk

**CITY COUNCIL
WORK SESSION AGENDA
Council Chambers**

MONDAY, November 29, 2021 at 4:00 P.M.

ROLL CALL: Councilors Geissler, Nelson Peterson, Mayor Boucher, & Hauschild via zoom

ABSENT:

CITY STAFF: John Mulder, City Administrator; Joe Wicklund, Communications Director; Steve Overom, City Attorney, Eric Johnson

OTHERS: Gunnar Johnson, Jim Crace, Jeff Schiltz,

DISCUSSION ITEMS

1. Community Recreation Initiative

- a. **Naming Rights Updates:** Company A has offered \$1.1 million for the Building and another \$500,000 to name the rink, presumably, the new rink. The naming right would be for 20 years. We have a meeting with a second company later this week for a potential gift.
- b. **Update on School discussions:** The School District representatives reported that they must own the facility in order to lease ice using their specific levy for ice time, therefore they need to own the existing arena. We were asked to look at legal options related to ownership and permission to build the facility. We also discussed the ability to name the building and the rink. We should develop the list of items that need to be accomplished with deadlines in order to keep the process moving.
- c. **Construction Cost Update:** Jeff Schiltz reported that the original construction estimate was at \$220 per foot, the updated costs is now at \$240 per feet. If it passes in November of 2022, design would take at least 6 months, and construction would start at the earliest August 2023. The new costs for the base arena would be \$12.24 million. The Council stated that there was a need to update the plan for the trails and Fichtner Park.

How do we move forward? The Council asked Jeff to provide proposal for services between now and November. John Giessler, John Mulder and Jeff Schiltz were told to meet to discuss the proposal and proposed fees. The Council discussed who internally on staff should be the point person.

- d. **Legislative Requests:** Over the past couple of months the City Council had mentioned three possible legislative requests related to the Community Recreation Initiative. The three items discussed were:
 - i. Sales tax questions – Should the City try to have the legislation amended to make the question on the ballot more clear and be limited to one question?
 - ii. increased amount’ – Costs have increased because of COVID so there is concern about funding the additional costs.
 - iii. bonding request. – Should the City attempt to be included in a bonding bill in 2022 and if so, what amount would be requested?

The Council concluded that staff should try to set up a meeting with Senator Bakk and ask for his help to try to find a solution. Grant Hauschild will continue to reach out to him. Jeff Schiltz stated that his firm had a access to a lobbyist that could assist with that request. firm.

2. **Business Subsidy Policy for Housing projects:** Staff discussed a potential multi-family housing development that was requesting City financial assistance. The Council discussed some possible ideas, concerns, and questioned the return for the city of any financial assistance. No formal position was taken at this time.

3. **Recess**

Recess: The meeting recessed at approximately 6:57 p.m.

Mayor

ATTEST:

Clerk

Ordinance No. 2021-10

The City Council of the City of Hermantown does ordain:

**AN ORDINANCE AMENDING HERMANTOWN
CODE OF ORDINANCES BY AMENDING SECTION 850.5,
PARTICULAR SPEED LIMITS DESIGNATED**

Section 1. Purpose and Intent. The purpose and intent of this Ordinance is to establish a 30 mile per hour speed limit zone on Sundby Road and a 40 mile per hour speed limit zone on Swan Lake Road, both of which are City streets and are shown on Exhibit A attached hereto.

Section 2. Addition to Chapter 8. Chapter 8, Traffic Regulations, of the City of Hermantown Code of Ordinances is hereby amended by amending Section 850.5, Particular Speed Limits Designated, to read as shown on Exhibit B attached hereto.

Section 3. Amendment to be Inserted in Code. After the amendment made by this ordinance becomes effective, it shall be inserted in the appropriate place in the Hermantown City Code.

Section 4. Effective Date. The provisions of this Ordinance shall be effective after adoption and immediately upon publication once in the official newspaper of the City of Hermantown.

Dated: _____

Mayor

Attest:

City Clerk

Adopted: _____

Published: _____

Effective Date: _____

EXHIBIT A

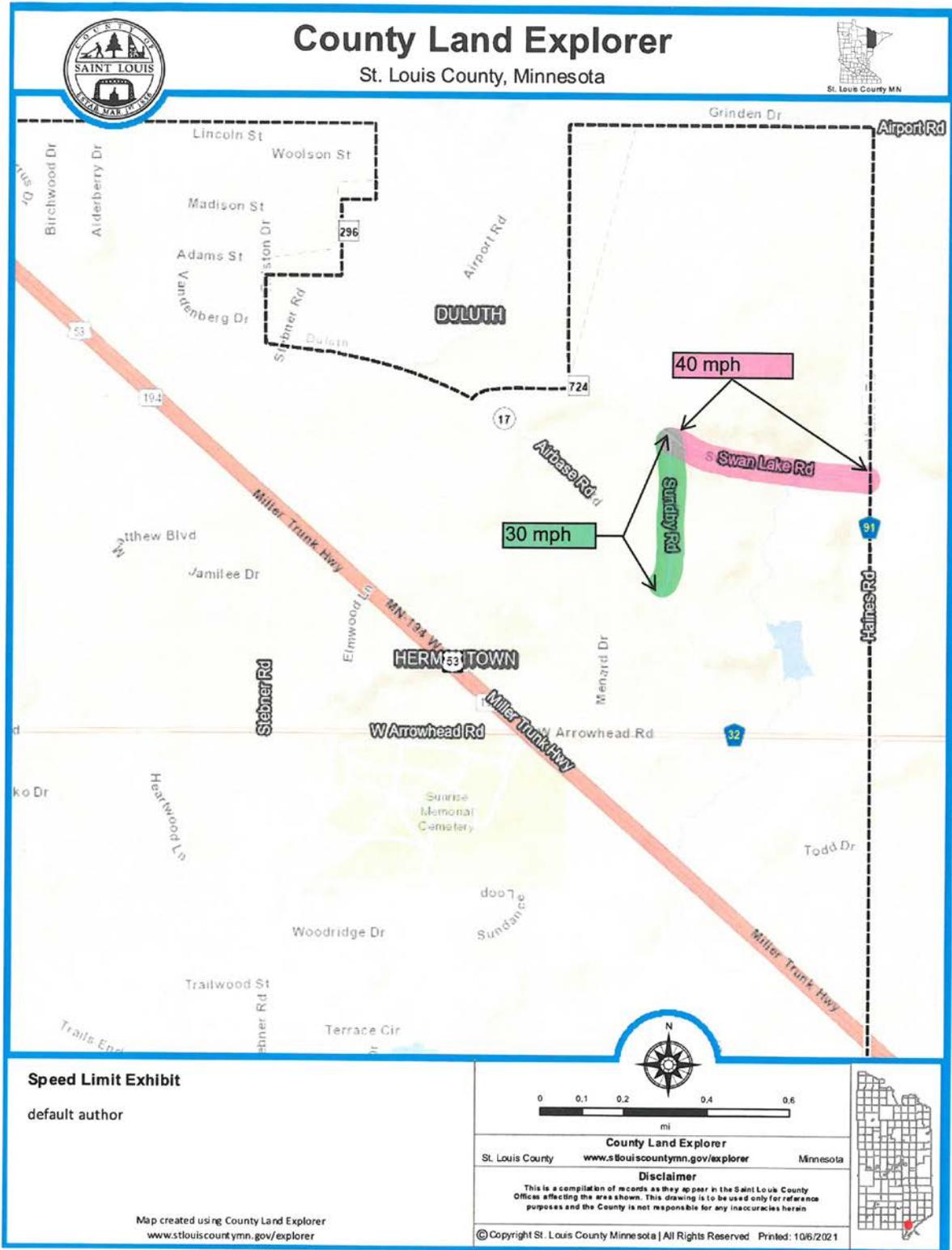


EXHIBIT B

850.5 Particular Speed Limits Designated. No person shall operate any motor vehicle at speeds in excess on the following speed limits on the roads in the City of Hermantown, to wit:

850.5.1 Twenty-five (25) miles per hour speed zone:

850.5.1.1 Lavaque Junction Road beginning at Lavaque Road intersection and ending at Ugstad Road intersection.

850.5.2 Thirty (30) miles per hour speed zone:

850.5.2.1 Sundby Road from Swan Lake Road to Airbase Road.

850.5.3 Forty (40) miles per hour speed zone:

850.5.3.1 Swan Lake Road from Sundby Road to Haines Road.

Deleted language is struck out and added language is underlined.

TO: Mayor & City Council

FROM: Eric Johnson, Community
Development Director

DATE: November 24, 2021

Meeting Date: 12/6/2021

SUBJECT: The Arbors on Maple Grove
Preliminary PUD

Agenda Item: 12-A

Resolution 2021-152



REQUESTED ACTION

Approve a Preliminary Planned Unit Development (PUD) Plan, to construct a 103-unit, four story apartment building on 13 acres in the R-3 Zoning District at 507x Maple Grove Road. The proposed development will contain 103 units total.

BACKGROUND

The property owner is proposing The Arbor's on Maple Grove project, a 103 unit, 4 story apartment building. The site is currently undeveloped with topography rising from the south to the north and contains a mixture of trees and open grassland area. The City's trunkline sanitary sewer runs along the western boundary of the property. The site has access from Maple Grove Road to the south and is providing a future road connection to the north. There are wetlands present on the property which have been delineated and have received TEP approval for impacts associated with the road construction.

A public hearing was held on November 16, 2021 at the Planning and Zoning Commission meeting. There were 6 people, including the developer and consultant who spoke regarding the project. Comments/concerns pertained to the density of the project, traffic generated by the project and proximity to the neighborhood in general. The Planning Commission unanimously recommended the project for approval to the City Council.

A neighborhood meeting was held on November 30, 2021 with property owners 1000 feet from the project being invited. There were nine people in attendance with comments mainly pertaining to increased traffic and the amount of people residing in the development.

SITE INFORMATION:

Parcel Size: 13 acres
Legal Access: Maple Grove Road
Wetlands: Yes, have been delineated and approved by the TEP
Existing Zoning: R -3 Single Family Residential
Airport Overlay: C Zone, structure height restrictions only
Shoreland Overlay: No
Comprehensive Plan: Residential

The 103-unit, 4 story apartment building consists of a mix of housing units. There will be 92 interior parking and 97 surface parking spaces for a total of 189 parking spaces. There will be 4 stories above grade and be 42' to the top of the roof peak as measured from the ground elevation. The building includes landscaped grounds, a sidewalk system and outdoor patio space. The building will consist 70 one bedroom units and 33 two bedroom units.

The property owner will be able to connect into the city sewer and water mains that serve the property. The City will require that these utilities are either in public right of way or are within a 30' wide easement when in the private roadway section.

The applicant is proposing an internal sidewalk system for the project. This sidewalk system will connect to the existing sidewalk along Maple Grove Road and could be extended in the future to the north in order to access a future trail system by the City.

PUD Process:

The City revised its Planned Unit Development ordinance in September 2021. This involved a lengthy review process, the work of a planning consultant, multiple meetings with Planning and Zoning Commission members and citizen input. The revised ordinance identified the application process and set thresholds for the associated procedures. This application exceeds the 5 acre maximum allowed for a combined preliminary and final PUD process. The applicant is seeking preliminary PUD input from the Planning and Zoning Commission and ultimately approval by the City Council. The applicant will then have 1 year to apply for a final PUD application.

The revised ordinance also identified project amenities for development greater than 4 units/acre. The proposed application is greater than 4 units/acre and is thus required to provide project amenities. The applicant is proposing an internal trail system which will eventually connect to the future City wide trail system which will run to the north of this property. There is also an internal sidewalk connecting the apartment to the existing sidewalk along Maple Grove Road; a dog run area; community garden for the apartment residents; a play structure and a pavilion. The developer has indicated that the public is able to access these on site amenities as well.

The revised PUD process also takes into account the relationship of the proposed development to it's surroundings. The proposed building is approximately 600 feet from Maple Grove Road and 1,000 feet from Lavaque Road. The two nearest residential structures are 520' to the home located at 4134 Lavaque Road and 420' feet to the home located at 5061 Maple Grove Road, which is part of the land subdivision.

The revised PUD ordinance allows for the submission of conceptual level site, grading, utility and architectural plans. The purpose of this is for developers to gauge an interest in a development by the City without preparing preliminary/final level engineering plans for a project. The applicant has provided concept level engineering documents and site renderings and is in the process of updating the previously prepared traffic study as part of the application.

Assuming the preliminary PUD is approved, the applicant will have 1 year to apply for a final PUD. As part of the Final PUD approval, the property owner will be required to enter into a development contract with the City to govern certain aspects of the site development and operations of the development, including payments for utility connections. A PUD order will be issued by the City setting project specific development standards. Following completion of the development contract the property owner will be granted final Zoning approval and can begin construction, pending approval of the associated building permits.

Zoning Analysis:

The property is zoned R-3, Residential. The applicant has applied for a Planned Unit Development (PUD) for the property. A PUD is a permitted use in an R-3 zone district. Section 11 of the zoning ordinance explains that: "The Planned Unit Development (PUD) process provides a mechanism for City officials to consider development proposals that do not meet the minimum requirements provided by the Zoning Code. Benefits resulting from this process include an opportunity for site based design, conservation of natural

features and resources, efficient design and use of transportation systems and utilities, improved housing and neighborhood options, and housing affordability and provide for the modification of certain regulations when it can be demonstrated that such modification would result in development which would not have been provided if no regulations were modified; which remains compatible with surrounding development; and, which conforms to the goals and policies of the Comprehensive Plan.

The proposed project maintains the majority of the existing wetlands on site as well as approximately 6.5 acres of land which is being kept in its natural condition.

Setbacks

City Code allows a PUD to have standards that meet the City's goals for each proposed development. These standards include building height, density, roadway widths and setbacks. The proposed project is for a four story (43.5' height), 103 unit apartment building, however, the full four stories are only evident at the mid point entry to the building on the west side and at the north end where the parking garage entrance is. The ground elevation at the east side of the building will be at the first occupied floor with the building height being approximately 33 feet in height.

The PUD ordinance identifies a 35 foot building height but allows for a 25% increase to 42 feet provided there are additional building setbacks and/or landscaping. The applicant is proposing a 60 foot setback from the eastern property line which abuts undeveloped land. The proposed structure is located 370 feet from the western property line; 180 feet from the northern property line and an average of 490 feet from the southern property line.

The PUD ordinance allows for the setting of site specific setbacks.

Stormwater

The applicant is proposing two stormwater basins for the project. One basin will be centrally located on the property to treat the southern portion of the parking lot and building. A second basin is proposed on the north portion of the site within the powerline easement area to treat the northern portion of the parking lot and building. Applicant to provide verification that the northern stormwater basin can be constructed within the existing powerline easement. Bio-rolls, silt fencing and other Best Management Practices will be required in order to control runoff during construction. The property owner is responsible to construct these ponds/BMP's.

The City will require that the two stormwater basins are on the same parcel as the apartment building. This will ensure that the stormwater ponds cannot go tax forfeit as they are on the same tax parcel as the apartment building.

Utilities

The property owner will connect the proposed apartment to City sewer and water systems. The property owner will provide final engineered plans for utility connections prior to beginning such work on the site. Detailed plans for new public utilities will be reviewed and approved by the City Engineer prior to issuance of the building permits. No new public utilities will be accepted by the City until reviewed by the City Engineer and accepted by resolution of the City Council. All new public utilities must be placed in a public utility easement.

The applicant will be responsible for all availability, hook-up and CAF fees imposed by the City and the WLSSD.

Lot Subdivision

The applicant owns the 10 acre parcel which contains the City sanitary sewermain. As part of the project, the applicant has an option to purchase the rear 3 acres associated with 5061 Maple Grove Road. The applicant has submitted an administrative lot split in order to subdivide this parcel, which in turn would be processed should this proposed project be approved by the City Council. The City will then require that the 10 acre parcel and 3 acre parcel be combined into a single 13 acre parcel.

Driveway, Parking, and Traffic

The applicant proposes to construct a public, 28-foot-wide asphalt roadway with curb and gutter from Maple Grove Road north into the site approximately 800 feet. This road would have a 66' public right of way associated with it and would generally follow the existing sanitary sewer easement existing on the property. The apartment building would take access directly from this public roadway. The applicant is proposing a stub of this roadway that can be extended to the north in order to provide future access to this property from Lavaque Road. This public roadway will be required to be built to City standards and will eventually be turned over to the City for its upkeep and maintenance including snowplowing. The applicant will be required to enter into an agreement with the City for the future extension of the road.

City staff has discussed this project with the St. Louis County Traffic Engineer. The applicant has engaged a Traffic Engineer to conduct a study which is included as an attachment. A traffic study was prepared for this project and submitted to St. Louis County for their review. The County had minor comments on the memo and stated that they would approve a singular full access point on Lavaque Road and Maple Grove Road that would accommodate both this proposed project and the future Pillars of Hermantown project.

The applicant is proposing an internal sidewalk system for the project. This sidewalk system will connect to the existing sidewalk along Maple Grove Road and could be extended in the future to the north in order to access a future trail system by the City.

Park Dedication Fees

The property owner will be required to pay park dedication fees consistent with the requirements of the City Zoning Ordinance. Park dedication fees will be paid according to the following schedule. Payments are due at the time of approval of the Final PUD or as agreed to in the development contract.

Development Type	Recommended
Multi-family, 2+ bedroom units	\$800
Multi-family, 1 bedroom and studio	\$400
Per bedroom fee	\$150
Planned Unit Development	Proportional to Mix of Development

Stormwater Utility Fees

Upon the completion of each new home, the homeowner will be required to pay the \$7.00/month stormwater utility fee associated with each parcel for the single family lots with the fourplex and assisted living building being calculated as a non-residential (greater than 4 units) use and subject to \$7.00/9,100 square feet of impervious surface.

Summary

Staff recommends approval of 103 unit Preliminary PUD, based on the findings of this report and the following conditions

1. The proposed PUD meets the intent of the R-3, Residential Zoning District, Chapter 11 – Planned Unit Developments, and the overall goals and policies of the Zoning Ordinance.
2. The proposed development meets the Comprehensive Plan for residential development and standards of a Planned Unit Development by providing public benefit through enhanced and coordinated development design and a greater variety of housing types in the community.
3. A PUD may be allowed in any zoning district in the City of Hermantown. In addition, all permitted and conditional uses listed in the underlying specific district are allowed in a PUD.
4. The Planned Unit Development is hereby approved is hereby expressly subject to the following conditions:
 - 4.1 That the Project will be constructed as described in the plans accompanying the Application and the conditions contained herein.
 - 4.2 The Zoning Administrator of the City of Hermantown shall be notified at least five (5) days in advance of the commencement of the work authorized hereunder and shall be notified of its completion within five (5) days thereafter.
 - 4.3 No change shall be made in the Project without written permission being previously obtained from the City of Hermantown.
 - 4.4 Property Owner shall grant access to the site at all reasonable times during and after construction to authorized representatives of the City of Hermantown for inspection of the Project to see that the terms of this permit are met.
 - 4.5 Property Owner is initially and continually in compliance with all of the ordinances and regulations of the City of Hermantown.
 - 4.6 Trees and brush cannot be burned on the property, but may be chipped and shredded.
 - 4.7 An MPCA Stormwater Permit and erosion control measures must be in place prior to the start of operations.
 - 4.8 All utility line easements shall be observed and any encroachment into the utility right-of-way shall only be permitted with the written approval of the utility.
 - 4.9 The Property Owner shall take measures to control erosion that has the potential to damage adjacent land, and control sedimentation that has the potential to leave the site.
5. The applicant will have one year from the date of the Preliminary PUD approval to apply for a Final PUD application.

6. Applicant to submit preliminary and final construction documents (water, storm sewer, sanitary sewer, roadway, etc.) according to City standards and coordinated with the City Engineer as part of the Final PUD process.
7. Installation of water and sanitary sewer shall require the Property Owner to enter into an agreement with the City governing the terms of such work. All utility plans shall be approved by the City Engineer. The City/Developer agreement shall specify the amount of a financial guarantee to be held by the City from the time of commencement of work until such a time as the City is prepared to accept as complete the new public infrastructure. All drainage and utility easements shall have associated easements. The Property Owner shall enter into a Development Agreement with the City for all public utilities.
8. The applicant is responsible for all City and WLSSD availability, hook-up and CAF fees associated with the PUD.
9. The applicant is responsible for all City Engineer and Attorney fees related to the review and approval of the PUD.
10. The applicant shall pay park dedication fees according to the following schedule. Payments are due at the time of approval of the Final PUD or as agreed to in the development contract.

Development Type	Recommended
Multi-family, 2+ bedroom units	\$800
Multi-family, 1 bedroom and studio	\$400
Per bedroom fee	\$150
Planned Unit Development	Proportional to Mix of Development
Development Type	Recommended
Multi-family, 2+ bedroom units	\$800

11. The property Owner shall sign a consent form assenting to all conditions of this approval.
12. The Property Owner shall pay an administrative fine of \$750 per violation of any condition of this approval.
13. The approval made by this resolution extends only to the Project as defined in this resolution.
 - Developer provided Public Benefits Statement
 - Traffic Memo

SOURCE OF FUNDS (if applicable)

n/a

ATTACHMENTS

- Location Map
- Site Plan
- Context Site Plan
- Concept Utility Plan
- Concept Grading Plan
- Building Elevation
- Public Benefit Statement
- Trip Generation Memo

Resolution No. 2021-152

RESOLUTION APPROVING PRELIMINARY PLANNED UNIT DEVELOPMENT FOR THE ARBORS AT MAPLE GROVE DEVELOPMENT

WHEREAS, JP Holding LLC (“Applicant”) submitted an application (“Application”) for a Preliminary Planned Unit Development (“Preliminary PUD”) to allow for construction of a 103 unit apartment building (“Project”) on a site located at the NE quadrant of Maple Grove Road and Lavaque Road, Parcels 395-0010-04130 and 395-0010-04137 in the City of Hermantown; and

WHEREAS, the Hermantown Planning and Zoning Commission held a public hearing on the Preliminary Planned Unit Development (“Preliminary PUD”) on November 16, 2021 following notice as required by the City’s Zoning Code; and

WHEREAS, following the public hearing on the Preliminary PUD, the Hermantown Planning and Zoning Commission recommended by a 5-0 vote that the City Council approve the Preliminary PUD; and

WHEREAS, after due consideration of the entire City file, the testimony at the public hearing conducted by the Hermantown Planning and Zoning Commission and all other relevant matters the City Council hereby makes the following findings of fact related to the Preliminary PUD.

A. FINDINGS OF FACT

1. Applicant made application for the Preliminary PUD which is to be located within the City of Hermantown.
2. Applicant is the owner of parcel 395-0010-04130 and has an option to purchase the rear three acres of parcel 395-0010-04137.
3. Applicant will be the user of the PUD.
4. The fee required to be submitted with the Preliminary PUD application has been paid.
5. The Planning and Zoning Commission held a public hearing on the Preliminary PUD following notice as required by ordinances of the City of Hermantown.
6. The Planning and Zoning Commission of the City of Hermantown submitted its report and recommendation on the Preliminary PUD to the City Council within the time period set forth in the ordinances of the City of Hermantown.
7. The City Council considered the Preliminary PUD after receiving the report and recommendation of the Planning and Zoning Commission.
8. The Preliminary PUD is consistent with the Hermantown Comprehensive Plan and is a permitted use in the R-3 Zone District in which it is located.
9. The tract of land (“Land”) affected by the Preliminary PUD is legally described on **Exhibit A** attached hereto.

10. The Preliminary PUD includes provisions for the preservation and creation of natural amenities.
11. Natural systems, resources, topography, vegetation and other natural features will be preserved and enhanced to the extent possible.
12. The Preliminary PUD is located on more than two and one half (2 ½) acres of contiguous land.
13. The Preliminary PUD includes residential uses.
14. The Preliminary PUD provides a public benefit with the following:
 - 14.1 Preservation and enhancement of natural systems and resources, topography, vegetation, and other natural features. – This project preserves approximately 50% of the site in its natural condition.
 - 14.2 Siting of structure so as to minimize impacts to surrounding neighbors/parcels. The building is located 1000 feet from Lavaque Road, an average of 490 feet from Maple Grove Road and 420 feet from the nearest residential structure.
 - 14.3 Provision of recreational amenities including trails and parks. – The Project proposes open green space; sidewalk connection to Maple Grove Road; internal sidewalk/trail system; play structure; pavilion; community garden space and future connection to the Munger Trail Spur all of which are available to residents of the proposed development and the public.
15. Maps were provided with the Plan and contained the following:
 - 15.1. The existing topographic character of the land.
 - 15.2. A composite of all natural amenities of the site.
 - 15.3. The size of the site and proposed uses of the land to be developed together with an identification of off-site land uses.
 - 15.4. The density of land use to be allocated to the overall development.
 - 15.5. The approximate location of thoroughfares.
 - 15.6. The location of open space.
16. The Preliminary PUD includes the following:
 - 16.1. A statement of the ownership of all land involved in the Preliminary PUD.
 - 16.2. An explanation of the general character of the Preliminary PUD.

16.3. A statement describing how all necessary governmental services will be provided for the Project. These will also be addressed in a Development Agreement(s) for development as a condition to the approval of the Final PUD.

B. CONCLUSION

On the basis of the foregoing Findings of Fact, the City Council of the City of Hermantown is hereby resolved as follows:

1. The Preliminary PUD meets the intent of the R-3, Residential Zoning District, Chapter 11 – Planned Unit Developments, and the overall goals and policies of the Zoning Ordinance.

2. The Preliminary PUD meets the Comprehensive Plan for residential development and standards of a Planned Unit Development by providing public benefit through enhanced and coordinated development design and a greater variety of housing types in the community.

3. The Preliminary PUD hereby approved is hereby expressly subject to the following conditions:

3.1. That the Preliminary PUD will be constructed as described in the plans accompanying the Application and the conditions contained herein and the Development Agreement.

3.2. The Zoning Administrator of the City of Hermantown shall be notified at least five (5) days in advance of the commencement of the work authorized hereunder and shall be notified of its completion within five (5) days thereafter.

3.3. Applicant shall grant access to the site at all reasonable times during and after construction to authorized representatives of the City of Hermantown for inspection to see that the terms of this permit are met.

3.4. Property Owner is initially and continually in compliance with all of the ordinances and regulations of the City of Hermantown.

3.5. Trees and brush cannot be burned on the Land, but may be chipped and shredded.

3.6. An MPCA Stormwater Permit and erosion control measures must be in place prior to any construction on the Preliminary PUD.

3.7. All utility line easements shall be observed and any encroachment into the utility right-of-way shall only be permitted with the written approval of the entity that owns the utility.

3.8. The Property Owner shall take measures to control erosion that has the potential to damage adjacent land, and control sedimentation that has the potential to leave the site.

3.9. The Applicant will have one year from the date of the Preliminary PUD approval to submit a Final PUD application and enter into a Development Agreement with the City.

3.10. The Applicant shall sign a consent form assenting to all conditions of this Resolution.

3.11. The Applicant is required to submit preliminary and final construction documents (water, storm sewer, sanitary sewer, drives, parking lots etc.) according to City standards and coordinated with the City Engineer which will be incorporated into the Development Agreement for the Final PUD.

3.12. The Applicant shall pay park dedication fees consistent with the requirements of the City Zoning Ordinance. A park dedication fee of \$1,100 per lot/unit will be paid at the time of final PUD approval. Bedroom fees at the rate of \$150/bedroom will be paid at the time of building permit.

4. The approval given by this Resolution is not effective until Applicant executes and delivers an acceptance of the terms and provisions of this Resolution.

5. The approval made by this resolution only extends to the Preliminary PUD as defined in this resolution.

6. The Applicant shall pay an administrative fine of \$750 per violation of any condition of this Resolution.

Councilor _____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor _____, and upon a vote being taken thereon, the following voted in favor thereof:

Councilors _____, Mayor Boucher, aye.

and the following voted in opposition thereto:

None

WHEREUPON, such resolution was duly passed and adopted December 6, 2021.

EXHIBIT A

West ½ of the East ½ of Southwest ¼ of Southwest ¼ of Section 14 Township 50 Range 15

PARCEL: 395-0010-04130

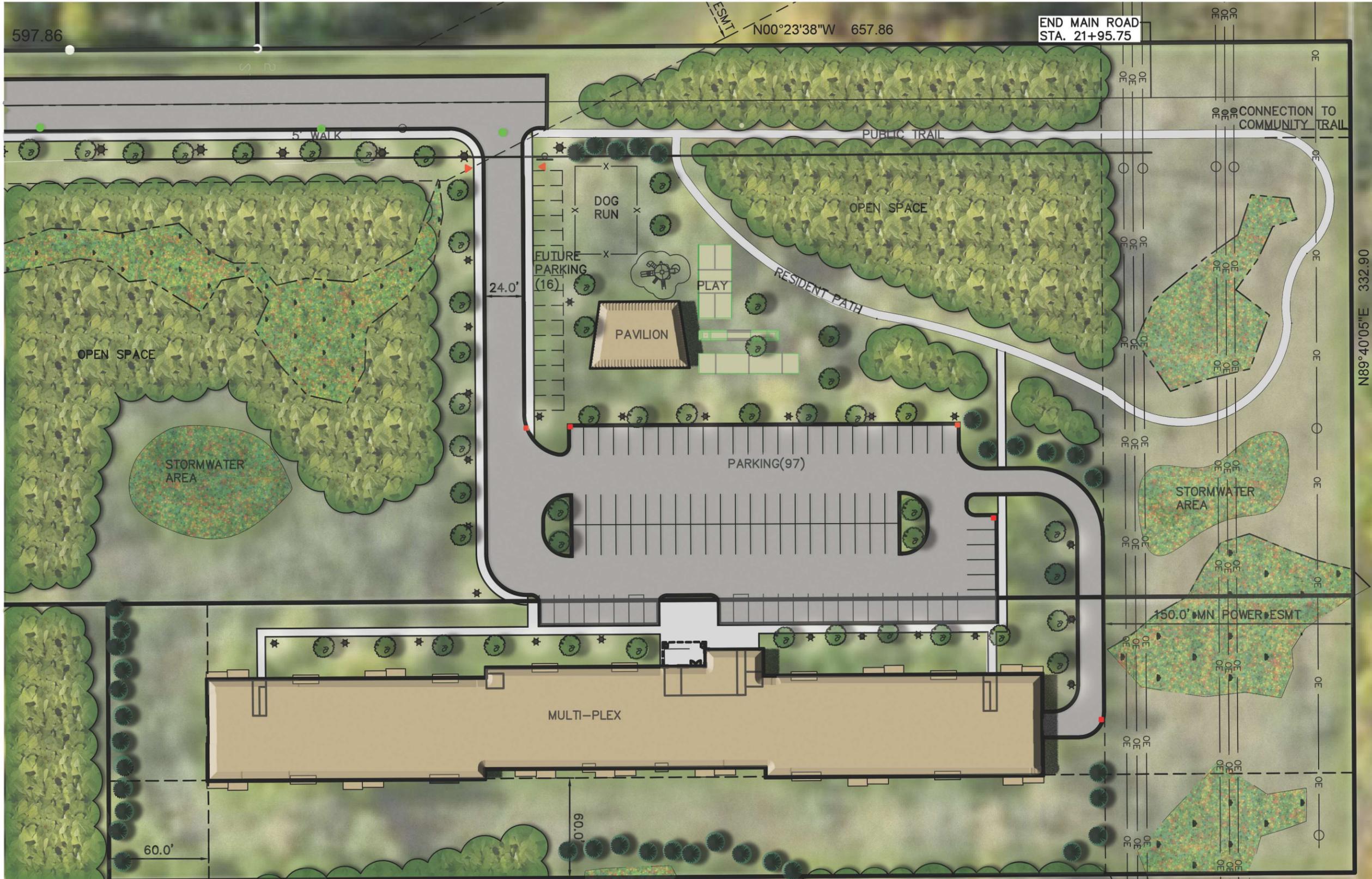
AND

West ½ of East ½ of East ½ of Southwest ¼ of Southwest ¼ of Section 14 Township 50 Range 15

PARCEL: 395-0010-04137

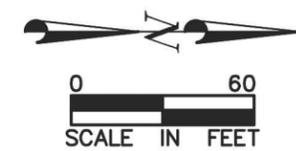
Location Map





LOT AREAS		
TOTAL	562,738 SF sq.ft.	12.92 ac

BUILDING INFORMATION			
BUILDING TYPE	DIMENSIONS	SQUARE FEET	PARKING
MULTI-PLEX BLDG	62 x 504	31,248	92 SPACES INTERNAL 97 SPACES EXTERNAL



Engineering
Land Surveying
Site Development

JPJ ENGINEERING, INC
425 Grant Street
Hibbing, MN 55746
(218) 262-5528

5670 Miller Trunk Hwy
Duluth, MN 55811
(218) 720-6219

www.jpjeng.com



JAMES PATRICK
DEVELOPMENT

PRELIMINARY PUD
GROVES OF HERMANTOWN
HERMANTOWN, MN

PUD EXHIBIT

REVISION DATE:	DESCRIPTION:

SURVEYED
DESIGNED TC
DRAWN TC
CHECKED

I hereby certify that this plan was prepared by me or under my direct supervision and that I am a duly licensed Professional Engineer under the laws of the State of Minnesota.

PRELIMINARY

PATRICIA JEAN S. CREGO

DATE _____ LIC. NO. 48524

19-636 PROJECT # EX-1

JAMES PATRICK DEVELOPMENT INC. GROVES OF HERMANTOWN, MN. 12.92 AC. 562,738 SF. 19-636 PROJECT # EX-1

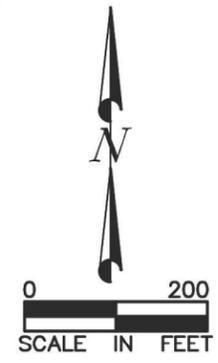


LOT AREAS

TOTAL 562,738 SF sq.ft. 12.92 ac

BUILDING INFORMATION

BUILDING TYPE	DIMENSIONS	SQUARE FEET	PARKING
MULTI-PLEX BLDG	62 x 504	31,248	92 SPACES INTERNAL 97 SPACES EXTERNAL



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JAMES PATRICK
DEVELOPMENT

PRELIMINARY PUD
GROVES OF HERMANTOWN
HERMANTOWN, MN

PUD EXHIBIT

REVISION DATE:	DESCRIPTION:

SURVEYED TC
DESIGNED TC
DRAWN TC
CHECKED

I hereby certify that this plan was prepared by me or under my direct supervision and that I am a duly licensed Professional Engineer under the laws of the State of Minnesota.

PRELIMINARY

PATRICIA JEAN S. CREGO

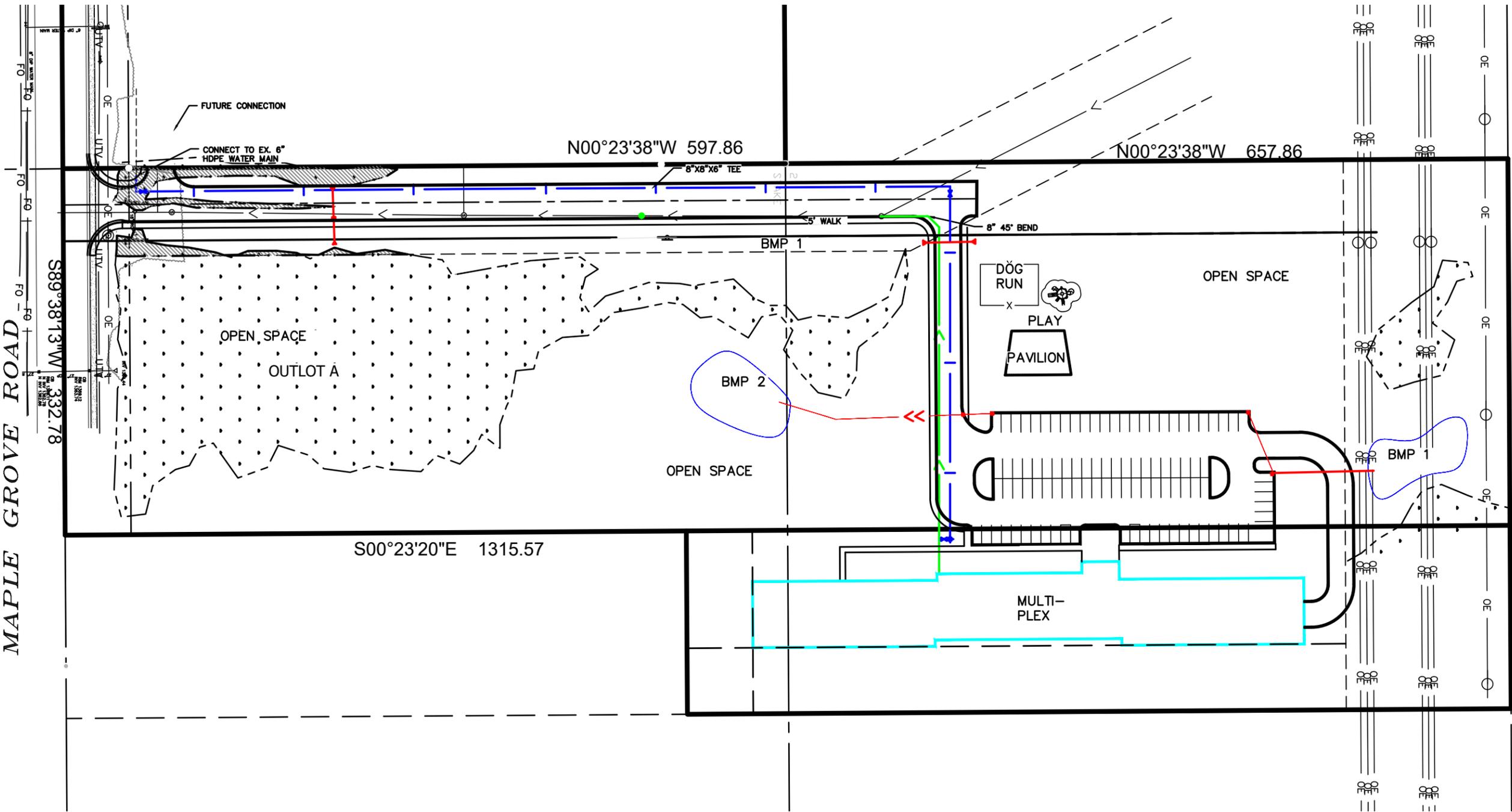
DATE _____ LIC. NO. 48524

19-636
PROJECT #

EX-3

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MAPLE GROVE ROAD



Engineering
Land Surveying
Site Development

JPJ ENGINEERING, INC
425 Grant Street
Hibbing, MN 55746
(218) 262-5528

5670 Miller Trunk Hwy
Duluth, MN 55811
(218) 720-6219

www.jpjeng.com



JAMES PATRICK
DEVELOPMENT

PRELIMINARY PUD
MAPLE GROVE TOWNHOMES
HERMANTOWN, MN

OVERALL SITE PLAN

REVISION DATE:	DESCRIPTION:

SURVEYED	TC
DESIGNED	TC
DRAWN	TC
CHECKED	JPJ

I hereby certify that this plan was prepared by me or under my direct supervision and that I am a duly licensed Professional Engineer under the laws of the State of Minnesota.

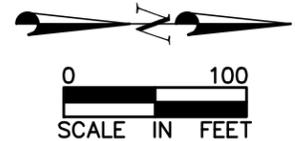
PRELIMINARY

JOHN P. JAMNICK, P.E.

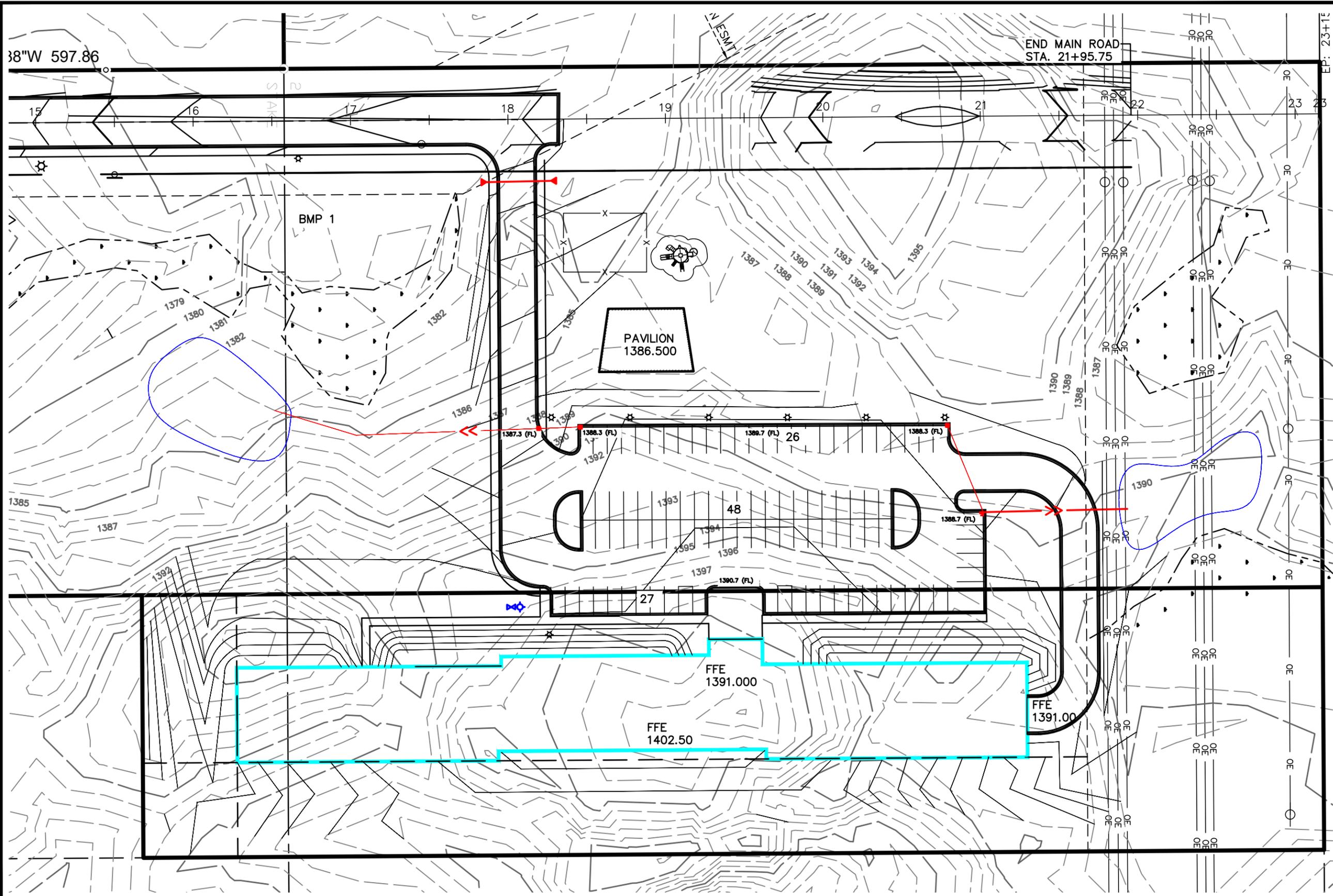
DATE _____ LIC. NO. 19907

19-636
PROJECT #

SI-2



Oct. 21, 2021 4:44pm
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Oct. 21, 2021 4:44pm
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JAMES PATRICK
DEVELOPMENT

PRELIMINARY PUD
MAPLE GROVE TOWNHOMES
HERMANTOWN, MN

PRELIMINARY GRADING PLAN

REVISION DATE:	DESCRIPTION:

SURVEYED	
DESIGNED	SC
DRAWN	SC
CHECKED	JPJ

I hereby certify that this plan was prepared by me or under my direct supervision and that I am a duly licensed Professional Engineer under the laws of the State of Minnesota.

PRELIMINARY

JOHN P. JAMNICK, P.E.

DATE _____ LIC. NO. 19907

19-636
PROJECT #

GR-2



Hermantown Arbors on Maple Grove
11/02/21

MAIN ENTRY
OPTION 'A'



Hermantown Arbors on Maple Grove
11/02/21

ENTRY VIEW
OPTION 'A'

Public Benefit Statement

The proposed development, The Arbor's on Maple Grove, located at 5097 Maple Grove Rd, Hermantown, Minnesota, will be a luxury apartment community. The development will upgrade a 13 - acre, R-3 zoned parcel to fully embrace the property's proximity to nearby commercial, retail and recreational facilities. The Arbor's on Maple Grove will be a unique luxury community.

1105.01 – Preservation and Enhancement of Natural Resources

Currently, the site has no existing structures and minimal wetlands. The land can be described by its native forestry and rolling topography. A proposed apartments will utilize the elevations for enhanced views of the Hermantown scenery. The dynamic topography will serve a functional purpose of accommodating underground parking for the facility. On the south 2.5 acres of the property, the existing foliage will remain to provide natural screening between the development and neighboring properties and road frontage.

1105.02 - Housing Variety

The proposed development will provide much need to housing to fill the regions demand. The demand for the site is several hundred apartment dwelling units are needed in the next 3-5 years. Hermantown is a growing city that currently does not have a sufficient amount of housing options for new and existing residents to choose from. Unfortunately, prospective tenants or homeowners are migrating to the surrounding areas which in turn is decreasing the tax base.

1105.03 – Parks and Trails

The Arbor's on Maple Grove will feature green spaces that reflect the look and feel of a serene community nestled into existing woods and grass lands. There will be localized trails to walk pets as well as an active central park. Additionally, there is immediate access to the Rocky Road Trail and future Munger Trail segments for extended routes to the new Wellness Center.

James Patrick Development shares the Hermantown Parks Vision,

“Through providing parks and trails services and spaces, we enhance the quality of life and nurture the health and wellness of our citizens and the community. Working together we strive to obtain the following for all: The creation of and maintenance of sustainable thriving parks, trails and recreational amenities in order to build a park system for the present and future residents of Hermantown. Through provision of recreation and parks and trail services, we strive to enhance the quality of life and nurture the health and well- being of our residents, community and our environment.”

Today this 13-acre tract of land is undeveloped and unimproved. Currently, it is not served by a public walking trail on the site. James Patrick Development has designed the master plan to be walker friendly, encouraging residents to enjoy the natural surroundings and peaceful living.

1105.04 – Pedestrian Facilities

The Americans with Disabilities Act (ADA) ensures access to the built environment for people with disabilities. All parks, trails and sidewalks will be ADA compliant.

1105.05 – Landscape and Architecture

The master plan features the aforementioned walking trails and central park, which will knit a collection of complimentary architectural building styles into a beautiful and peaceful surrounding. The trail system and tree lined entrance will enhance our clients living experience. The architecture and landscaping will support this peaceful setting.

1105.06 – Elimination of Blighted Structures

There are no existing structures on site.

1105.07 – Local Economy

The proposed development will offer a variety of tax benefits for both the City and State as well benefits to the local labor force, suppliers and vendors.

1105.08 – Utility Efficiency

The site is in an optimal location for the efficient provision of utility services. A public water main runs along Maple Grove Road, directly south of the site, and a sewer trunk line runs along an easement on the existing 13 areas. This development is utilizing the existing sewer lines that have been installed by the city and does not require any out-of-pocket expenses to the City of Hermantown or its residents.

1105.09 – Green Infrastructure and Environmental Design

The master plan was designed to provide a min of 70% green space preserving environmentally sensitive areas and conserving surrounding natural resources. The senior living facility will adhere to sustainable building practices such as recycling, energy and water conservation. “Best Management Practices”, such as infiltration basins or biofiltration swales, will be provided throughout the site for the effective and economical treatment of stormwater entering natural wetlands and streams.

1105.10 – Preservation and Enhancement of Historical and Cultural Resources.

The Hermantown Comprehensive Plan describes Hermantown is a unique and varied City with a diverse natural landscape. Since 2000, Hermantown has been one of the fastest growing cities in Northeast Minnesota. The city is the focus of sprawling residential and commercial development contributing to a significant amount of traffic. The Arbor’s on Maple Grove will preserve the unique natural resources of Hermantown and provide alternative modes of transportation such as shuttles, which will not adversely impact traffic congestion in the region.



November 15, 2021

**To: James Talago,
James Patrick Development, LLC**

From: Vernon Swing, PE

Re: Trip Generation Study – Maple Grove Apartments, Hermantown, MN

Per your request, S² Traffic Solutions has conducted a trip generation analysis for the proposed James Patrick Development’s Maple Grove Apartments which includes a mid-rise residential apartment development in Hermantown, MN. In addition to the apartment development, the adjacent parcel is planned to include a senior continuing care community, which is included in this analysis. The combined developments on the 10.5-acre site are located in the northeast quadrant of the Lavaque Rd (CSAH 48) and Maple Grove Rd (CSAH 6) intersection. The site will include 110 senior continuing care units, and 103 mid-rise apartment units. Full access to the site is proposed along Maple Grove Rd approximately 530 feet east of Lavaque Rd, and along Lavaque Rd approximately 530 feet north of Maple Grove Rd.

The trip generation for the proposed development has been estimated based on the methodology described by the Institute of Transportation Engineers (ITE) in *Trip Generation*, 10th Edition. Table 1 summarizes the findings.

**Table 1
Trip Generation**

Land Use	ITE Code	AM Peak Hour		PM Peak Hour		Daily Trips
		Enter	Exit	Enter	Exit	
Mid-rise Apt (103 Units)	221	10 Trips	27 Trips	28 Trips	17 Trips	560 Trips
Continuing Care (110 Units)	255	10 Trips	5 Trips	7 Trips	11 Trips	264 Trips
TOTAL		52 Trips		63 Trips		824 Trips

As shown in Table 1, the developments are forecast to generate 20 entering and 32 exiting trips during the morning traffic peak hour; and 35 entering and 28 exiting trips during the afternoon traffic peak hour.

Review of the current traffic conditions, including traffic counts conducted at the intersection of Lavaque Rd and Maple Grove Rd, suggest traffic from the proposed development will be distributed as follows:

- 15% to/from the north on Lavaque Rd
- 28% to/from the west on Maple Grove Rd
- 15% to/from the south on Lavaque Rd

- 42% to/from the east on Maple Grove Rd

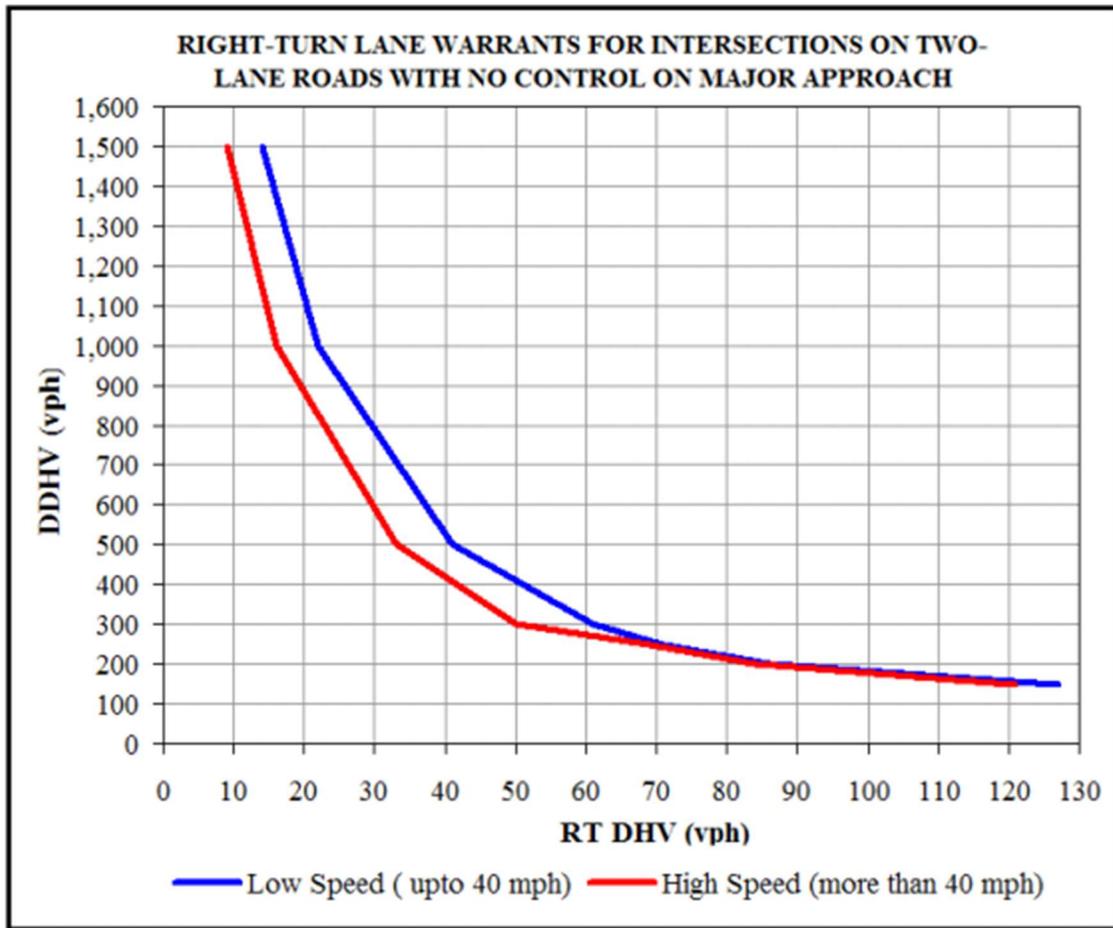
The estimated site generated traffic when distributed according to the regional pattern results in the following turning movements at the site accesses:

**Table 2
Driveway Movement**

Access	AM Peak Entering		AM Peak Exiting		PM Peak Entering		PM Peak Exiting	
	Left	Right	Left	Right	Left	Right	Left	Right
Lavaque Rd	3	5	8	5	5	8	7	4
Maple Grove RD	4	8	13	6	7	15	12	5

As shown in the Table 2, the largest single turning movement is 15 right turns westbound to northbound from Maple Grove Rd to the site. Saint Louis County has requested that right turn lane warrants be investigated at this access. To determine if right turn lane warrants are satisfied, S² Traffic Solutions relied on standards published by MnDOT, and by the American Association of State Highway and Transportation Officials (AASHTO) as reproduced below.

MnDOT Right Turn Lane Warrants





Maple Grove Rd is a 50 mph road which is represented by the redline in the graph above. Recent traffic counts indicate the design hourly traffic flow in the westbound direction of Maple Grove Rd is 450 trips. Using the graph to warrant a right turn lane when the DDHV is 500 trips, the right turn demand would need to equal or exceed 33 turns. The proposed development is forecast to include 15 right turns from Maple Grove Rd. Therefore, a right turn lane from Maple Grove Rd to the site is not warranted.

In conclusion, the proposed development has appropriate access to the site and to the surrounding roadway network. The addition of the proposed development is not anticipated to noticeably impact traffic operations in the area. In other words, the roadway network serving the proposed development will function well with the project.

Please contact Vernon Swing at vswingtraffic@gmail.com or 612-968-4142 with any questions.

TO: Mayor & City Council
FROM: Eric Johnson, Community
Development Director



DATE: November 23, 2021 **Meeting Date:** 12/6/21
SUBJECT: Special Use Permit – Maurice Bourdage **Agenda Item: 12-Bx** **Resolution 2021-153**

REQUESTED ACTION

Approval of a Special Use Permit for parking as a primary use for 4918 Lightning Drive for Maurice Bourdage.

RECOMMENDED ACTION:

Staff recommends approval of the Special Use Permit for parking as a primary use for Maurice Bourdage and his property located at 4918 Lightning Drive.

DESCRIPTION OF REQUEST:

The applicant is requesting a Special Use Permit for parking as a primary use at the property located at 4918 Lightning Drive.

SITE INFORMATION:

Parcel Size: 1.4 acres
Legal Access: 4918 Lightning Drive
Wetlands: None per the National Wetland Inventory
Existing Zoning: BLM, Business Light Manufacturing
Airport Overlay: None
Shoreland Overlay: None
Comprehensive Plan: Commercial

Development Details

The applicant is proposing to purchase the subject property for the purpose of relocating his existing towing business to the site. The applicant owns Nascar Towing, which had previously been operating out of 4803 Miller Trunk Highway until the property was sold earlier this summer.

The applicant is proposing to fence a portion of the property in order to provide secure storage of towed vehicles. The proposed location is in the NW portion of the site underneath the existing power lines and is approximately 7,000 square feet in size. Parking and fencing are allowed in this powerline easement area, however, no buildings are. This is similar to the City’s impound lot which is located approximately 800 feet to the west.

The City held a public hearing at the November 16 Planning and Zoning Commission. There were no comments at the meeting and the Planning Commission recommended the project unanimously.

The applicant proposes to use the existing building for storage of his vehicles as well as office space. From discussions with the Police Department, it is recommended that the applicant install security cameras on the property in addition to slatted/screen fenced storage area.

Wetlands

There are no wetlands shown on the national Wetland Inventory Map.

Special Use Permit

The Special Use Permit is for a parking as a primary use. There are general conditions for all SUPs. Staff finds the following in regard to the criteria for Special Use Permits in the Zoning Ordinance:

No special use permit shall be approved unless positive findings are made with respect to each and every one of the following criteria:

- 1. The proposed development is likely to be compatible with development permitted under the general provisions of this chapter on substantially all land in the vicinity of the proposed development;**

The City has an impound lot approximately 800 feet to the west of the proposed use.

- 2. The proposed use will not be injurious to the use and enjoyment of the environment, or detrimental to the rightful use and enjoyment of other property in the immediate vicinity of the proposed development;**

The property is located in the City's Industrial Park with other vehicle related uses within close proximity to the subject property.

- 3. The proposed use is consistent with the overall Hermantown Comprehensive Plan and with the spirit and intent of the provisions of this chapter;**

The property is located in the City's Industrial Park which was designed and envisioned for this and similar style businesses.

- 4. The proposed use will not result in a random pattern of development with little contiguity to existing programmed development and will not cause negative fiscal and environmental effects upon the community.**

The property is located in the City's Industrial Park with other vehicle related uses within close proximity to the subject property. The City has an impound lot approximately 800 feet to the west of the proposed use.

- 5. Other criteria required to be considered under the provisions of this code for any special use permit.**

The applicant will be required to provide a detailed plan layout for the property along with the extent of existing and proposed impervious surfaces. The property will require stormwater control measures per Sections 1060 and 1080 of the City's Zoning Ordinance should there be an additional 5,000 square feet or more of proposed impervious surface.

RECOMMENDATIONS:

Staff recommends approval of the Special Use Permit based on the findings set forth in the Staff report, subject to the following conditions:

1. The approval is for a Special Use Permit for parking as a primary use at the applicants property located at 4918 Lightning Drive.
2. The applicant shall sign a consent form assenting to all conditions of this approval.
3. The applicant shall pay an administrative fine of \$750 per violation of any condition of this approval.

ATTACHMENTS

- Location Map
- Proposed Site Plan

Resolution No. 2021-153

**RESOLUTION APPROVING A SPECIAL USE PERMIT FOR PARKING AS A PRIMARY USE
AT 4918 LIGHTNING DRIVE**

WHEREAS, Maurice Bourdage (“Applicant”), owner of the property located at 4918 Lightning Drive, submitted an application for a Special Use Permit for a parking as a primary use (“Project”), and legally described in Attachment A.

WHEREAS, The Hermantown Planning and Zoning Commission held a public hearing on the Special Use Permit application at its meeting on November 16, 2021 and recommended approval of the Special Use Permit at such meeting; and

WHEREAS, after due consideration of the entire City file, the testimony at the public hearing and all other relevant matters the City Council hereby makes the following findings related to the Special Use Permit.

FINDINGS OF FACT

- 1. The proposed development is likely to be compatible with development permitted under the general provisions of this chapter on substantially all land in the vicinity of the proposed development;**

The City has an impound lot approximately 800 feet to the west of the proposed use.

- 2. The proposed use will not be injurious to the use and enjoyment of the environment, or detrimental to the rightful use and enjoyment of other property in the immediate vicinity of the proposed development;**

The property is located in the City’s Industrial Park with other vehicle related uses within close proximity to the subject property.

- 3. The proposed use is consistent with the overall Hermantown Comprehensive Plan and with the spirit and intent of the provisions of this chapter;**

The property is located in the City’s Industrial Park which was designed and envisioned for this and similar style businesses.

- 4. The proposed use will not result in a random pattern of development with little contiguity to existing programmed development and will not cause negative fiscal and environmental effects upon the community.**

The property is located in the City's Industrial Park with other vehicle related uses within close proximity to the subject property. The City has an impound lot approximately 800 feet to the west of the proposed use.

5. Other criteria required to be considered under the provisions of this code for any special use permit.

The applicant will be required to provide a detailed plan layout for the property along with the extent of existing and proposed impervious surfaces. The property will require stormwater control measures per Sections 1060 and 1080 of the City's Zoning Ordinance should there be an additional 5,000 square feet or more of proposed impervious surface.

CONCLUSION

On the basis of the foregoing Findings of Fact, the City Council of the City of Hermantown is hereby resolved as follows:

1. The approval is for a Special Use Permit for parking as a primary use at the applicants property located at 4918 Lightning Drive.
2. The applicant shall sign a consent form assenting to all conditions of this approval.
3. The applicant shall pay an administrative fine of \$750 per violation of any condition of this approval.

Councilor _____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor _____ and, upon a vote being taken thereon, the following voted in favor thereof:

Councilors _____, Mayor Boucher, aye.

and the following voted in opposition thereto:

None

WHEREUPON, such resolution was declared duly passed and adopted on December 6, 2021.

ATTACHMENT A

E'ly 200 feet of N'ly 317 feet of Lot 1 Block 2 MAPLE GROVE INDUSTRIAL CENTER

Property ID: 395-0092-00165

(TOP THREE INCHES RESERVED FOR RECORDING DATA)

SPECIAL USE PERMIT

Permission is hereby granted to Maurice Bourdage (“Applicant”), owner of the property located at 4918 Lightning Drive, submitted an application for a Special Use Permit for a parking as a primary use at 4918 Lightning Drive (“Project”), and legally described in Attachment A.

The permission hereby granted is expressly conditioned as follows:

- a. That the Project will be constructed as described in the plans accompanying the application and the conditions contained herein.
- b. The Zoning Officer of the City of Hermantown shall be notified at least five (5) days in advance of the commencement of the work authorized hereunder and shall be notified of its completion within (5) days thereafter.
- c. No change shall be made in the Project without written permission being previously obtained from the City of Hermantown.
- d. Applicant shall grant access to the site at all reasonable times during and after construction to authorized representatives of the City of Hermantown for inspection of the Project to see the terms of this permit are met.
- e. The permit is permissive only. No liability shall be imposed upon or incurred by the City of Hermantown or any of its officers, agents or employees, officially or personally, on account of the granting hereof or on account of any damage to any person or property resulting from any act or omission of Applicant or any of Applicant’s agents, employees or contractors relating to any matter hereunder. This permit shall not be construed as estopping or limiting any legal claims or right of action of any person against Applicant, its agents, employees of contractors, for any damage or injury resulting from any such act or omission, or as estopping or limiting any legal claim or right of action of the City of

Hermantown against Developer, its agents, employees or contractors for violation of or failure to comply with the permit or applicable provisions of law.

- f. This permit may be terminated by the City of Hermantown at any time it deems necessary for the conservation of water resources, or in the interest of public health and welfare, or for violation of any of the provisions of this permit.
- g. Applicant is initially and continually in compliance with all of the ordinances and regulations of the City of Hermantown Building Code and the Hermantown Fire Code.
- h. All state licenses and other permits required for the Project have been obtained by the Applicant and copies are provided to the City of Hermantown.
- i. That Applicant pay all direct costs incurred by the City of Hermantown in connection with the enforcement and administration of this permit within fifteen (15) days of Applicant being invoiced by the City for such costs.
- j. The approval is for a Special Use Permit for parking as a primary use at 4918 Lightning Drive.
- k. The applicant shall sign a consent form assenting to all conditions of this approval.
- l. The applicant shall pay an administrative fine of \$750 per violation of any condition of this approval.

ATTACHMENT A

E'ly 200 feet of N'ly 317 feet of Lot 1 Block 2 MAPLE GROVE INDUSTRIAL CENTER

Property ID: 395-0092-00165

Location Map

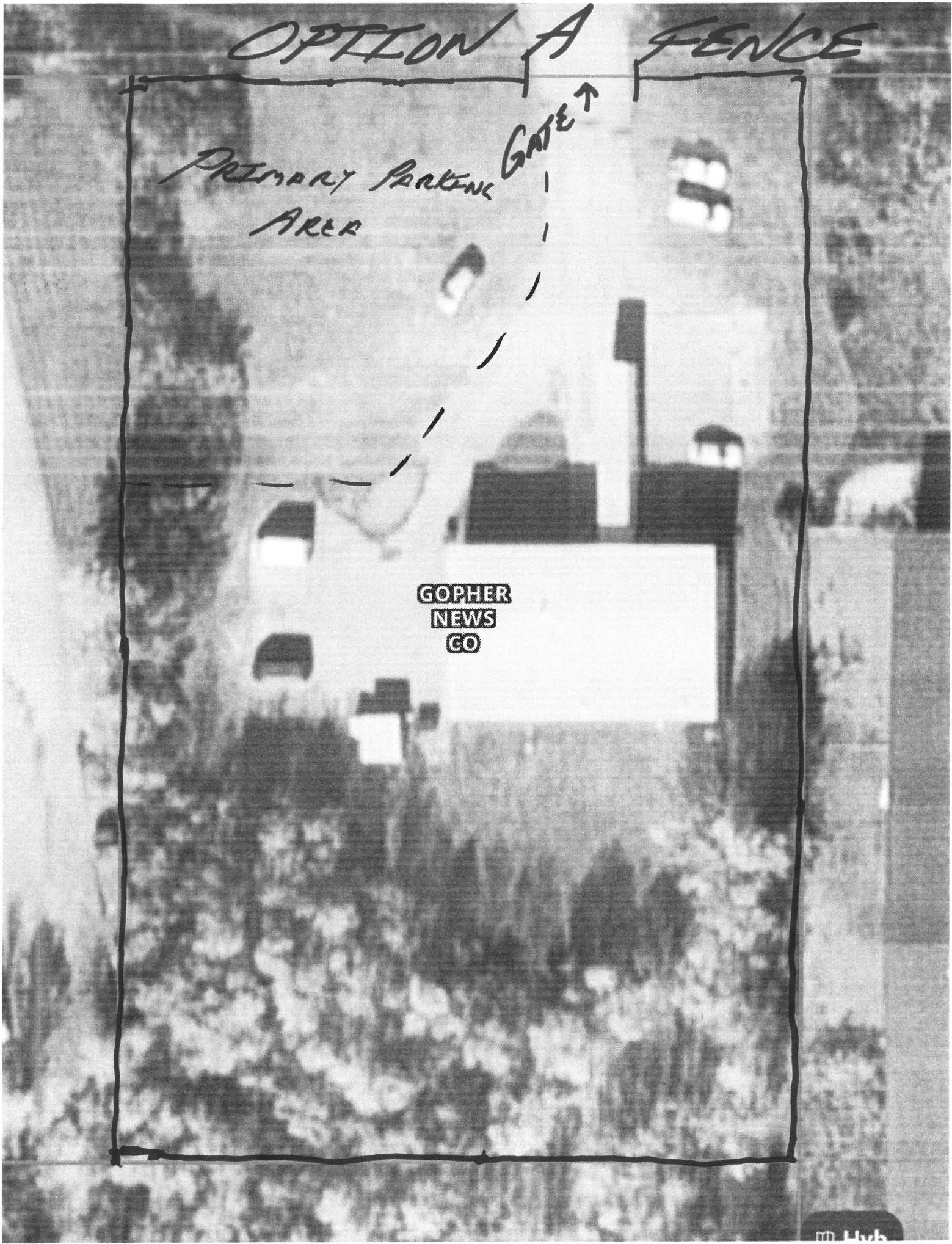


OPTION A FENCE

PRIMARY PARKING AREA

GATE ↑

GOPHER NEWS CO



OPTION B FENCE

PRIMARY PARKING
AREA

GATE →

GOPHER
NEWS
CO

TO: Mayor & City Council
FROM: Eric Johnson, Community
Development Director



DATE: November 23, 2021 **Meeting Date:** 12/6/21
SUBJECT: Special Use Permit – Miller
Creek Property Investments **Agenda Item: 12-C** **Resolution 2021-154**

REQUESTED ACTION

Approval of a Special Use Permit for a Contractor’s shop and storage yard/Lawn and garden material supplies at 5350 and 5396 Miller Trunk Highway.

RECOMMENDED ACTION:

Staff recommends approval of a Special Use Permit for a Contractor’s shop and storage yard/Lawn and garden material supplies in a C-1, Office/Light Industrial zoning district.

DESCRIPTION OF REQUEST:

The applicant is requesting a Special Use Permit for a Contractor’s shop and storage yard/Lawn and garden material supplies at the property located at 5350 and 5396 Miller Trunk Highway.

SITE INFORMATION:

Parcel Size: 6.3 acres
Legal Access: 5350 and 5396 Miller Trunk Highway
Wetlands: SW portion of 5396 Miller Trunk Highway parcel
Existing Zoning: C-1, Office/Light Industrial
Airport Overlay: Safety Zone 2 (formerly B)
Shoreland Overlay: None
Comprehensive Plan: Commercial

Development Details

The applicant purchased the subject property in the summer of 2021 for the purpose of relocating their existing lawn and landscape business previously located at 4818 Swan Lake Road. The applicant’s business model has changed over the years with the business primarily being a contractor based business rather than having a retail sales component as they had in past years.

The applicant is utilizing the main building located on the 5396 parcel as their office and future office/showroom space. The garage/accessory building on this parcel and the 5350 parcel are used for storage of materials. The rear portion of the property are utilized for storage of plant material awaiting installation at job sites.

Since purchasing the property, the applicant has conducted numerous site/building improvements and is expanded the business model to include the rental or portable storage pods to businesses or homeowners. The empty pods are stored on site with rented pods being delivered to a home or business for use at that location. On site storage of filled/rented pods is not proposed.

The City held a public hearing at the November 16, 2021 Planning and Zoning Commission. There were no comments at the meeting and the Planning Commission recommended the project unanimously.

Wetlands

The National Wetland Inventory Map indicates the presence of wetlands in the SW portion of the 5396 Miller Trunk Highway parcel. These wetlands are not within any developed portion of the property.

Special Use Permit

The Special Use Permit is for a Contractor's shop and storage yard/Lawn and garden material supplies. There are general conditions for all SUPs. Staff finds the following in regard to the criteria for Special Use Permits in the Zoning Ordinance:

No special use permit shall be approved unless positive findings are made with respect to each and every one of the following criteria:

- 1. The proposed development is likely to be compatible with development permitted under the general provisions of this chapter on substantially all land in the vicinity of the proposed development;**

The subject properties are located along Miller Trunk Highway in a C-1, Office/Light Industrial zoning district. Neighboring properties consist of a used automobile lot, an equipment rental business and a building supply business.

- 2. The proposed use will not be injurious to the use and enjoyment of the environment, or detrimental to the rightful use and enjoyment of other property in the immediate vicinity of the proposed development;**

The proposed uses for the property are consistent with other businesses along this portion of the Miller Trunk Highway corridor.

- 3. The proposed use is consistent with the overall Hermantown Comprehensive Plan and with the spirit and intent of the provisions of this chapter;**

The Comprehensive plan identifies this area of Miller Trunk Highway as commercial. The proposed uses for the property are consistent with other businesses along this portion of the Miller Trunk Highway corridor.

- 4. The proposed use will not result in a random pattern of development with little contiguity to existing programmed development and will not cause negative fiscal and environmental effects upon the community.**

The subject properties are located along Miller Trunk Highway in a C-1, Office/Light Industrial zoning district. Neighboring properties consist of a used automobile lot, an equipment rental business and a building supply business.

5. Other criteria required to be considered under the provisions of this code for any special use permit.

The property will require stormwater control measures per Sections 1060 and 1080 of the City's Zoning Ordinance should there be an additional 5,000 square feet or more of proposed impervious surface.

RECOMMENDATIONS:

Staff recommends approval of the Special Use Permit based on the findings set forth in the Staff report, subject to the following conditions:

1. The approval is for a Special Use Permit for a Contractor's shop and storage yard/Lawn and garden material supplies at the applicants property located at 5350 and 5396 Miller Trunk Highway.
2. Storage pods may not be stacked. On site storage shall consist of on grade placement of each individual storage pod.
3. Storage pods to be set back a minimum of 10' from the Miller Trunk Hwy front yard property line.
4. The applicant shall sign a consent form assenting to all conditions of this approval.
5. The applicant shall pay an administrative fine of \$750 per violation of any condition of this approval.

ATTACHMENTS

- Location Map
- Proposed Site Plan

Resolution No. 2021-154

RESOLUTION APPROVING A SPECIAL USE PERMIT FOR A CONTRACTOR'S SHOP AND STORAGE YARD/LAWN AND GARDEN MATERIAL SUPPLIES AT 5350 AND 5396 MILLER TRUNK HIGHWAY

WHEREAS, Miller Creek Property Investments (“Applicant”), owner of the property located at 5350 and 5396 Miller Trunk Highway, submitted an application for a Special Use Permit for a Contractor’s shop and storage yard/lawn and garden material supplies at 5350 and 5396 Miller Trunk Highway (“Project”), and legally described in Attachment A.

WHEREAS, The Hermantown Planning and Zoning Commission held a public hearing on the Special Use Permit application at its meeting on November 16, 2021 and recommended approval of the Special Use Permit at such meeting; and

WHEREAS, after due consideration of the entire City file, the testimony at the public hearing and all other relevant matters the City Council hereby makes the following findings related to the Special Use Permit.

FINDINGS OF FACT

- 1. The proposed development is likely to be compatible with development permitted under the general provisions of this chapter on substantially all land in the vicinity of the proposed development;**

The subject properties are located along Miller Trunk Highway in a C-1, Office/Light Industrial zoning district. Neighboring properties consist of a used automobile lot, an equipment rental business and a building supply business.

- 2. The proposed use will not be injurious to the use and enjoyment of the environment, or detrimental to the rightful use and enjoyment of other property in the immediate vicinity of the proposed development;**

The proposed uses for the property are consistent with other businesses along this portion of the Miller Trunk Highway corridor.

- 3. The proposed use is consistent with the overall Hermantown Comprehensive Plan and with the spirit and intent of the provisions of this chapter;**

The Comprehensive plan identifies this area of Miller Trunk Highway as commercial. The proposed uses for the property are consistent with other businesses along this portion of the Miller Trunk Highway corridor.

- 4. The proposed use will not result in a random pattern of development with little contiguity to existing programmed development and will not cause negative fiscal and environmental effects upon the community.**

The subject properties are located along Miller Trunk Highway in a C-1, Office/Light Industrial zoning district. Neighboring properties consist of a used automobile lot, an equipment rental business and a building supply business.

- 5. Other criteria required to be considered under the provisions of this code for any special use permit.**

The property will require stormwater control measures per Sections 1060 and 1080 of the City's Zoning Ordinance should there be an additional 5,000 square feet or more of proposed impervious surface.

CONCLUSION

On the basis of the foregoing Findings of Fact, the City Council of the City of Hermantown is hereby resolved as follows:

1. The approval is for a Special Use Permit for a Contractor's shop and storage yard/Lawn and garden material supplies at the applicants property located at 5350 and 5396 Miller Trunk Highway.
2. Storage pods may not be stacked. On site storage shall consist of on grade placement of each individual storage pod.
3. Storage pods to be set back a minimum of 10' from the Miller Trunk Hwy front yard property line.
4. The applicant shall sign a consent form assenting to all conditions of this approval.
5. The applicant shall pay an administrative fine of \$750 per violation of any condition of this approval.

Councilor _____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor _____ and, upon a vote being taken thereon, the following voted in favor thereof:

Councilors _____, Mayor Boucher, aye.

and the following voted in opposition thereto:

None

WHEREUPON, such resolution was declared duly passed and adopted on December 6, 2021.

ATTACHMENT A

Parcel A: That part of the SW1/4 of SE1/4, Section 4, Township 50 North, Range 15 West of the Fourth Principal Meridian, described as follows: Commencing at the intersection of the Southerly right-of-way line of U.S. Highway Number 53 and the West line of said SW1/4 of SE1/4; thence South 61 degrees 05' 09" East (assumed bearing) along said Southerly right-of-way line a distance of 50.00 feet to the point of beginning; thence South 61 degrees 05' 09" East along said Southerly right-of-way line a distance of 450.0 feet; thence South 28 degrees 54' 51" West a distance of 513 feet; thence South 2 degrees 17' 52" East along a line parallel with the West line of said SW1/4 of SE1/4 a distance of 476.70 feet to its intersection with the South line of said SW1/4 of SE1/4; thence South 87 degrees 32' 09" West along said South line a distance of 161.87 feet to the Southwest corner of said SW1/4 of SE1/4; thence North 02 degrees 17' 52" West along the West line of said SW1/4 of SE1/4 a distance of 1078.51 feet to the intersection with a line bearing South 28 degrees 54' 51" West from the point of beginning and being at a right angle to said Southerly right-of-way line; thence North 28 degrees 54' 51" East along said line a distance of 82.54 feet to the point of beginning, St. Louis County, Minnesota.

Property ID: 395-0010-00845

Parcel B: the South Half of the Southeast Quarter of the Southwest Quarter, Section 4, Township 50 North, Range 15 West of the Fourth Principal Meridian, St. Louis County, Minnesota.

Property ID: 395-0010-00844 and

(TOP THREE INCHES RESERVED FOR RECORDING DATA)

SPECIAL USE PERMIT

Permission is hereby granted to Miller Creek Property Investments (“Applicant”), owner of the property located at 5350 and 5396 Miller Trunk Highway, submitted an application for a Special Use Permit for a Contractor’s shop and storage yard/Lawn and garden material supplies at 5350 and 5396 Miller Trunk Highway (“Project”), and legally described in Attachment A.

The permission hereby granted is expressly conditioned as follows:

- a. That the Project will be constructed as described in the plans accompanying the application and the conditions contained herein.
- b. The Zoning Officer of the City of Hermantown shall be notified at least five (5) days in advance of the commencement of the work authorized hereunder and shall be notified of its completion within (5) days thereafter.
- c. No change shall be made in the Project without written permission being previously obtained from the City of Hermantown.
- d. Applicant shall grant access to the site at all reasonable times during and after construction to authorized representatives of the City of Hermantown for inspection of the Project to see the terms of this permit are met.
- e. The permit is permissive only. No liability shall be imposed upon or incurred by the City of Hermantown or any of its officers, agents or employees, officially or personally, on account of the granting hereof or on account of any damage to any person or property resulting from any act or omission of Applicant or any of Applicant’s agents, employees or contractors relating to any matter hereunder. This permit shall not be construed as estopping or limiting any legal claims or right of action of any person against Applicant, its agents, employees of contractors, for any damage or injury resulting from any such act

or omission, or as estopping or limiting any legal claim or right of action of the City of Hermantown against Developer, its agents, employees or contractors for violation of or failure to comply with the permit or applicable provisions of law.

- f. This permit may be terminated by the City of Hermantown at any time it deems necessary for the conservation of water resources, or in the interest of public health and welfare, or for violation of any of the provisions of this permit.
- g. Applicant is initially and continually in compliance with all of the ordinances and regulations of the City of Hermantown Building Code and the Hermantown Fire Code.
- h. All state licenses and other permits required for the Project have been obtained by the Applicant and copies are provided to the City of Hermantown.
- i. That Applicant pay all direct costs incurred by the City of Hermantown in connection with the enforcement and administration of this permit within fifteen (15) days of Applicant being invoiced by the City for such costs.
- j. The approval is for a Special Use Permit for a Contractor's shop and storage yard/Lawn and garden material supplies at the applicants property located at 5350 and 5396 Miller Trunk Highway.
- k. The applicant shall sign a consent form assenting to all conditions of this approval.
- l. Storage pods may not be stacked. On site storage shall consist of on grade placement of each individual storage pod.
- m. Storage pods to be set back a minimum of 10' from the Miller Trunk Hwy front yard property line.
- n. The applicant shall pay an administrative fine of \$750 per violation of any condition of this approval.

ATTACHMENT A

Parcel A: That part of the SW1/4 of SE1/4, Section 4, Township 50 North, Range 15 West of the Fourth Principal Meridian, described as follows: Commencing at the intersection of the Southerly right-of-way line of U.S. Highway Number 53 and the West line of said SW1/4 of SE1/4; thence South 61 degrees 05' 09" East (assumed bearing) along said Southerly right-of-way line a distance of 50.00 feet to the point of beginning; thence South 61 degrees 05' 09" East along said Southerly right-of-way line a distance of 450.0 feet; thence South 28 degrees 54' 51" West a distance of 513 feet; thence South 2 degrees 17' 52" East along a line parallel with the West line of said SW1/4 of SE1/4 a distance of 476.70 feet to its intersection with the South line of said SW1/4 of SE1/4; thence South 87 degrees 32' 09" West along said South line a distance of 161.87 feet to the Southwest corner of said SW1/4 of SE1/4; thence North 02 degrees 17' 52" West along the West line of said SW1/4 of SE1/4 a distance of 1078.51 feet to the intersection with a line bearing South 28 degrees 54' 51" West from the point of beginning and being at a right angle to said Southerly right-of-way line; thence North 28 degrees 54' 51" East along said line a distance of 82.54 feet to the point of beginning, St. Louis County, Minnesota.

Property ID: 395-0010-00845

Parcel B: the South Half of the Southeast Quarter of the Southwest Quarter, Section 4, Township 50 North, Range 15 West of the Fourth Principal Meridian, St. Louis County, Minnesota.

Property ID: 395-0010-00844 and

Location Map



SITE PLAN



TO: Mayor & City Council
FROM: Eric Johnson, Community
Development Director



DATE: November 9, 2021 **Meeting Date:** 12/6/21
SUBJECT: Approval of grant with the **Agenda Item: 12-D** **Resolution 2021-155**
MN DNR

REQUESTED ACTION

Approve a grant with the Minnesota Department of Natural Resources (MNDNR) for the Hermantown Night Riders to purchase snow grooming equipment for the maintenance of their snowmobile trails.

BACKGROUND

The Hermantown City Council adopted a resolution approving a grant funding request for a MN DNR Equipment Grant on February 1, 2021. The City was acting as the sponsoring partner with the Hermantown Night Riders snowmobile club in order to purchase grooming equipment for their 54 miles of trails throughout Hermantown, Proctor and Duluth. The City submitted the grant request to the DNR and was notified of the award in June 2021.

The City will receive and administer the funds for the Hermantown Night Riders as the project partner for the grant. The request is for \$36,825.00 with the 25% required match of \$9,206.25 provided by the snowmobile club. City staff will prepare an agreement with the snowmobile club in order to disburse the funds.

SOURCE OF FUNDS (if applicable)

Funds available through the Federal Recreation Trail Program
Hermantown Night Riders

ATTACHMENTS

- Grant Agreement with the DNR

RESOLUTION APPROVING A GRANT AGREEMENT BETWEEN THE STATE OF MINNESOTA AND THE CITY OF HERMANTOWN AND AUTHORIZING AND DIRECTING THE MAYOR AND CITY CLERK TO EXECUTE AND DELIVER SUCH GRANT AGREEMENT ON BEHALF OF THE CITY OF HERMANTOWN

WHEREAS, the City of Hermantown (“City”) desires to purchase groomer (“Groomer”) to groom trails in Keene Creek Park for multitude of uses and support grooming and maintenance of 54 miles of trail system throughout Hermantown, Proctor and Duluth; and

WHEREAS, to further the interests of the City and its residents, the City has applied to the State of Minnesota for a grant (“Grant”) to assist with the purchase of the Groomer; and

WHEREAS, a form of a Grant Agreement is attached hereto as Exhibit A which outlines the terms and provisions acceptable to the State and City for the utilization of such Grant; and

WHEREAS, the City Council has reviewed the Grant Agreement and believes that it is in the best interests of the City of Hermantown to approve the Grant Agreement substantially in the form of the one attached hereto and authorize and direct the Mayor and City Clerk to execute and deliver the Grant Agreement on behalf of the City of Hermantown.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hermantown, Minnesota as follows:

1. The Grant Agreement substantially in the form of the one attached hereto as Exhibit A between the State of Minnesota and the City of Hermantown is hereby approved.
2. The Mayor and City Clerk are hereby authorized and directed to execute and deliver the Grant Agreement substantially in the form attached hereto on behalf of the City.

Councilor _____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor _____ and, upon a vote being taken thereon, the following voted in favor thereof:

and the following voted in opposition thereto:

WHEREUPON, such resolution was declared duly passed and adopted on December 6, 2021.

EXHIBIT A

DocuSign Envelope ID: E16123D5-A397-4254-B392-5997B2B86B7A

**STATE OF MINNESOTA
GRANT CONTRACT
Federal Sub-Award Agreement
Project # 0022-21-2C**

This grant contract is between the State of Minnesota, acting through its Commissioner of Natural Resources ("State") and City of Hermantown, 5105 Maple Grove Road, Hermantown, MN, 55811 ("Grantee").

Recitals

1. Under Recreational Trail Program (F RTP), United States Department of Transportation, Federal Highway Administration, CFDA #20.219, TRAL027, the State received a federal award of \$2,589,187, of which \$36,825 was sub-awarded to the Grantee, on October 1, 2021 to purchase groomer to groom trails in Keene Creek Park for multitude of uses and support grooming and maintenance of 54 miles of trail system throughout Hermantown, Proctor and Duluth, and as provided in Minnesota Statutes, section 84.026. This project is not a research and development project.
2. The State sub-awards to the Grantee for the purpose of conducting the program entitled Keene Creek Park/Hermantown Night Riders Groomer Purchase in the approved Project Scope and Budget contained in Attachment "A" which is attached and incorporated into this grant contract.
3. The Grantee represents that it is duly qualified and agrees to perform all services described in this grant contract to the satisfaction of the State.

Grant Contract

1. Term of Grant Contract

- 1.1. **Effective date:** This contract becomes effective on November 16, 2021 or the date the State obtains all required signatures under Minn. Stat. §16B.98, Subd. 5, whichever is later. Per Minn. Stat. §16B.98 Subd. 7, no reimbursements will be made to the Grantee until this grant contract is fully executed. **The Grantee must not begin work under this sub-grant contract until this contract is fully executed and the Grantee has been notified by the State's Authorized Representative to begin the work.**
- 1.2. **Expiration date:** The contract shall remain in effect until June 30, 2023, or until all obligations have been satisfactorily fulfilled, whichever occurs first.
- 1.3. **Survival of Terms:** The following clauses survive the expiration or cancellation of this grant contract: 9 Liability; 10 Audits; 11 Government Data Practices and Intellectual Property; 13 Endorsement; 14 Governing Law, Jurisdiction, and Venue; 16 Data Disclosure; 19 Monitoring; and 28 Additional Program Requirements.

2. Grantee's Duties

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

The Grantee will comply with required grants management policies and procedures set forth through Minn. Stat. §16B.97, subdivision 4 (a) (1).

The Grantee shall operate the Project or cause it to be operated as outlined in the approved Attachment "A", Project Scope and Budget which is attached and incorporated into this grant contract. The Grantee agrees to complete the Project in accordance with the approved budget to the extent practicable and within the program period specified in the grant contract. Any material change in the grant contract shall require an amendment by the State (see Section 7.2). The application has been approved by the Grantee's appropriate governing entity as evidenced by Attachment "B" which is attached and incorporated into this grant contract.

The Grantee shall not, prior to twenty years after the date of completion of the project, at any time convert any property acquired or developed pursuant to this contract to uses other than those specified in this contract without the prior written approval of Grantor. The Grantee must maintain property developed as per this contract in a manner consistent with the original purpose of this grant.

The Grantee shall be responsible for the administration, supervision, management, record keeping, and program oversight required for the work performed under this contract.

The Grantee shall submit an inventory form Attachment "C" which is attached and incorporated into this grant contract. The Grantee will annually submit Materials Management Inventory Form by December 31st of every year the equipment is possessed by the Grantee.

The Grantee is responsible for maintaining a written conflict of interest policy. Throughout the term of this contract, the Grantee shall monitor and report any actual or potential conflicts of interest to the State's Authorized Representative.

3. Time

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

4. Consideration and Payment

4.1. **Consideration.** Consideration for all services performed by Grantee pursuant to this grant contract shall be paid by the State as follows:

4.1.1 **Compensation.** Compensation in an amount not to exceed \$36,825, according to the breakdown of costs contained in Attachment A. Project Scope and Budget, which is attached and incorporated into this grant contract.

4.1.2 **Matching Requirements.** Grantee certifies that the following matching requirement for the grant will be met by City of Hermantown. The total project cost is \$49,100. Grantee agrees to match at least \$12,275 of this project cost.

The State shall disburse funds to the Grantee pursuant to this contract on a reimbursement basis not to exceed **seventy-five (75) percent** of its eligible costs, as described in Section 28.

THE TOTAL OBLIGATION OF THE STATE FOR ALL COMPENSATION AND REIMBURSEMENTS TO GRANTEE SHALL NOT EXCEED: \$36,825.

Funds made available pursuant to this Contract shall be used only for expenses incurred in performing and accomplishing the purposes and activities specified herein. Notwithstanding all other provisions of this Contract, it is understood that any reduction or termination of funds allocated to the State may result in a like reduction to the Grantee.

4.2. **Payment.**

The State shall disburse funds to the Grantee pursuant to this contract **on a reimbursement basis**. The State will promptly pay the Grantee after the Grantee presents an itemized invoice for the services actually performed and the State's Authorized Representative accepts the invoiced services. Invoices must be submitted timely and according to the following schedule. The Grantee shall submit payment requests with required expenditure documentation. If necessary, advance payments on grants shall be negotiated between the State and Grantee on a case-by-case basis. In order to make advance payments, the Grantee must prepare and submit a written justification to the State for approval that details the specific need to utilize advance payments. A copy of the signed justification must be maintained in the grant file. All advance payments on grants over \$50,000 must be reconciled within 12 months of issuance or within 60 days of the end of the grant period.

4.3 **Federal funds.** Payments under this grant contract will be made from federal funds obtained by the State through Federal Recreational Trail Program, CFDA number 20.219 of the Moving Ahead for Progress in the 21st Century (MAP-21) Act of 2012; the Fixing America's Surface Transportation (FAST) Act reauthorized the Recreational Trails Program for Federal fiscal years 2016 through 2021. The Grantee is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by the Grantee's failure to comply with federal requirements. The Grantee agrees to perform this contract in accordance with the Recreational Trails Program, 23 U.S.C. 206, the provisions and conditions of the FHWA's Guidelines.

5. Conditions of Payment

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

6. Authorized Representative

The State's Authorized Representative is Daniel Golner, Trail Grant Coordinator, Division of Parks and Trails, Department of Natural Resources, 500 Lafayette Road, Box 39, St. Paul, MN 55155-4052, Daniel.Golner@state.mn.us, 651-259-5599 and has the responsibility to monitor the Grantee's performance and the authority to accept the services provided under this grant contract. If the services are satisfactory, the State's Authorized Representative or his/her designee will certify acceptance on each invoice submitted for payment.

The Grantee's Authorized Representative is Eric Johnson, Community Development Director, City of Hermantown, 5105 Maple Grove Road, Hermantown, MN 55811, 218-729-3618, Eric.johnson@hermantownmn.com, or his/her successor. If the Grantee's Authorized Representative changes at any time during this grant contract, the Grantee must immediately notify the State.

The Grantee Authorized Fiscal Agent is Eric Johnson, Community Development Director, City of Hermantown, 5105 Maple Grove Road, Hermantown, MN 55811, 218-729-3618, Eric.johnson@hermantownmn.com, or his/her successor. If the Grantee's Authorized Fiscal Agent changes at any time during this grant contract, the Grantee must immediately notify the State.

7. Assignment, Amendments, Waiver, and Grant Contract Complete

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

8. Subcontractors, Contracting, and Bidding Requirements

- 8.1. The Grantee agrees that if it subcontracts any portion of this project to another entity, the contract with the subcontractor will contain all provisions of the contract with the State. The Grantee also agrees to comply with Title 2 Code of Federal Regulations (CFR) 200.317 and 200.322 (if applicable-both apply to state entities only) as well as 2 CFR 200.318-321, and 2 CFR 200.323-326.

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

- (a) If the amount of the contract is estimated to exceed \$100,000, a formal notice and bidding process must be conducted in which sealed bids shall be solicited by public notice. Municipalities may, as a best value alternative, award a contract for construction, alteration, repair, or maintenance work to the vendor or contractor offering the best value under a request for proposals as described in Minn. Stat. §16C.28, Subd. 1, paragraph (a), clause (2)
- (b) If the amount of the contract is estimated to exceed \$25,000 but not \$100,000, the contract may be made either upon sealed bids or by direct negotiation, by obtaining two or more quotations for the purchase or sale when possible, and without advertising for bids or otherwise complying with the requirements of competitive

bidding. All quotations obtained shall be kept on file for a period of at least one year after receipt thereof. Municipalities may, as a best value alternative, award a contract for construction, alteration, repair, or maintenance work to the vendor or contractor offering the best value under a request for proposals as described in Minn. Stat. §16C.28, Subd. 1, paragraph (a), clause (2) and paragraph (c).

- (c) If the amount of the contract is estimated to be \$25,000 or less, the contract may be made either upon quotation or in the open market, in the discretion of the governing body. If the contract is made upon quotation, it shall be based, so far as practicable, on at least two quotations which shall be kept on file for a period of at least one year after their receipt. Alternatively, municipalities may award a contract for construction, alteration, repair, or maintenance work to the vendor or contractor offering the best value under a request for proposals as described in Minn. Stat. §16C.28, Subd. 1, paragraph (a), clause (2)
- (d) Support documentation of the bidding process utilized to contract services must be included in the grantee's financial records, including support documentation justifying a single/sole source bid, if applicable.
- (e) For projects that include construction work of \$25,000 or more, prevailing wage rules apply per; Minn. Stat. §§177.41 through 177.44 consequently, the bid request must state the project is subject to *prevailing wage*. These rules require that the wages of laborers and workers should be comparable to wages paid for similar

9. Liability

The Grantee must indemnify, save, and hold the State, its agents, and employees harmless from any claims or causes of action, including attorney's fees incurred by the State, arising from the performance of this grant contract by the Grantee or the Grantee agents or employees. This clause will not be construed to bar any legal remedies the Grantee may have for the State's failure to fulfill its obligations under this grant contract.

10. Audits (State and Single)

Under Minn. Stat. §16B.98, subd. 8 and 2 CFR 200.331, the Grantee the Grantee's books, records, documents, and accounting procedures and practices of the Grantee or other party relevant to this grant contract or transaction are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this grant contract, receipt and approval of all final reports, or the required period of time to satisfy all state and program retention requirements, whichever is later.

All state and local governments, colleges and universities, and non-profit organizations that expend \$750,000 or more of Federal awards in a fiscal year must have a single audit according to the OMB Uniform Guidance: Cost Principles, Audit, and Administrative Awards Requirements for Federal Awards. This is \$750,000 total Federal awards received from all sources. If an audit is completed, forward a copy of the report to both the State's Authorized Representative and the State Auditor.

11. Government Data Practices and Intellectual Property

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

11.2 Intellectual Property Rights (if applicable).

11.2.1. **Intellectual Property Rights.** The State owns any intellectual property developed with these funds. The federal awarding agency may receive royalty-free, non-exclusive and an irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so as noted in 2 CFR 200.315.

11.2.2 Obligations.

(A) **Notification.** Whenever any invention, improvement, or discovery (whether or not patentable) is

made or conceived for the first time or actually or constructively reduced to practice by the Grantee, including its employees and subcontractors, in the performance of this contract, the Grantee will immediately give the State's Authorized Representative written notice thereof, and must promptly furnish the Authorized Representative with complete information and/or disclosure thereon.

- (B) *Representation.* The Grantee must perform all acts and take all steps necessary to ensure that all intellectual property rights in the Works and Documents are the sole property of the State, and that neither Grantee nor its employees, agents, or subcontractors retain any interest in and to the Works and Documents. The Grantee represents and warrants that the Works and Documents do not and will not infringe upon any intellectual property rights of other persons or entities. Notwithstanding Clause 9, the Grantee will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless the State, at the Grantee's expense, from any action or claim brought against the State to the extent that it is based on a claim that all or part of the Works or Documents infringe upon the intellectual property rights of others. The Grantee will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney fees. If such a claim or action arises, or in the Grantee's or the State's opinion is likely to arise, the Grantee must, at the State's discretion, either procure for the State the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing Works or Documents as necessary and appropriate to obviate the infringement claim. This remedy of the State will be in addition to and not exclusive of other remedies provided by law.

12. Workers' Compensation

The Grantee certifies that it is in compliance with Minn. Stat. §176.181, Subd. 2, pertaining to workers' compensation insurance coverage. The Grantee's employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way the State's obligation or responsibility.

13. Endorsement

The Grantee must not claim that the State endorses its products or services, and the Grantee must adhere to the terms of 2 CFR 200.315.

14. Governing Law, Jurisdiction, and Venue

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

15. Termination

15.1 Termination by the State

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

15.2 Termination for Cause

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

15.3 Termination for Insufficient Funding

The State may immediately terminate this grant contract if:

- (a) Funding for Grant No. TRAL027 is withdrawn by the United States Department of Transportation, Federal Highway Administration.

16. Data Disclosure

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

17. American Disabilities Act

The Grantee is subject to complying with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101 et seq.) and all applicable regulations and guidelines.

18. Non-Discrimination Requirements

No person in the United States must, on the ground of race, color, national origin, handicap, age, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under, any program or activity receiving Federal financial assistance. Including but not limited to:

- a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.) and DOC implementing regulations published at 15 C.F.R. Part 8 prohibiting discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance; Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.) prohibiting discrimination on the basis of sex under Federally assisted education programs or activities.
- b) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), and DOC implementing regulations published at 15 C.F.R. Part 8b prohibiting discrimination on the basis of handicap under any program or activity receiving or benefiting from Federal assistance.
- c) The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.), and DOC implementing regulations published at 15 C.F.R. Part 20 prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance.

Any other applicable non-discrimination law(s).

19. Reporting Requirements

The Grantee is bound to financial reporting requirements as noted in the approved Project Scope and Budget contained in Attachment "A", which is attached and incorporated into this grant contract.

20. Monitoring

The State shall be allowed at any time to conduct periodic site visits and inspections to ensure work progress in accordance with this grant contract, including a final inspection upon program completion. At least one monitoring visit per grant period on all state grants of over \$50,000 will be conducted and at least annual monitoring visits on grants of over \$250,000.

Following closure of the program, the State's authorized representatives shall be allowed to conduct post-completion inspections of the site to ensure that the site is being properly operated and maintained and that no conversion of use has occurred.

21. Invasive Species Prevention

Grantees and subcontractors must follow Minnesota DNR's Operational Order 113, which requires preventing or limiting the introduction, establishment and spread of invasive species during activities on public waters and DNR-administered lands. This applies to all activities performed on all lands under this grant agreement and is not limited to lands under DNR control or public waters. Duties are listed under Sections II and III (p. 5-8) of Operational Order 113 which may be found at http://files.dnr.state.mn.us/assistance/grants/habitat/heritage/oporder_113.pdf.

TERRESTRIAL WORK SITES include:

The grantee shall prevent invasive species from entering into or spreading within a project site by cleaning equipment and clothing prior to arriving at the project site.

If the equipment or clothing arrives at the project site with soil, aggregate material, mulch, vegetation (including seeds) or animals, it shall be cleaned by grantee furnished tool or equipment (brush/broom, compressed air or pressure washer) at the staging area. The grantee or subcontractor shall dispose of material cleaned from equipment and clothing at a location determined by the DNR Grant Administrator or their representative. If the material cannot be

disposed of onsite, secure material prior to transport (sealed container, covered truck, or wrap with tarp) and legally dispose of offsite.

AQUATIC WORK SITES include:

The grantee shall prevent invasive species from entering into or spreading within a project site by cleaning equipment and clothing prior to arriving at the project site.

If the project site includes a water body, the grantee shall clean equipment and clothing as noted above, prior to entering and leaving the water body. Prior to leaving the water body, drain water from all equipment, tanks or water retaining components of boats (motors, live well and bilge). Immediately after leaving the water body, drain water from transom wells onto dry land.

22. Pollinator Best Management Practices

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

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

- 23.1. The prospective lower tier participant certifies, by submission of this contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- 23.2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this contract.

24. Whistleblower Protection Rights

Recipient Employee Whistleblower Rights and Requirement To Inform Employees of Whistleblower Rights

(a) This award and employees working on this financial assistance contract will be subject to the whistleblower rights and remedies in the pilot program on Award Recipient employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub.L. 112-239)

(b) The Award Recipient shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712

(c) The Award Recipient shall insert the substance of this clause, including this paragraph (c), in all sub awards or subcontracts over the simplified threshold. 42 CFR & 52.203-17 (as referenced in 42 CFR & 3.908-9)

25. Conflict of Interest

It is the policy of the State of Minnesota to work to deliberately avoid actual and potential conflict of interests related to grant making at both the individual and organizational levels.

A conflict of interest (actual or potential) occurs when a person has actual or apparent duty or loyalty to more than one organization and the competing duties or loyalties may result in actions which are adverse to one or both parties. A conflict of interest exists even if no unethical, improper, or illegal act results from it.

The Grantee, by signing this contract with the State, certifies it has read and understands the Office of Grants Management Conflict of Interest Policy 08-01, will maintain an adequate Conflict of Interest Policy and, throughout the term of the contract, monitor and report any actual or potential conflicts of interest to the State's Authorized Representative.

26. COVID 19

All work completed for this contract must adhere to the following conditions until all State executive orders related to COVID 19 are rescinded or expired.

- Allowed activities and work performed should, to the maximum extent possible, be conducted in a manner that adheres to Minnesota Occupational Safety and Health Standards and the Minnesota Department of Health and CDC Guidelines related to COVID-19, including social distancing and hygiene.
- The current list of Critical Sector Exemptions is maintained by the Department of Health and can be found at <http://staysafe.mn.gov/>.

27. Force majeure

Neither party shall be responsible to the other or considered in default of its obligations within this Contract to the extent that performance of any such obligation is prevented or delayed by acts of God, war, riot, disruption of government, or other catastrophes beyond the reasonable control of the party unless the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party relying on this provision to excuse performance must provide the other party prompt written notice of the inability to perform and take all necessary steps to bring about performance as soon as practicable.

28. Additional Program Requirements

The grantee must comply with the following additional program requirements, state and federal law requirements, requirements of the award, as well as the terms and conditions for closeout of the sub-award.

28.1 Reimbursable Costs.

Eligible costs shall be those costs directly incurred by the Grantee in preparation of and the actual conduct of the Project. Eligible shall be based upon the approved Application and can include the following types of costs provided they are solely related to and necessary for the completion of the Project:

- 28.1.1 Advertising costs solely for (1) Recruitment of personnel; (2) Solicitation of bids; and (3) Disposal of scrap materials;
- 28.1.2 Capital and labor expenditures for facilities, equipment and other capital assets and/or the maintenance of real or personal property which is the subject of the approved Application;
- 28.1.3 Communication costs incurred for telephone calls and postage;
- 28.1.4 Materials and supplies;
- 28.1.5 Freight transportation expenses; and
- 28.1.6 Professional services and administrative costs for the "Project" provided they do not exceed 20% of the total cost of the Project; and
- 28.1.7 Land (including permanent easements) whose value does a licensed appraiser establishes and whose conclusions of value are certified by the state.

Any cost not defined as an eligible cost or not included in the approved Application shall not be paid from the funds received by Grantee under this Contract.

28.2 Non-reimbursable Costs.

Non-eligible costs for reimbursement means all costs not defined as eligible costs, including but not limited to the following that applies to sub-grantee and their associated trail club/organization or project partner:

- 28.2.1 Any expenditure that occurs before the effective date of this contract;
- 28.2.2 Fund raising;
- 28.2.3 Taxes, except sales tax on goods and services;
- 28.2.4 Insurance, except title insurance;
- 28.2.5 Attorneys fees;
- 28.2.6 Loans, grants, or subsidies to persons or entities for development;
- 28.2.7 Bad debts, late payment fees, finance charges or contingency funds;
- 28.2.8 Interest, investment management fees;
- 28.2.9 Lobbyists;
- 28.2.10 Political contributions;
- 28.2.11 Wages and expenses of Grantee's employees;
- 28.2.12 Fringe benefit costs of Grantee's employees; and
- 28.2.13 Land appraisals;

- 28.2.14 Entertainment, gifts and prizes, food and refreshments;
- 28.2.15 Purchase of phones, computers, tablets or audiovisual equipment;
- 28.2.16 Memberships (including subscriptions and dues), publications, periodicals and other subscription fees
- 28.2.17 Agency advertising and marketing expenses
- 28.2.18 Office Rental Fees, and Overhead and Indirect Expenses (including, but not limited to office or storage space rental, utility expenses, copier rental, phone bills, office materials and supplies).

1. STATE ENCUMBRANCE VERIFICATION

Individual certifies that funds have been encumbered as required by Penn. Statutes 16A.15.

Signed: *Karen Patin*
63FBE77957A34A6...

Date: November 17, 2021

SWIFT Contract/PO No(s). 204050/PO# 3000200686

2. GRANTEE

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

By: _____

Title: _____

Date: _____

3. STATE AGENCY

By: _____
(with delegated authority)

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

Attachment A

PROJECT SCOPE and BUDGET

Recipient: City of Hermantown

Grant/Project #: 0022-21-2C

Grant Amount: \$36,825

Match: \$12,275 Hermantown Night Riders Snowmobile Club

Total Project Cost: \$49,100

Project Scope: To purchase groomer to groom trails in Keene Creek Park and support grooming and maintenance of 54 miles of trail system throughout Hermantown, Proctor and Duluth.

Notes: The Financial Management Manual, payment request form and cost summary data sheet are available on our website at <http://www.dnr.state.mn.us/grants/recreation/index.html>. Click on the trail program in which you are participating and look under the "For the Grantee" in the far left column for Project Administration. Click on Project Administration and go to Grant Expenditures and Requests for Reimbursement for the manual and forms.

Attachment B

RESOLUTION

Resolution No. 2021-18

RESOLUTION AUTHORIZING THE CITY OF HERMANTOWN TO SPONSOR A GRANT FOR THE PURCHASE OF SNOWMOBILE TRAIL MAINTENACE EQUIPMENT BY THE HERMANTOWN NIGHT RIDERS

BE IT RESOLVED by the City Council of the City of Hermantown, Minnesota, as follows:

WHEREAS, the City of Hermantown has the legal authority to sponsor a grant funding request to Minnesota Department of Natural Resources (STATE) for an Equipment Grant (PROJECT), in order for the Hermantown Night Riders, project partner with the City, to purchase snowmobile trail maintenance equipment; and

WHEREAS, the City of Hermantown supports the grant application made to the Minnesota Department of Natural Resources for the Federal Recreational Trail Program; and

WHEREAS, the City of Hermantown and the Hermantown Night Riders recognizes the twenty-five (25) percent match requirement for the Federal Recreation Trail Program, and has secured the matching funds; and

WHEREAS, that, if selected for funding by the STATE, the City shall act as a legal sponsor for the PROJECT as funded by the MN Department of Natural Resources and that the City is hereby authorized to apply to the STATE for funding of this project on behalf of the City; and

WHEREAS, if the City of Hermantown is awarded a grant by the Minnesota Department of Natural Resources, the City of Hermantown agrees to accept the grant award, and may enter into an agreement with the State of Minnesota for the above referenced project. The City of Hermantown will comply with all applicable laws, environmental requirements and regulations as stated in the grant agreement; and

WHEREAS, the City of Hermantown has not incurred any development costs and the Hermantown Night Riders are responsible for any grant matches.

NOW, THEREFORE BE IT RESOLVED that the applicant has read the Conflict of Interest Policy contained in the Trail Program Grant Manual and certifies it will report any actual, potential, perceived, or organizational conflicts of interest upon discovery to the state related to the application or grant award.

BE IT FURTHER RESOLVED that the application for a Trail Program Grant is hereby approved and the City Administrator is hereby authorized to execute and submit the application on behalf of the City.

Councilor Peterson introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor Nelson and, upon a vote being taken thereon, the following voted in favor thereof:

Councilors Geissler, Hauschild, Nelson, Peterson, Mayor Boucher, aye.

and the following voted in opposition thereto:

None

WHEREUPON, such resolution was declared duly passed and adopted February 1, 2021.

Attachment C

Materials Management Inventory Form For Equipment Purchased Through the Federal Recreational Trail Program

(Please fill out as clearly as possible)

Title Holder:

Purchase Date:

Grant/Project Number:

Serial/Identification Number:

Source of Purchase:

Make/Model:

Model year of the item:

Original purchase price:

Current Market Value of the item:

Federal Participation in the Cost:

Who (group or person) is responsible for the item:

Where is the item going to be stored:

**RESOLUTION AUTHORIZING AND DIRECTING MAYOR AND CITY CLERK
TO EXECUTE AND DELIVER A SUBGRANT AGREEMENT WITH
HERMANTOWN NIGHT RIDERS SNOWMOBILE CLUB**

WHEREAS, the Hermantown Night-Riders Snowmobile Club (“Club”) is a snowmobile club that has developed and continues to maintain fifty-nine (59) miles of Grant-In-Aid trails (“Snowmobile Trails”), including a portion of which runs through the City of Hermantown (“City”); and

WHEREAS, the City supports the Club and desires to promote outdoor activities for the benefit of the public; and

WHEREAS, City and Club jointly applied for and received a grant (“Grant”) for the purchase of snowmobile trail grooming equipment (“Groomer”) from the State of Minnesota; and

WHEREAS, the Club desires to utilize the Groomer on the Snowmobile Trails through the City to enhance enjoyment and use of the Snowmobile Trail pursuant to an existing Trail Grooming License Agreement with the City; and

WHEREAS, the City agrees to subgrant its rights and obligations under the Grant to the Club pursuant to the terms and provisions of the Subgrant Agreement attached hereto as Exhibit A; and

WHEREAS, the City Council has considered this matter and believes it is in the best interest of the City to authorize and direct the Mayor and City Clerk to enter into the Subgrant Agreement attached hereto as Exhibit A on behalf of the City of Hermantown.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Hermantown, Minnesota, as follows:

1. That the Subgrant Agreement with Hermantown Night Riders Snowmobile Club and Hermantown attached hereto as Exhibit A is hereby approved.
2. The Mayor and City Clerk are hereby authorized and directed to execute and deliver the Subgrant Agreement on behalf of the City.

Councilor _____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor _____ and, upon a vote being taken thereon, the following voted in favor thereof:

and the following voted in opposition thereto:

WHEREUPON, such resolution was declared duly passed and adopted on December 6, 2021.

EXHIBIT A

SUBGRANT AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 2021, between **City of Hermantown**, a Minnesota statutory city, (“City”) and **Hermantown Night-Riders Snowmobile Club**, a Minnesota non-profit corporation (“Club”):

A. The Club is a snowmobile club that developed and maintains fifty-nine (59) miles of Grant-In-Aid trail connecting the Munger Trail in the South, North to Fish Lake and the North Shore trail all of which runs through Duluth, Proctor, Hermantown, Rice Lake, and Fredenberg, Minnesota (“Snowmobile Trail”).

B. The City is supportive of the Club’s work and wants to promote recreational activities that benefit the residents of Hermantown and the surrounding area.

C. The City and the Club worked together to apply for and receive a grant for snowmobile trail grooming equipment (“Groomer”) from the State of Minnesota. A copy of the grant contract # 0022-21-2C (“Grant”) is attached hereto as Exhibit A.

D. The Club desires utilize the Groomer to groom the Snowmobile Trail on, which would increase snowmobile usage through the City of Hermantown and enhance enjoyment of the Snowmobile Trail by users.

E. The City and the Club agree to subgrant the City’ rights and obligations under the Grant to the Club.

NOW, THEREFORE, in consideration of mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficient of which are hereby acknowledged, the parties agree as follows:

1. **Recitals.** The Recitals are included as a part hereof.
2. **Grant Requirements.** The parties agree that the Club will administer the City’s obligations under the Grant. The Club will use the Groomer in compliance with the Grant.
3. **Term.** The term of this Agreement shall be concurrent with the City’s obligations under the Grant. The City shall have the right to terminate this Agreement at any time upon thirty (30) days written notice to the Club.
4. **Ownership of Groomer.** The Groomer shall be owned by the Club.
5. **Grooming Requirements.** The parties hereto agree that Club shall have the sole responsibility for use of the Groomer on the Snowmobile Trail, and Club covenants and agrees that:

5.1. Club will groom the Snowmobile Trail according to the terms of its existing Trail Grooming License with the City, but no less than one time per week during the snowmobile season, once the snow cover has achieved sufficient depth.

5.2. The Groomer shall be kept at 3677 Okerstrom Road during the winter months and at 5186 Martin Road during the summer months and for repairs and service. The groomer will be stored indoors to the extent possible. The Groomer will be used only for grooming the Snowmobile Trail or other public purposes.

6. **Repairs and Maintenance.** Club, at Club's sole cost and expense, shall (a) keep the Groomer in good repair, operating condition, appearance and working order in compliance with the manufacturer's recommendations and Club's standard practices, (b) properly service all components of Groomer following the manufacturer's written operating and servicing procedures, (c) replace any part of the Groomer that becomes unfit or unavailable for use from any cause with a replacement part that is of the same manufacture, value, remaining useful life and utility as the replaced part immediately preceding the replacement, assuming that such replaced part was in the condition.

7. **Insurance.** Prior to use of the Groomer and Property for activities provided herein, Club, at its sole cost and expense, will procure, and will maintain during the term of this Agreement, or any continued term of this Agreement, insurance adequate to cover all liability herein assumed by Club and to protect City and its councilors, officers, employees and agents with respect to losses arising out of the use of the Groomer and Property by Club its officers, councilors, employees, agents, contractors, suppliers, etc. The insurance policies will name City its officers, councilors, employees and agents as Additional Insureds and will be endorsed to provide coverage to these Additional Insureds on a primary basis without seeking contribution from any other insurance available to City.

8. **Execution of Documents.** All parties agree to execute any and all additional documents that may be necessary to implement the full terms and conditions of this Agreement.

9. **Notice of Material Change.** The Club will promptly notify the City in writing of any material change to the Groomer, the Club's status, or its ability to comply with this Agreement.

10. **Notices.** Any notice required or permitted to be given under this Agreement will be in writing and deemed to have been given when deposited in a United States Post Office, registered or certified mail, postage prepaid, return receipt requested and addressed as follows:

If to City: City of Hermantown
 Attn: City Administrator
 5105 Maple Grove Rd
 Hermantown, MN 55811

If to Club: Hermantown Night-Riders Snowmobile Club
 5186 Martin Road
 Duluth, MN 55811
 Attn: President

11. **Entire Agreement.** This Agreement and the Exhibits attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions and understandings between the City and the Club concerning the Grant and the Groomer and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement will be binding upon the City or the Club unless reduced to writing and signed by them.

12. **Interpretation.** The laws of the State of Minnesota and all terms will govern this Agreement and covenants will be interpreted in accordance herewith.

13. **Modifications.** Any amendments or modifications to this Agreement must be in writing and signed by the parties.

14. **Relationship of Parties.** The relationship of the parties is that of independent contractors and in no way establishes an agency relationship.

[SIGNATURES APPEAR ON NEXT PAGE]

TO: Mayor & City Council
FROM: John Mulder, City Administrator
DATE: November 17, 2021
SUBJECT: Lavaque Junction
Street Improvement
District No. 537



Meeting Date: December 6, 2021
Agenda Item: 12-F
Resolution: 2021-157

REQUESTED ACTION

Approve Final Pay Application and Final Compensating Change Order to Ulland Brothers, Inc. for the construction related to the Lavaque Junction Project – Street Improvement District No. 537.

BACKGROUND

Attached is the Final Pay Application and Final Compensating Change Order for the work associated with the Lavaque Junction Project – Street Improvement District No. 537. The Final Compensating Change Order adjusts the completed/ final quantities to reflect the final contract amount. The final compensating amount is (\$8,952.35). The final Pay Application amount is **\$150,000.79**. The City will release the 5% retainage that has previously been held. Once approved final payment will be made after we receive the required IC-134 forms.

NCE has reviewed the and agreed on the final quantities through construction inspection and discussions with Ulland Brothers, Inc. representatives. I recommend the final payment in the amount of **\$150,000.79** be authorized at the December 6, 2021 City Council Meeting.

SOURCE OF FUNDS (if applicable)

City of Hermantown General Fund

ATTACHMENTS

Final Payment Application
Final Compensating Change Order

Resolution No. 2021-157

RESOLUTION APPROVING FINAL COMPENSATING CHANGE ORDER AND FINAL PAY REQUEST FOR ROAD IMPROVEMENT DISTRICT NO. 537 (LAVAQUE JUNCTION ROAD) TO ULLAND BROTHERS, INC. IN THE AMOUNT OF \$150,000.79

WHEREAS, the City of Hermantown has contracted with Ulland Brothers, Inc. for construction of Road Improvement District No. 537 (Lavaque Junction Road) (“Project”); and

WHEREAS, Ulland Brothers, Inc. has performed the agreed upon work in said Project; and

WHEREAS, Ulland Brothers, Inc. has submitted a Final Compensating Change Order and a Final Pay Request in the amount of \$150,000.79; and

WHEREAS, Northland Consulting Engineers LLP has recommended and the City Administrator have approved such Final Compensating Change Order and Final Pay Request; and

WHEREAS, the necessary documentation for the final compensating change order final pay request is on file and available for inspection.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Hermantown, Minnesota as follows:

1. Final Compensating Change Order and Final Pay Request is hereby approved.
2. The City is hereby authorized and directed to pay to Ulland Brothers, Inc. the sum of \$150,000.79 which is the amount represented on the Final Compensation Change Order and the Final Pay Request.

Councilor introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor and, upon a vote being taken thereon, the following voted in favor thereof:

Councilors

and the following voted in opposition thereto:

WHEREUPON, such resolution has been duly passed and adopted December 6, 2021.

November 17, 2021

John Mulder
City Administrator
City of Hermantown
5105 Maple Grove Road
Hermantown MN 55811

Re: Lavaque Junction – Street Improvement District No. 537
Final Pay Estimate and Final Compensating Change Order

Dear John:

Attached are the Final Pay Application and Final Compensating Change Order for the work associated with the reconstruction of Lavaque Junction project. NCE and Ulland Brothers, Inc. have reviewed the project and agreed upon the final quantities of work completed. The amount of the Final Pay Application is **\$150,000.79**. We will release the retainage against the project.

I have reviewed and inspected the project and certify that the project has been constructed in accordance with the plans and specifications. I hereby am recommending that the City take ownership and maintenance of the Lavaque Junction Street Improvement Project. Lastly, I recommend payment Final Payment in the amount of **\$150,000.79** be authorized at the December 6, 2021 City Council Meeting.

Please contact me with any questions you may have.

Thank you,



David Bolf, P.E. – City Engineer
Northland Consulting Engineers
218-727-5995
david@nce-duluth.com

CC: Ryan Swanson – Ulland Brothers, Inc

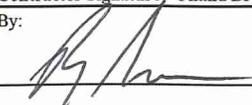
Contractor's Application for Payment			Final
Application Period:	September 27, 2021 through October 16, 2021	Application Date:	11/11/2021
To (Owner):	City of Hermantown	Project:	Lavaque Junction Street Impr. District #537
Owner's Contract Number:	Street Improvement District #537	From (Contractor):	Ulland Brothers Inc.
		Contractor's Project Number:	
		Engineer Project Number:	20-8014
		Via (Engineer):	Northland Consulting Engineers, LLP

Application For Payment Change Order Summary		
Approved Change Orders		
Number	Additions	Deductions
1	\$ 138,257.56	
2	\$ 147,281.10	
3		\$ (8,952.35)
4		
TOTAL	\$ 285,538.66	\$ (8,952.35)
NET CHANGE BY CHANGE ORDER:		\$276,586.31

Application For Payment Previous Pay Application Summary		
Approved Pay Applications		
Number	Date	Amount
1	4/27/2021	\$ 38,462.73
2	6/1/2021	\$ 200,380.27
3	7/6/2021	\$ 275,049.98
4	8/2/2021	\$ 387,914.09
5	9/7/2021	\$ 353,661.35
6	9/27/2021	\$ 224,407.10
8. TOTALS		\$1,479,875.52

1. ORIGINAL CONTRACT PRICE.....	\$	<u>1,353,290.00</u>
2. Net change by Change Orders.....	\$	<u>276,586.31</u>
3. Final Contract Price (Line 1 ± 2).....	\$	<u>1,629,876.31</u>
4. TOTAL COMPLETED AND STORED TO DATE		
See attached Pay Application Summary.....	\$	<u>1,629,876.31</u>
5. RETAINAGE:		
a. 5% X Work Completed.....	\$	<u> </u>
b. 5% X Stored Material.....	\$	<u> </u>
c. Total Retainage (Line 5.a + Line 5.b).....	\$	<u> </u>
6. AMOUNT ELIGIBLE TO DATE (Line 4 - Line 5.c).....	\$	<u>1,629,876.31</u>
7. LESS PREVIOUS PAYMENTS (Line 8).....	\$	<u>1,479,875.52</u>
9. AMOUNT DUE THIS APPLICATION.....	\$	<u>150,000.79</u>
10. BALANCE TO FINISH, PLUS RETAINAGE (Line 3 - 4 + Line 5.c above).....	\$	<u> </u>

Final Payment of: \$ 150,000.79
(Line 9 or other - attach explanation of the other amount)

Contractor's Certification	
The undersigned Contractor certifies, to the best of its knowledge, the following: (1) All previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with the Work covered by prior Applications for Payment; (2) Title to all Work, materials and equipment incorporated in said Work, or otherwise listed in or covered by this Application for Payment, will pass to Owner at time of payment free and clear of all Liens, security interests, and encumbrances (except such as are covered by a bond acceptable to Owner indemnifying Owner against any such Liens, security interest, or encumbrances); and	
Contractor Signature - Ulland Brothers Inc.	
By: 	Date: 11-15-2021

Recommended by:  11/11/2021
David Bolf, P.E. - City Engineer (Date)

Approved by: _____
John Mulder, City Administrator (Date)



Structural, Civil and Forensic Engineering

Final Pay Estimate - 10/27/2021
City of Hermantown
Lavaque Junction
Street Improvement District #537

Item No.	Spec. Number	Item Description	Unit of Measure	Contract Total Quantities	Ulland Unit Price	Total Project	
						Completed Quantities	Completed Cost
BASE BID							
1	2021.501	MOBILIZATION	LS	1	\$24,174.15	1	\$ 24,174.15
2	2101.501	CLEARING AND GRUBBING	LS	1	\$16,000.00	1	\$ 16,000.00
3	2101.524	CLEARING	TREE	35	\$400.00	42	\$ 16,800.00
4	2101.524	GRUBBING	TREE	35	\$170.00	42	\$ 7,140.00
5	2104.502	REMOVE SIGN TYPE C	EACH	38	\$40.00	38	\$ 1,520.00
6	2104.502	REMOVE MAIL BOX SUPPORT	EACH	35	\$35.00	35	\$ 1,225.00
7	2104.502	REMOVE HYDRANT	EACH	5	\$800.00	5	\$ 4,000.00
8	2104.502	SALVAGE HYDRANT	EACH	1	\$1,200.00	1	\$ 1,200.00
9	2104.502	SALVAGE PIPE APRON	EACH	1	\$200.00	1	\$ 200.00
10	2104.503	REMOVE PIPE CULVERTS	LF	896	\$11.00	948	\$ 10,428.00
11	2104.503	REMOVE WATER SERVICE PIPE	LF	46	\$9.00	46	\$ 414.00
12	2104.503	SAWING BITUMINOUS PAVEMENT (FULL DEPTH)	LF	370	\$2.00	370	\$ 740.00
13	2104.503	SAWING CONCRETE PAVEMENT (FULL DEPTH)	LF	12	\$3.00	12	\$ 36.00
14	2104.504	REMOVE BITUMINOUS PAVEMENT	SY	9,852	\$1.80	9852	\$ 17,733.60
15	2104.504	REMOVE BITUMINOUS DRIVEWAY PAVEMENT	SY	800	\$6.00	800	\$ 4,800.00
16	2104.504	REMOVE CONCRETE DRIVEWAY PAVEMENT	SY	12	\$39.00	12	\$ 468.00
17	2104.618	SALVAGE BRICK PAVERS	SF	455	\$8.30	455	\$ 3,776.50
18	2105.601	WETLAND RESTORATION	LS	1	\$2,500.00	1	\$ 2,500.00
19	2105.507	SELECT GRANULAR BORROW MOD 7% (CV)	CY	8,143	\$12.00	8143	\$ 97,716.00
20	2106.504	GEOTEXTILE FABRIC TYPE 5	SY	22,429	\$2.50	19105	\$ 47,762.50
21	2106.507	COMMON EXCAVATION	CY	14,776	\$10.80	14776	\$ 159,580.80
22	2106.507	MUCK EXCAVATION	CY	5,500	\$10.70	5240	\$ 56,068.00
23	2106.507	GRANULAR BORROW (CV)	CY	5,500	\$16.00	5240	\$ 83,840.00
24	2130.523	WATER	MGAL	52	\$35.00	69	\$ 2,415.00
25	2211.507	AGGREGATE BASE (CV) CLASS 5	CY	3,910	\$30.00	3910	\$ 117,300.00
26	2211.507	AGGREGATE BASE (CV) CLASS 5 DRIVEWAY	CY	164	\$75.00	142	\$ 10,650.00
27	2221.507	SHOULDER BASE AGGREGATE (CV) CLASS 5	CY	395	\$45.00	395	\$ 17,775.00
28	2215.504	FULL DEPTH RECLAMATION	SY	2,462	\$4.20	2462	\$ 10,340.40
29	2360.509	TYPE SP 9.5 WEARING COURSE MIXTURE (3,B)	TON	1,616	\$60.00	1726	\$ 103,560.00
30	2360.509	TYPE SP 12.5 NON-WEARING COURSE MIXTURE (3,B)	TON	1,616	\$58.00	1656	\$ 96,048.00
31	2360.609	TYPE SP 9.5 BITUMINOUS MIXTURE FOR PATCHING	TON	127	\$185.00	190	\$ 35,150.00
32	2401.507	STRUCTURE EXCAVATION CLASS R	CY	70	\$300.00	57	\$ 17,100.00
33	2411.507	GRANULAR BACKFILL (CV)	CY	140	\$26.00	140	\$ 3,640.00
34	2451.507	COARSE FILTER AGGREGATE (CV)	CY	82	\$31.00	82	\$ 2,542.00
35	2501.502	24" RC PIPE APRON	EACH	4	\$800.00	4	\$ 3,200.00
36	2501.503	36" RC PIPE APRON	EACH	1	\$200.00	1	\$ 200.00
37	2501.503	24" RC PIPE CULVERT	LF	88	\$90.00	80	\$ 7,200.00
38	2501.503	36" RC PIPE CULVERT	LF	8	\$72.00	8	\$ 576.00
39	2501.503	12" CS PIPE CULVERT	LF	34	\$31.00	34	\$ 1,054.00
40	2501.503	15" CS PIPE CULVERT	LF	1,258	\$31.00	1356	\$ 42,036.00
41	2504.602	CONNECT TO EXISTING WATER MAIN	EACH	2	\$2,200.00	2	\$ 4,400.00
42	2504.602	RELOCATE HYDRANT	EACH	1	\$1,600.00	1	\$ 1,600.00
43	2504.602	HYDRANT	EACH	9	\$7,300.00	9	\$ 65,700.00
44	2504.602	8" GATE VALVE AND BOX	EACH	3	\$3,000.00	3	\$ 9,000.00
45	2504.602	1" CURB STOP AND BOX	EACH	1	\$400.00	1	\$ 400.00
46	2504.602	1" CORPORATION STOP	EACH	1	\$400.00	1	\$ 400.00
47	2504.603	1" TYPE K COPPER PIPE	LF	54	\$28.00	52	\$ 1,456.00
48	2504.603	HYDRANT RISER	LF	10	\$1,000.00	0	\$ -
49	2504.603	6" WATERMAIN HDPE SDR-11	LF	30	\$71.00	30	\$ 2,130.00
50	2504.603	6" WATERMAIN DUCTILE IRON CL-53	LF	49	\$90.00	27	\$ 2,430.00
51	2504.603	8" WATERMAIN HDPE SDR-11	LF	1,289	\$47.00	1289	\$ 60,583.00
52	2504.604	4" POLYSTYRENE INSULATION	SY	67	\$60.00	130	\$ 7,800.00
53	2506.502	ADJUST FRAME AND RING CASTING	EACH	11	\$400.00	12	\$ 4,800.00
54	2506.502	MANHOLE FRAME SEAL (EXTERNAL)	EACH	11	\$450.00	12	\$ 5,400.00
55	2511.507	RANDOM RIPRAP CLASS II	CY	11	\$68.00	11	\$ 748.00
56	2531.504	6" CONCRETE DRIVEWAY PAVEMENT	SY	12	\$145.00	0	\$ -
57	2540.602	MAIL BOX SUPPORT	EACH	39	\$125.00	39	\$ 4,875.00
58	2540.618	INSTALL BRICK PAVERS	SF	300	\$18.00	300	\$ 5,400.00
59	2563.601	TRAFFIC CONTROL	LS	1	\$2,000.00	1	\$ 2,000.00
60	2564.502	INSTALL SIGN PANEL TYPE C	EACH	45	\$125.00	51	\$ 6,375.00
61	2564.518	SIGN PANELS TYPE C	SF	54	\$36.00	79	\$ 2,844.00
62	2573.501	EROSION CONTROL SUPERVISOR	LS	1	\$2,000.00	1	\$ 2,000.00
63	2573.501	STABILIZED CONSTRUCTION EXIT	LS	2	\$1,200.00	2	\$ 2,400.00
64	2573.502	CULVERT END CONTROLS	EACH	45	\$235.00	0	\$ -
65	2573.503	SILT FENCE, TYPE HI	LF	1,095	\$3.05	1792	\$ 5,465.60
66	2573.503	SEDIMENT CONTROL LOG TYPE WOOD FIBER	LF	410	\$2.90	78	\$ 226.20
67	2574.507	COMMON TOPSOIL BORROW	CY	1,400	\$26.00	1200	\$ 31,200.00
68	2574.508	FERTILIZER TYPE 1	POUND	254	\$1.00	254	\$ 254.00
69	2575.504	EROSION CONTROL BLANKET CATEGORY 3N	SY	6,121	\$1.60	7135	\$ 11,416.00
70	2575.504	SODDING TYPE LAWN	SY	12,366	\$4.80	13265	\$ 63,672.00
71	2575.505	SEEDING	ACRE	1.27	\$90.00	1.27	\$ 114.30
72	2575.508	SEED MIXTURE 25-131 (UPLAND)	POUND	96	\$3.10	96	\$ 297.60
73	2575.508	SEED MIXTURE 34-371 (WETLAND)	POUND	57	\$82.00	57	\$ 4,674.00
74	2582.503	4" SOLID LINE PAINT (WR)	LF	10,496	\$0.25	10496	\$ 2,624.00
75	2582.503	4" DOUBLE SOLID LINE PAINT (WR)	LF	5,248	\$0.50	5248	\$ 2,624.00
76	2582.503	24" SOLID LINE PAINT (WR)	LF	30	\$5.00	24	\$ 120.00
77	C/O #1	ROCK REMOVAL AND FILL BORE HOLES	LUMP SUM	1	\$40,614.01	1	\$ 40,614.01
78	C/O #1	ROCK BORE	LUMP SUM	1	\$97,643.55	1	\$ 97,643.55
79	C/O #2	ADDITIONAL SUBCUT	LUMP SUM	1	\$147,281.10	1	\$ 147,281.10

Final Amount Earned \$ 1,629,876.31

Date of Issuance: 11/11/21	Effective Date:
Owner: City of Hermantown	Owner's Contract No.: 20-8014
Contractor: Ulland Brothers, Inc.	Contractor's Project No.:
Engineer: Northland Consulting Engineers	Engineer's Project No.: 20-8014
Project: Lavaque Junction	SSID:

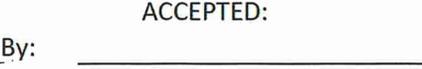
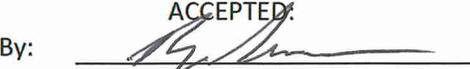
The Contract is modified as follows upon execution of this Final Compensating Change Order:

Description: This change order adjusts the contract quantities to reflect the final completed quantities.

Total = (\$8,952.35)

Attachments: 1) *Final Compensating Summary*

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES
Original Contract Price: \$ <u>1,353,290.00</u>	
Increase from previously approved Change Orders: \$ <u>285,538.66</u>	Extend Contract Time to 10/16/21
Contract Price prior to this Change Order: \$ <u>1,638,828.66</u>	
Decrease of this Change Order: \$ <u>8,952.35</u>	
Final Contract Price incorporating this Change Order: \$ <u>1,629,876.31</u>	

RECOMMENDED:		ACCEPTED:		ACCEPTED:	
By: 	By: _____	By: 	By: 		
Engineer	Owner	Contractor			
Title: <u>City Engineer</u>	Title: _____	Title: <u>Vice-President</u>			
Date: <u>11/11/21</u>	Date: _____	Date: <u>11-15-2021</u>			



Structural, Civil and Forensic Engineering

**Final Compensating Summary
City of Hermantown
Lavaque Junction
Street Improvement District #537**

Item No.	Spec. Number	Item Description	Unit of Measure	Contract Total Quantities	Ulland Unit Price	Total Project		
						Completed Quantities	Compensating Quantities	Cost
BASE BID								
1	2021.501	MOBILIZATION	LS	1	\$24,174.15	1	0	\$ -
2	2101.501	CLEARING AND GRUBBING	LS	1	\$16,000.00	1	0	\$ -
3	2101.524	CLEARING	TREE	35	\$400.00	42	7	\$ 2,800.00
4	2101.524	GRUBBING	TREE	35	\$170.00	42	7	\$ 1,190.00
5	2104.502	REMOVE SIGN TYPE C	EACH	38	\$40.00	38	0	\$ -
6	2104.502	REMOVE MAIL BOX SUPPORT	EACH	35	\$35.00	35	0	\$ -
7	2104.502	REMOVE HYDRANT	EACH	5	\$800.00	5	0	\$ -
8	2104.502	SALVAGE HYDRANT	EACH	1	\$1,200.00	1	0	\$ -
9	2104.502	SALVAGE PIPE APRON	EACH	1	\$200.00	1	0	\$ -
10	2104.503	REMOVE PIPE CULVERTS	LF	896	\$11.00	948	52	\$ 572.00
11	2104.503	REMOVE WATER SERVICE PIPE	LF	46	\$9.00	46	0	\$ -
12	2104.503	SAWING BITUMINOUS PAVEMENT (FULL DEPTH)	LF	370	\$2.00	370	0	\$ -
13	2104.503	SAWING CONCRETE PAVEMENT (FULL DEPTH)	LF	12	\$3.00	12	0	\$ -
14	2104.504	REMOVE BITUMINOUS PAVEMENT	SY	9,852	\$1.80	9852	0	\$ -
15	2104.504	REMOVE BITUMINOUS DRIVEWAY PAVEMENT	SY	800	\$6.00	800	0	\$ -
16	2104.504	REMOVE CONCRETE DRIVEWAY PAVEMENT	SY	12	\$39.00	12	0	\$ -
17	2104.618	SALVAGE BRICK PAVERS	SF	455	\$8.30	455	0	\$ -
18	2105.601	WETLAND RESTORATION	LS	1	\$2,500.00	1	0	\$ -
19	2105.507	SELECT GRANULAR BORROW MOD 7% (CV)	CY	8,143	\$12.00	8143	0	\$ -
20	2106.504	GEOTEXTILE FABRIC TYPE 5	SY	22,429	\$2.50	19105	-3324	\$ (8,310.00)
21	2106.507	COMMON EXCAVATION	CY	14,776	\$10.80	14776	0	\$ -
22	2106.507	MUCK EXCAVATION	CY	5,500	\$10.70	5240	-260	\$ (2,782.00)
23	2106.507	GRANULAR BORROW (CV)	CY	5,500	\$16.00	5240	-260	\$ (4,160.00)
24	2130.523	WATER	MGAL	52	\$35.00	69	17	\$ 595.00
25	2211.507	AGGREGATE BASE (CV) CLASS 5	CY	3,910	\$30.00	3910	0	\$ -
26	2211.507	AGGREGATE BASE (CV) CLASS 5 DRIVEWAY	CY	164	\$75.00	142	-22	\$ (1,650.00)
27	2221.507	SHOULDER BASE AGGREGATE (CV) CLASS 5	CY	395	\$45.00	395	0	\$ -
28	2215.504	FULL DEPTH RECLAMATION	SY	2,462	\$4.20	2462	0	\$ -
29	2360.509	TYPE SP 9.5 WEARING COURSE MIXTURE (3,B)	TON	1,616	\$60.00	1726	110	\$ 6,600.00
30	2360.509	TYPE SP 12.5 NON-WEARING COURSE MIXTURE (3,B)	TON	1,616	\$58.00	1656	40	\$ 2,320.00
31	2360.609	TYPE SP 9.5 BITUMINOUS MIXTURE FOR PATCHING	TON	127	\$185.00	190	63	\$ 11,655.00
32	2401.507	STRUCTURE EXCAVATION CLASS R	CY	70	\$300.00	57	-13	\$ (3,900.00)
33	2411.507	GRANULAR BACKFILL (CV)	CY	140	\$26.00	140	0	\$ -
34	2451.507	COARSE FILTER AGGREGATE (CV)	CY	82	\$31.00	82	0	\$ -
35	2501.502	24" RC PIPE APRON	EACH	4	\$800.00	4	0	\$ -
36	2501.503	36" RC PIPE APRON	EACH	1	\$200.00	1	0	\$ -
37	2501.503	24" RC PIPE CULVERT	LF	88	\$90.00	80	-8	\$ (720.00)
38	2501.503	36" RC PIPE CULVERT	LF	8	\$72.00	8	0	\$ -
39	2501.503	12" CS PIPE CULVERT	LF	34	\$31.00	34	0	\$ -
40	2501.503	15" CS PIPE CULVERT	LF	1,258	\$31.00	1356	98	\$ 3,038.00
41	2504.602	CONNECT TO EXISTING WATER MAIN	EACH	2	\$2,200.00	2	0	\$ -
42	2504.602	RELOCATE HYDRANT	EACH	1	\$1,600.00	1	0	\$ -
43	2504.602	HYDRANT	EACH	9	\$7,300.00	9	0	\$ -
44	2504.602	8" GATE VALVE AND BOX	EACH	3	\$3,000.00	3	0	\$ -
45	2504.602	1" CURB STOP AND BOX	EACH	1	\$400.00	1	0	\$ -
46	2504.602	1" CORPORATION STOP	EACH	1	\$400.00	1	0	\$ -
47	2504.603	1" TYPE K COPPER PIPE	LF	54	\$28.00	52	-2	\$ (56.00)
48	2504.603	HYDRANT RISER	LF	10	\$1,000.00	0	-10	\$ (10,000.00)
49	2504.603	6" WATERMAIN HDPE SDR-11	LF	30	\$71.00	30	0	\$ -
50	2504.603	6" WATERMAIN DUCTILE IRON CL-53	LF	49	\$90.00	27	-22	\$ (1,980.00)
51	2504.603	8" WATERMAIN HDPE SDR-11	LF	1,289	\$47.00	1289	0	\$ -
52	2504.604	4" POLYSTYRENE INSULATION	SY	67	\$60.00	130	63	\$ 3,780.00
53	2506.502	ADJUST FRAME AND RING CASTING	EACH	11	\$400.00	12	1	\$ 400.00
54	2506.502	MANHOLE FRAME SEAL (EXTERNAL)	EACH	11	\$450.00	12	1	\$ 450.00
55	2511.507	RANDOM RIPRAP CLASS II	CY	11	\$68.00	11	0	\$ -
56	2531.504	6" CONCRETE DRIVEWAY PAVEMENT	SY	12	\$145.00	0	-12	\$ (1,740.00)
57	2540.602	MAIL BOX SUPPORT	EACH	39	\$125.00	39	0	\$ -
58	2540.618	INSTALL BRICK PAVERS	SF	300	\$18.00	300	0	\$ -
59	2563.601	TRAFFIC CONTROL	LS	1	\$2,000.00	1	0	\$ -
60	2564.502	INSTALL SIGN PANEL TYPE C	EACH	45	\$125.00	51	6	\$ 750.00
61	2564.518	SIGN PANELS TYPE C	SF	54	\$36.00	79	25	\$ 900.00
62	2573.501	EROSION CONTROL SUPERVISOR	LS	1	\$2,000.00	1	0	\$ -
63	2573.501	STABILIZED CONSTRUCTION EXIT	LS	2	\$1,200.00	2	0	\$ -
64	2573.502	CULVERT END CONTROLS	EACH	45	\$235.00	0	-45	\$ (10,575.00)
65	2573.503	SILT FENCE, TYPE HI	LF	1,095	\$3.05	1792	697	\$ 2,125.85
66	2573.503	SEDIMENT CONTROL LOG TYPE WOOD FIBER	LF	410	\$2.90	78	-332	\$ (962.80)
67	2574.507	COMMON TOPSOIL BORROW	CY	1,400	\$26.00	1200	-200	\$ (5,200.00)
68	2574.508	FERTILIZER TYPE 1	POUND	254	\$1.00	254	0	\$ -
69	2575.504	EROSION CONTROL BLANKET CATEGORY 3N	SY	6,121	\$1.60	7135	1014	\$ 1,622.40
70	2575.504	SODDING TYPE LAWN	SY	12,366	\$4.80	13265	899	\$ 4,315.20
71	2575.505	SEEDING	ACRE	1.27	\$90.00	1.27	0	\$ -
72	2575.508	SEED MIXTURE 25-131 (UPLAND)	POUND	96	\$3.10	96	0	\$ -
73	2575.508	SEED MIXTURE 34-371 (WETLAND)	POUND	57	\$82.00	57	0	\$ -
74	2582.503	4" SOLID LINE PAINT (WR)	LF	10,496	\$0.25	10496	0	\$ -
75	2582.503	4" DOUBLE SOLID LINE PAINT (WR)	LF	5,248	\$0.50	5248	0	\$ -
76	2582.503	24" SOLID LINE PAINT (WR)	LF	30	\$5.00	24	-6	\$ (30.00)
77	C/O #1	ROCK REMOVAL AND FILL BORE HOLES	LUMP SUM	1	\$40,614.01	1	0	\$ -
78	C/O #1	ROCK BORE	LUMP SUM	1	\$97,643.55	1	0	\$ -
79	C/O #2	ADDITIONAL SUBCUT	LUMP SUM	1	\$147,281.10	1	0	\$ -

FINAL COMPENSATING AMOUNT \$ (8,952.35)

TO: Mayor & City Council
FROM: John Mulder, City Administrator
DATE: November 24, 2021
SUBJECT: HWY 53 Water Tower
Reconditioning
Water Improvement District #
318



Meeting Date: December 6, 2021
Agenda Item: 12-G
Resolution: 2021-158

REQUESTED ACTION

Approve Final Plans and Specifications and Authorize Advertisement for Bids

BACKGROUND

As part of the City's capital improvement program, the City Hired S.E.H. to prepare an inspection report of each water tower in 2017. In 2019 we reconditioned and painted the Hawk Circle Tank. Now in 2021, the City hired Bolten and Menk to prepare the plans and specifications for the reconditioning of the Highway 53 Water Tower. This includes upgrades and maintenance items of the tank as well as complete repainting inside and out. The project manual consists of 258 pages and is very detailed, so I have not printed the entire manual for the City Council. I have printed the table of contents for you. The City Engineer, Public Works Director and the City Attorney have all reviewed the project manual and found that the City Requirements have been met.

We are hereby recommending approval of the project manual and authorizing advertisement for bids.

SOURCE OF FUNDS (if applicable)

Sales Tax 240-494300-530

ATTACHMENTS

Excerpt from Project Manual
Engineers Estimate

Resolution No. 2021-158

**RESOLUTION APPROVING FINAL PLANS AND
SPECIFICATIONS AND ORDERING ADVERTISEMENT
FOR BIDS FOR RECONDITIONING OF HIGHWAY 53
WATER TOWER WATER IMPROVEMENT DISTRICT NO. 318**

WHEREAS, SEH prepared final plans and specifications for reconditioning of Highway 53 Water Tower, Water Improvement District No. 318; and

WHEREAS, such final plans and specifications have been presented to the City Council;
and

WHEREAS, the City Council has reviewed such final plans and specifications and believes it to be in the best interest of the City of Hermantown to approve such final plans and specifications; and

WHEREAS, the City will finance the Project from an issue of tax-exempt bonds; and

WHEREAS, by law the City of Hermantown is obligated to advertise for bids for construction of the improvements described in such final plans and specifications; and

WHEREAS, the City Council believes that it is in the best interest of the City of Hermantown that such bids be advertised for at the earliest possible time.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Hermantown, Minnesota, as follows:

1. The final plans and specifications prepared by Bolten & Menk are hereby approved and ordered placed on file in the office of the City Clerk.
2. WHEREAS, the City reasonably expects to finance the Project from an issue of tax-exempt bonds. In advance of issuance of the bonds, it will be necessary for the City to temporarily finance certain costs of the Project by using either working capital or cash reserves, which are needed for other purposes. The City reasonably expects to reimburse itself from the proceeds of the bonds within eighteen (18) months after the date the Project is paid from such working capital or cash reserves.
3. The City Clerk is hereby directed to file such final plans and specifications in the permanent records of the City.
4. The City Clerk is hereby further authorized and directed to prepare and cause to be inserted in the Hermantown Star, the official newspaper an advertisement for bids for Reconditioning of Water Tower on Highway 53 in accordance with the plans and specifications approved by the City Council. The advertisement for bids shall be published in the Hermantown

Star on December 9, 2021, December 16, 2021, and December 23, 2021.

5. Such advertisement shall specify the work to be done, shall state that the bids will be publicly opened and tabulated by the Consulting Engineer and the City Clerk on **Thursday, January 6, 2022**, at **10:00 a.m.**, that the tabulated bids will be considered at the City Council meeting on **January 18, 2022** at **6:30 p.m.**, and shall state that no bids will be considered unless sealed and filed with the City Clerk and accompanied by a cash deposit, cashier's check, bid bond or certified check payable to the City of Hermantown for five percent (5%) of the amount bid.

6. The notice to be published shall be substantially in the form of the one attached hereto as Exhibit A.

Councilor _____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor _____ and, upon a vote being taken thereon, the following voted in favor thereof:

Councilors _____, aye

and the following voted in opposition thereto:

WHEREUPON, such resolution was declared duly passed and adopted on December 6, 2021.

PROJECT MANUAL

HWY 53 Tower Reconditioning

Hermantown, MN

2021

Bolton & Menk Project No. 0M2.125206



Real People. Real Solutions.

Bolton-Menk.com

TABLE OF CONTENTS

HWY 53 Tower Reconditioning
Hermantown, MN

SPECIFICATIONS

00020	ADVERTISEMENT FOR BIDS
00200	INSTRUCTIONS TO BIDDERS FOR CONSTRUCTION CONTRACTS
00410	BID FORM
00411	BID SCHEDULE
00412	PROJECT REFERENCES
00430	BID BOND
00450	INFORMATION REQUESTED FROM THE LOW BIDDER
00510	NOTICE OF AWARD
00515	RESPONSIBLE CONTRACTOR NOTICE OF AWARD
00515	RESPONSIBLE CONTRACTOR - SUPPLEMENTAL
00520	AGREEMENT
00550	NOTICE TO PROCEED
00700	00700 EJCDC® C-700 (Rev. 1), STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT COPYRIGHT ® 2013
00750	WITHHOLDING AFFIDAVIT FOR CONTRACTORS AND IC 134
00800	SUPPLEMENTARY CONDITIONS
00801	RESIDENT PROJECT REPRESENTATIVE
00802	CITY OF HERMANTOWN STANDARD GOVERNMENT ENTITY CONSTRUCTION CONTRACT PROVISIONS
00991	CHANGE ORDER
00992	ENGINEER'S FIELD ORDER
00993	PROPOSAL REQUEST
00994	WORK CHANGE DIRECTIVE
00995	LETTER OF TRANSMITTAL

DIVISION 1 – GENERAL REQUIREMENTS

01010	SUMMARY OF WORK
01025	MEASUREMENT AND PAYMENT
01040	SEQUENCE OF CONSTRUCTION
01090	REFERENCES
01092	ABBREVIATIONS
01110	CULTURAL RESOURCES PROTECTION
01200	PROJECT MEETINGS
01300	SUBMITTALS
01310	COORDINATION
01410	REGULATORY REQUIREMENTS
01562	AIR, LAND AND WATER POLLUTION
01600	MATERIALS, EQUIPMENT, LABOR AND WORKMANSHIP
01700	PROJECT CLOSEOUT

DIVISION 9 – FINISHES

09910	WATER TOWER REPAINTING
-------	------------------------

DIVISION 13 – SPECIAL CONSTRUCTION

13211	WATER STORAGE TANK DISINFECTION
13415	ELEVATED WATER STORAGE TANK REHABILITATION
13415	PART 2 - SPECIAL CONSTRUCTION (SUPPLEMENTARY SPECIFICATIONS)

APPENDICES

APPENDIX A – WATER TOWER PHOTOS REPORT

APPENDIX B – TEST RESULTS FROM PAINT CHIP SAMPLING AND TESTING

APPENDIX C – SITE OVERVIEW

APPENDIX D – WATER TOWER LOGO AND LETTERING

**** END OF SECTION ****



**Hermantown, Minnesota
Water Tower Logo and Lettering**



**BOLTON
& MENK**

Real People. Real Solutions.

7533 Sunwood Drive NW
Suite 206
Ramsey, MN 55303-5119

Ph: (763) 433-2851
Fax: (763) 427-0833
Bolton-Menk.com

MEMORANDUM

Date: November 23, 2021
To: Paul Senst, Director of Public Works
From: Brian Guldán, P.E.
Subject: Engineers Opinion of Probable Construction Cost
Hwy 53 Water Tower Reconditioning

The opinion of probable construction cost for the reconditioning of Hermantown's Hwy 53 Water Tower is \$600,000 - \$700,000, a breakdown of major items is provided below.

		Spheroid
1	Mobilization	\$25,000
2	Interior Wet Coating Rehabilitation - Complete Removal & Replacement	\$140,000
3	Interior Dry Coating Rehabilitation - Complete Removal & Replacement	\$50,000
4	Exterior Coating Rehabilitation – Complete Removal & Replacement	\$240,000
5	Interior Dry Coating Rehabilitation (Vault/pit) – Complete removal and replacement	\$60,000
6	New safety climb systems	\$10,000
7	Tower Logo	\$15,000
8	Structural Repairs/Misc. Improvements	\$10,000
9	New GridBee Mixer	\$20,000
10	Miscellaneous Project Costs (Welding, Disinfection, Site Restoration, Pit Filler, etc.)	\$15,000
11	Contingency (approx..10%)	\$60,000
Probable Project Cost = Total		\$645,000

TO: Mayor & City Council

FROM: Jim Crace, Chief of Police



DATE: November 18, 2021

Meeting Date: 12/6/21

SUBJECT: Towing Contract

Agenda Item: 12-H

Resolution 2021-159

REQUESTED ACTION

The Chief of Police recommends that the City issue the 2022-2023 towing contract to Troy's / USA Towing and Recovery.

BACKGROUND

The City of Hermantown is required by ordinance to biannually request bids for a towing contract. In comparing bids, it appears that Troy's will be most beneficial and cost effective to the City of Hermantown. The quotes are somewhat comparable across the board and they have provided quality service for the police department over the past several years. In addition, they have quoted a price to the public for tows which is lower than the competitor, they are charging nothing for standard tows on city owned vehicles.

SOURCE OF FUNDS (if applicable)

N/A

ATTACHMENTS

Comparison spreadsheet

Resolution No. 2021-159

RESOLUTION AUTHORIZING AND DIRECTING MAYOR AND CITY CLERK TO EXECUTE AND DELIVER AGREEMENT WITH TROY'S TOWING D/B/A USA TOWING & RECOVERY FOR WRECKER SERVICE AND VEHICLE STORAGE FOR THE CITY OF HERMANTOWN POLICE DEPARTMENT

WHEREAS, the City is in need of wrecker service and vehicle storage; and

WHEREAS, the City solicited proposals for such services pursuant to a Request for Proposal; and

WHEREAS, Troy's Towing d/b/a USA Towing & Recovery has agreed to honor their proposal and enter into an agreement with the City; and

WHEREAS, the City Council has duly considered the attached Agreement for Professional Services and believes that it is in the best interests of the City of Hermantown for it to enter into such Agreement with Troy's Towing d/b/a USA Towing & Recovery.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hermantown that the Mayor and City Clerk are hereby authorized and directed to execute and deliver on behalf of the City of Hermantown the Agreement for Professional Services attached hereto between the City of Hermantown and Troy's Towing d/b/a USA Towing & Recovery.

Councilor _____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor _____ and, upon a vote being taken thereon, the following voted in favor thereof:

Councilors

and the following voted in opposition thereto:

WHEREUPON, such resolution was declared duly passed and adopted December 6, 2021.

	<u>Troy's</u>	<u>NASCAR</u>	<u>Notes</u>
<u>Standard Towing Services</u>			
Towing - Public Vehicles (Traffic Violations - Owner Responsibility)	\$95.00	\$120.00	
Towing - Public Vehicles (Traffic Violations - Police Forfeited -City Responsibility)	\$65.00	\$65.00	
After Hours Charges - (Between the hours of 1800-0800 hours)	\$25.00	\$50.00	2300-0600
Service Call (Jump Starts, Vehicle Unlocks, Tire Change, etc)	\$65.00	\$65.00	
<u>Specialized Services</u>			
Medium / Heavy Towing	\$300.00	\$195.00	Dukes
Heavy Towing (per hour)	\$300.00	Varies	Lake City
Rotator service (per hour)	\$700.00	Varies	Lake City
Winching and recovery fees (per hour)	\$95.00	\$120.00	
<u>Storage</u>			
Outside Storage (Police Forfeit) first 72 hours	\$0.00	\$0.00	
Inside Storage per day	\$40.00	\$35.00	
Outside Storage (Police Forfeit) per month	\$25.00	\$25.00	
Outside Storage (Public) per day	\$30.00	\$35.00	
<u>City Owned Vehicles</u>			
Towing (Squads, Light Trucks, etc)	\$0.00	\$0.00	
Service Call (Jump Starts, Vehicle Unlocks, Tire Change, etc)	\$0.00	\$0.00	
Medium/Heavy Towing (per hour)	\$300.00	\$195.00	(Dukes / Lake City)
Heavy Towing (per hour)	\$300.00	Varies	(Lake City)
<u>Other</u>			
Admin Fees (State Notification)	\$20.00	\$25.00	

TO: Mayor & City Council

FROM: Jim Crace, Chief of Police



DATE: November 24, 2021

Meeting Date: 12/6/21

SUBJECT: Towards Zero Deaths Grant **Agenda Item: 12-I** **Resolution 2021-160**

REQUESTED ACTION

Approve agreement with the City of Duluth for a Towards Zero Deaths traffic enforcement grant.

BACKGROUND

Annually, the Hermantown Police Department partners with other local agencies in traffic enforcement efforts. The agreement before you is to participate in these enforcement efforts. The grant reimburses the city for all wages and fringe benefits for officers to work these extra enforcement shifts. The shifts focus on speed, DUI, seatbelt and distracted driving. With St. Louis County regularly identified as one of the 13 deadliest counties in Minnesota, these extra shifts are very useful in helping keep our roads safe.

SOURCE OF FUNDS (if applicable)

Grant funds from NHTSA, passed through the State of MN

ATTACHMENTS

Agreement

Resolution No. 2021-160

RESOLUTION APPROVING THE 2022 TOWARD ZERO DEATHS ENFORCEMENT GRANT AGREEMENT

WHEREAS, the City of Duluth is the recipient of a 2022 Toward Zero Deaths Law Enforcement Grant (herein after referred to as “Grant”) from the Minnesota Department of Public Safety in an amount not to exceed \$188,770; and

WHEREAS, pursuant to the terms of said Grant the City of Duluth is to support the Lake Superior Traffic Enforcement Team Enforcement Plan (hereinafter referred to as “Enforcement Plan”) to reduce the number of fatal crashes and injuries in southern St. Louis County, Minnesota, for which the Lake Superior Traffic Enforcement Team parties will be entitled to reimbursement under the terms of the Grant; and

WHEREAS, the City of Duluth, County, UMD Police, Hermantown, Proctor and Floodwood are collectively referred to as the Lake Superior Traffic Enforcement Team for purposes of the 2022 Toward Zero Deaths Project; and

WHEREAS, the parties hereto did enter into an agreement memorializing the parties’ rights and responsibilities in the implementation of said Grant; and

WHEREAS, the parties hereto desire to amend the Agreement as stated in Exhibit “A”, attached hereto.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hermantown, Minnesota, as follows:

1. The Mayor is hereby authorized to execute and deliver the Agreement attached hereto as Exhibit A.
2. The amounts payable pursuant to this resolution shall be credited to Fund 101-331998.

Councilor _____ introduced the foregoing resolution and moved it adoption.

The motion for the adoption of such resolution was seconded by Councilor _____, and upon a vote being taken thereon, the following voted in favor thereof:

Councilors, _____ aye.

and the following voted in opposition thereto:

WHEREUPON, such resolution was declared duly passed and adopted December 6, 2021.



Grant Contract Agreement

Page 1 of 2

Minnesota Department of Public Safety (“State”) Office of Traffic Safety 445 Minnesota Street, Suite 1620 Saint Paul, Minn. 55101	Grant Program: 2022 Enforcement Grant Contract Agreement No.: A-ENFRC2-2022-DULUTHPD-024
Grantee: Duluth Police Department 2030 N. Arlington Ave. Duluth, Minn. 55811-2030	Grant Contract Agreement Term: Effective Date: October 1, 2021 Expiration Date: September 30, 2022
Grantee’s Authorized Representative: Lt. Ryan Morris Duluth Police Department 2030 N. Arlington Ave. Duluth, Minn. 55811-2030 Phone: (218) 730-5655 Email: rmorris@duluthmn.gov	Grant Contract Agreement Amount: Original Agreement \$ 188,770.00 Matching Requirement \$ 0.00
State’s Authorized Representative: Kammy Huneke Office of Traffic Safety 445 Minnesota Street, Suite 1620 Saint Paul, Minn. 55101 Phone: (651) 201-7070 Email: kammy.huneke@state.mn.us	Federal Funding: CFDA 20.600, 20.608 & 20.616 FAIN: 69A37519300001640MNA, 69A3752030000405DMNL 69A3751930000405BMNH & 69A37520300004020MN0 State Funding: N/A Special Conditions: None

Under Minn. Stat. § 299A.01, Subd 2 (4) the State is empowered to enter into this grant contract agreement.

Term: The creation and validity of this grant contract agreement conforms with Minn. Stat. § 16B.98 Subd. 5. Effective date is the date shown above or the date the State obtains all required signatures under Minn. Stat. § 16B.98, subd. 7, whichever is later. Once this grant contract agreement is fully executed, the Grantee may claim reimbursement for expenditures incurred pursuant to the Payment clause of this grant contract agreement. Reimbursements will only be made for those expenditures made according to the terms of this grant contract agreement. Expiration date is the date shown above or until all obligations have been satisfactorily fulfilled, whichever occurs first.

The Grantee, who is not a state employee will:

Perform and accomplish such purposes and activities as specified herein and in the Grantee’s approved 2022 Enforcement Application (“Application”) which is incorporated by reference into this grant contract agreement and on file with the State at 445 Minnesota Street, Suite 1620, St. Paul, Minn. 55101. The Grantee shall also comply with all requirements referenced in the 2022 Enforcement Guidelines and Application which includes the Terms and Conditions and Grant Program Guidelines (<https://app.dps.mn.gov/EGrants>), which are incorporated by reference into this grant contract agreement.

Budget Revisions: The breakdown of costs of the Grantee’s Budget is contained in Exhibit A, which is attached and incorporated into this grant contract agreement. As stated in the Grantee’s Application and Grant Program Guidelines, the Grantee will submit a written change request for any substitution of budget items or any deviation and in accordance with the Grant Program Guidelines. Requests must be approved prior to any expenditure by the Grantee.

Matching Requirements: (If applicable.) As stated in the Grantee’s Application, the Grantee certifies that the matching requirement will be met by the Grantee.

Payment: As stated in the Grantee’s Application and Grant Program Guidance, the State will promptly pay the



Grant Contract Agreement

Grantee after the Grantee presents an invoice for the services actually performed and the State's Authorized Representative accepts the invoiced services and in accordance with the Grant Program Guidelines. Payment will not be made if the Grantee has not satisfied reporting requirements.

Certification Regarding Lobbying: (If applicable.) Grantees receiving federal funds over \$100,000.00 must complete and return the Certification Regarding Lobbying form provided by the State to the Grantee.

1. ENCUMBRANCE VERIFICATION

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

Signed: _____

Date: _____

3. STATE AGENCY

Signed: _____
(with delegated authority)

Title: _____

Date: _____

Grant Contract Agreement No./ P.O. No. A-ENFRC2-2022-DULUTHPD-024/3000076024

Project No.(indicate N/A if not applicable): 22-04-01

2. GRANTEE

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

DocuSigned by:
CITY OF DULUTH a Minnesota municipal corporation

By:  _____
Its ID is 39F2E826ED714AA...

Date: 10/27/2021

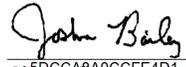
DocuSigned by:

DocuSigned by:
Attest:  _____
City ID is 74291125583459...



Date: 10/27/2021

Countersigned:
DocuSigned by:

 _____
City ID is 5D9CABA0CCFE4D1...
City Auditor

Distribution: DPS/FAS
Grantee
State's Authorized Representative

Approvals form:
DocuSigned by:

 _____
City ID is 4C4D88DF08942A...

2022 Enforcement

EXHIBIT A

Organization: Duluth Police Department

A-ENFRC2-2022-DULUTHPD-024

Budget Summary

Budget			
Budget Category	State Reimbursement	Local Match	
Dispatch/Admin - Other			
Admin - Other	\$400.00	\$0.00	
Total	\$400.00	\$0.00	
Dispatch/Admin - DWI			
Dispatch/Admin - DWI	\$2,000.00	\$0.00	
Total	\$2,000.00	\$0.00	
Enforcement - Distracted			
Enforcement - Distracted	\$12,870.00	\$0.00	
Total	\$12,870.00	\$0.00	
Enforcement - DWI			
Enforcement - DWI	\$146,100.00	\$0.00	
Total	\$146,100.00	\$0.00	
Enforcement - Seat Belt			
Enforcement - Seatbelt	\$13,400.00	\$0.00	
Total	\$13,400.00	\$0.00	
Enforcement - Speed			
Enforcement - Speed	\$14,000.00	\$0.00	
Total	\$14,000.00	\$0.00	
Mileage Expenses			
Mileage Expenses	\$0.00	\$0.00	
Total	\$0.00	\$0.00	
Training/Meeting Match			
Training/Meeting Match	\$0.00	\$0.00	
Total	\$0.00	\$0.00	
Total	\$188,770.00	\$0.00	

**2022 TOWARD ZERO DEATHS ENFORCEMENT GRANT
AGREEMENT
CITY OF DULUTH
LAKE SUPERIOR TRAFFIC ENFORCEMENT TEAM**

THIS AGREEMENT, by and among the CITY OF DULUTH, a municipal corporation under the laws of the State of Minnesota, hereinafter referred to as "City of Duluth", and St. Louis County, a Minnesota county acting through its governing body, hereinafter referred to as "County", and University of Minnesota - Duluth Police Department, hereinafter referred to as "UMD Police", and City of Hermantown, a municipal corporation under the laws of the State of Minnesota, hereinafter referred to as "Hermantown", and City of Proctor, a municipal corporation under the laws of the State of Minnesota, hereinafter referred to as "Proctor", and City of Floodwood, a municipal corporation under the laws of the State of Minnesota, hereinafter referred to as "Floodwood".

WHEREAS, City of Duluth is the recipient of a FY 2022 Towards Zero Deaths Enforcement Grant (hereinafter referred to as "Grant") from the Minnesota Department of Public Safety in an amount not to exceed \$188,770;

WHEREAS, pursuant to the terms of said Grant, City of Duluth is to support the Lake Superior Traffic Enforcement Team Enforcement Plan (hereinafter referred to as "Enforcement Plan") to reduce the number of fatal crashes and injuries in southern St. Louis County, Minnesota, for which Lake Superior Traffic Enforcement Team parties will be entitled to reimbursement under the terms of the Grant; and

WHEREAS, the City of Duluth, County, UMD Police, Hermantown, Proctor, and Floodwood are collectively referred to as the Lake Superior Traffic Enforcement Team for purposes of the 2022 Toward Zero Deaths Project.

WHEREAS, the parties hereto have deemed it desirable to enter into an agreement memorializing the parties' rights and responsibilities in the implementation of said Grant.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto agree as follows:

ARTICLE I

Scope of Professional Services

Each member of the Lake Superior Traffic Enforcement Team ("Team Member") agrees that it will be responsible to provide its respective services as generally described in the Grant Agreement and Enforcement Calendar, copies of which are attached hereto and made a part hereof as Document A and Exhibit B and provide other necessary professional services generally relating thereto.

ARTICLE II

Reimbursement for Expenses

Each Team Member shall be entitled to be reimbursed by City of Duluth for the cost of providing services in an amount not to exceed the following:

Team Member	Maximum Reimbursement Amount	Additional Funds
St. Louis County Sheriff's Office	\$27,334.50	
	\$2,000.00	911 Dispatch - DWI
UMD Police Dept.	\$8,507.00	
Hermantown Police Dept.	\$27,334.50	
Proctor Police Dept.	\$2,921.20	
Floodwood Police Dept.	\$9,458.40	
Dispatch Other	\$400.00	

The remaining funds, including those not utilized by the above Team Members, will be reimbursed to the City of Duluth for services provided by the Duluth Police Department under the terms of this Grant. Upon the expenditure of funds in support of the Grant Agreement and Enforcement Calendar and presentation to City of Duluth of documentation establishing the expenses, City of Duluth shall promptly reimburse Team Members for said costs up to the amount set forth above. All reimbursements from City of Duluth to Team Members pursuant to this Agreement shall be issued from City of Duluth Fund 215-200-2209-5447 (Duluth Police Grant Programs, Police, TZD, Payment to Other Government Agencies).

ARTICLE III

Assignability

The Team Members shall not in any way assign or transfer any of their respective rights or interests under this Agreement in any way whatsoever.

ARTICLE IV

Term

Notwithstanding the date of execution of this Agreement, this Agreement shall be deemed to commence on October 1, 2021 and run concurrently with the Grant Term and expire on September 30, 2022.

ARTICLE V

Termination of Services

Any Team Member may, by giving written notice at least thirty (30) days prior to the effective date thereof, terminate, without cause, a portion of the Agreement as it relates to its obligations hereunder. The terminating party shall be entitled to compensation for services properly performed by it, to and including the date of written notice of termination of this Agreement, including reimbursable expenses. Such termination shall not affect the remaining Team Member's rights and obligations. Notwithstanding the foregoing, the City of Duluth may terminate this Agreement upon notification from the Minnesota Department of Public Safety that grant funding to fund City of Duluth's obligations hereunder has been terminated; such termination shall be effective upon the parties receiving notice thereof.

ARTICLE VI

Standard of Performance

Each Team Member agrees that all services to be provided pursuant to this Agreement shall be in accordance with the generally accepted standards of the profession for provision of services of this type.

ARTICLE VII

Records and Inspections

- A. Establishment and Maintenance of Records
Records shall be maintained by each Team Member in accordance with requirements prescribed by Grant. Such records shall be maintained for a period of six (6) years after receipt of final payment under this Agreement.
- B. Documentation of Costs
Each Team Member will ensure that all costs shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.
- C. Reports and Information
Each party shall be responsible for furnishing to City of Duluth records, data and information as City of Duluth may require pertaining to matters covered by this Agreement.
- D. Audits and Inspections
Each Team Member shall ensure that at any time during normal business hours, there shall be made available to any party, for examination, all of its records with respect to all matters covered by this Agreement. Each Team Member will also permit any party, State, or Federal agency to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement.

E. Information

All reports, data, information, documentation and material given to or prepared by each Team Member pursuant to this Agreement will be public except as provided for in applicable Federal or state laws, rules, regulations or orders.

ARTICLE VIII

Independent Contractor

It is agreed that nothing herein contained is intended or shall be construed in any manner as creating or establishing a relationship of co-partners between the parties hereto or of constituting any party as an agent, representative or employee of the other for any purpose or in any manner whatsoever. None of the parties or any officers or employees thereof shall be considered an employee of any other party, and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of any party and their employees while so engaged and any and all claims whatsoever on behalf of any party arising out of employment or alleged employment, including without limitation, claims of discrimination against any party, its officers, agents, contractors or employees shall in no way be the responsibility of the other party. Neither the parties nor their officers, agents, contractors and employees shall be entitled to any compensation or rights or benefits of any hospital care, sick leave and vacation pay, Workers' Compensation, Unemployment Insurance, disability pay or severance pay from another party.

ARTICLE IX

Liability

A. As Between the Parties

Each party hereto agrees that it will be solely liable for any liability arising out of any acts or omissions of itself or its officers, agents, servants, employees or subcontractors in the performance of its respective obligations under this Agreement.

B. Limitation of Liability

Nothing herein shall be deemed to create any liability on behalf of any party not otherwise existing as to such party under the provisions of Minnesota Statutes Chapters 466 or 3.736 as applicable or to extend the amount of liability of any party to amounts in excess of that specified in said Chapters.

C. Third Party Liability

Nothing herein shall be deemed to create any liability to any third party not otherwise existing under applicable law.

ARTICLE X

Civil Rights Assurances

Each Team Member and their respective officers, agents, servants and employees as part of the consideration under this Agreement, does hereby covenant and agree that:

- A. No person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, sexual orientation and/or disability shall be excluded from any participation in, denied any benefits of or otherwise subjected to discrimination with regard to the work to be done pursuant to this Agreement.
- B. That all activities to be conducted pursuant to this Agreement shall be conducted in accordance with the Minnesota Human Rights Act of 1974, as amended (Chapter 363), Title 7 of the U.S. Code and any regulations and executive orders which may be affected with regard thereto.

ARTICLE XI

Rules and Regulations

All parties agree to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota, County, and the City of Duluth and their respective agencies which are applicable to their activities under this Agreement.

ARTICLE XII

Notices

Notice to Team Members provided for herein shall be sufficient if sent by the regular United States mail, postage prepaid, addressed to the parties at the addresses hereinafter set forth or to such other respective persons or addresses as the parties may designate to each other in writing from time to time:

CITY OF DULUTH: Lt. Ryan Morris
 City of Duluth Police Department
 2030 N. Arlington Avenue
 Duluth, MN 55811

County: Sheriff Ross Litman
 St. Louis County Sheriff's Office
 Room 103
 100 North 5th Avenue West
 Duluth, MN 55802

Hermantown: Chief James Crace
 Chief of Police
 Hermantown Police Department
 5111 Maple Grove Road
 Hermantown, MN 55811-3605

UMD Police Chief Sean Huls
 Chief of Police
 Sponsored Projects Administration, UMD
 409 Darland Admin. Bldg.
 1049 University Drive.
 Duluth, MN 55812-3011

Floodwood: City Administrator
City of Floodwood
111 W. 8th Ave.
Floodwood, MN 55736

Proctor: Jessica Rich
City Administrator
City of Proctor
100 Pionk Drive
Proctor, MN 55810

ARTICLE XIII

Waiver

Any waiver by any party of any provision of this Agreement shall not imply a subsequent waiver of that or any other provision.

ARTICLE XIV

Applicable Law

This Agreement, together with all of its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

ARTICLE XV

Severability

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provisions shall continue in full force and effect and shall be binding upon the parties to this Agreement.

ARTICLE XVI

Entire Agreement

It is understood and agreed that the entire agreement of the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any amendment to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

ARTICLE XVII

This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

[Remainder of page intentionally left blank; signature page to follow.]

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and date shown below.

CITY OF DULUTH, a Minnesota municipal corporation

ST. LOUIS COUNTY, a Minnesota County

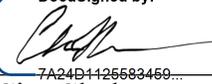
By: 
36F2E826ED714AA...
Its Mayor

By: _____
Patrick Boyle, County Board Chair

Date: 10/27/2021

Date: _____

Attest:

By: 
7A24D1125583460...
City Clerk

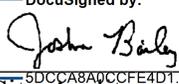
DocuSigned by: 
By: _____
Nancy Nilsen, Auditor

Date: _____

Date: 10/27/2021

By: _____
Ross Litman, Sheriff

Countersigned:

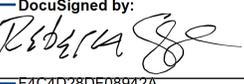

5DCCAB80CCFE4D1...
City Auditor

Date: _____

Approved as to form and execution:
KIMBERLY J. MAKI
St. Louis County Attorney

Date: 10/28/2021

Approved as to form:


F4C4D28DF08942A...
City Attorney

By: _____
Thomas Stanley
Assistant County Attorney

Damion# 2021-14875

Date: 10/27/2021

Date: _____

CITY OF PROCTOR, A Minnesota
municipal corporation

CITY OF FLOODWOOD, A Minnesota
municipal corporation

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

CITY OF HERMANTOWN, A Minnesota
municipal corporation

**Regents of the University of Minnesota for
the UMD UNIVERSITY POLICE
DEPARTMENT**

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____



City of Duluth

411 West First Street
Duluth, Minnesota
55802

Certified Copy

Resolution: 21-0801R

RESOLUTION AUTHORIZING THE ACCEPTANCE OF A GRANT FROM THE MINNESOTA DEPARTMENT OF PUBLIC SAFETY IN THE AMOUNT OF \$188,770 FOR THE 2022 TOWARDS ZERO DEATHS PROJECT AND FURTHER AUTHORIZING AN AGREEMENT WITH THE LAKE SUPERIOR TRAFFIC ENFORCEMENT TEAM PARTNER AGENCIES FOR SERVICES UNDER THE GRANT.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to accept an award from the state of Minnesota, department of public safety, in the amount of \$188,770 and to execute a grant agreement substantially the same as the attached Document A. Such funds are to be used to reimburse the Duluth police department and other Lake Superior traffic enforcement team participants for overtime salary/fringe benefits expenditures, based upon the Enforcement Calendar, for traffic enforcement of speed, distracted and impaired driving, seat belt and move over enforcement, St. Louis County 9-1-1 dispatch support. Funds to be deposited in Fund No. 215-200-2209-4210-02 (Duluth Police Grant Programs, Police, TZD Grant, Pass Thru Federal Grants Operating) and expenses to be paid from Fund 215-200-2209-5700-10 (Duluth Police Grant Programs, Police, TZD Grant, Interfund Transfers Out to General Fund) and Fund 215-200-2209-5447 (Duluth Police Grant Programs, Police, TZD Payment to Other Government Agencies).

FURTHER RESOLVED, that the proper city officials are authorized to execute an agreement with the Lake Superior Traffic Enforcement Team partner agencies, substantially the same as the attached Document B.

This Resolution was adopted unanimously.

I, Chelsea Helmer, City Clerk of the City of Duluth, Minnesota, do hereby certify that I have compared the foregoing passed by the city council on 10/25/2021, with the original approved and that the same is a true and correct transcript therefrom. IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said city of Duluth.

DocuSigned by:
Chelsea Helmer, City Clerk
By: 
7A24D4125583469...
Duluth, Minnesota

TO: Mayor & City Council

FROM: Jim Crace, Chief of Police



DATE: November 24, 2021

Meeting Date: 12/6/21

SUBJECT: JPA – CJDN System

Agenda Item: 12-J

Resolution 2021-161

REQUESTED ACTION

Approve Joint Powers Agreement between the City of Hermantown and the State of Minnesota

BACKGROUND

The Criminal Justice Data Network is a computer system that the State of Minnesota operates which allows us to access state and federal data networks. HPD uses these systems constantly to query people and vehicles as well as report crime statistics.

SOURCE OF FUNDS (if applicable)

General Fund - Police

ATTACHMENTS

Joint Powers Agreement

Resolution No. 2021- 161

RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR AND CITY CLERK TO EXECUTE AND DELIVER THE STATE OF MINNESOTA JOINT POWERS AGREEMENT WITH THE CITY OF HERMANTOWN ON BEHALF OF ITS CITY ATTORNEY AND POLICE DEPARTMENT

WHEREAS, the City of Hermantown on behalf of its Prosecuting Attorney and Police Department desires to enter into a State of Minnesota Joint Powers Agreement (“Agreement”) with the State of Minnesota, Department of Public Safety, Bureau of Criminal Apprehension to use systems and tools available over the State’s criminal justice data communications network for which the City is eligible; and

WHEREAS, the City Council has considered this matter and believes that it is in the best interests of the City of Hermantown to approve the Agreement as shown on the **Exhibit A**.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Hermantown, Minnesota as follows:

1. That the Agreement by and between the State of Minnesota acting through its Department of Public Safety, Bureau of Criminal Apprehension and the City of Hermantown on behalf of its Police Department, are hereby approved.

2. That Chief James Crace, or his successor, is designated the Authorized Representative for the Police Department.

3. To assist the Authorized Representative with the administration of the Agreements, Investigation & Administration Commander Jon Esterbrooks is appointed as the Authorized Representative’s designee.

4. That Prosecuting Attorney, Shawn B. Reed, or his successor, is designated the Authorized Representative for the Prosecuting Attorney.

5. To assist the Authorized Representative with the administration of the Agreement, Gunnar B. Johnson is appointed as the Authorized Representative’s designee.

6. That the Mayor and City Clerk are authorized to sign the Agreement attached hereto as **Exhibit A**.

Councilor _____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor _____, and upon a vote being taken thereon, the following voted in favor thereof:

and the following voted in opposition thereto:

WHEREUPON, such resolution was declared duly passed and adopted on December 6, 2021.

EXHIBIT A

SWIFT Contract # 200507
MN0691700



State of Minnesota Joint Powers Agreement

This Agreement is between the State of Minnesota, acting through its Department of Public Safety on behalf of the Bureau of Criminal Apprehension ("BCA"), and the City of Hermantown on behalf of its Police Department ("Governmental Unit"). The BCA and the Governmental Unit may be referred to jointly as "Parties."

Recitals

Under Minn. Stat. § 471.59, the BCA and the Governmental Unit are empowered to engage in agreements that are necessary to exercise their powers. Under Minn. Stat. § 299C.46, the BCA must provide a criminal justice data communications network to benefit political subdivisions as defined under Minn. Stat. § 299C.46, subd. 2 and subd. 2(a). The Governmental Unit is authorized by law to utilize the criminal justice data communications network pursuant to the terms set out in this Agreement. In addition, BCA either maintains repositories of data or has access to repositories of data that benefit authorized political subdivisions in performing their duties. The Governmental Unit wants to access data in support of its official duties.

The purpose of this Agreement is to create a method by which the Governmental Unit has access to those systems and tools for which it has eligibility, and to memorialize the requirements to obtain access and the limitations on the access.

Agreement

- 1 **Term of Agreement**
 - 1.1 **Effective Date.** This Agreement is effective on the date the BCA obtains all required signatures under Minn. Stat. § 16C.05, subdivision 2.
 - 1.2 **Expiration Date.** This Agreement expires five years from the date it is effective.
- 2 **Agreement Between the Parties**
 - 2.1 **General Access.** BCA agrees to provide Governmental Unit with access to the Minnesota Criminal Justice Data Communications Network (CJDN) and those systems and tools which the Governmental Unit is authorized by law to access via the CJDN for the purposes outlined in Minn. Stat. § 299C.46.
 - 2.2 **Methods of Access.**

The BCA offers three (3) methods of access to its systems and tools. The methods of access are:

 - A. **Direct access** occurs when individual users at the Governmental Unit use the Governmental Unit's equipment to access the BCA's systems and tools. This is generally accomplished by an individual user entering a query into one of BCA's systems or tools.
 - B. **Indirect Access** occurs when individual users at the Governmental Unit go to another Governmental Unit to obtain data and information from BCA's systems and tools. This method of access generally results in the Governmental Unit with indirect access obtaining the needed data and information in a physical format like a paper report.
 - C. **Computer-to-Computer System Interface** occurs when the Governmental Unit's computer exchanges data and information with BCA's computer systems and tools using an interface. Without limitation, interface types include: state message switch, web services, enterprise service bus and message queuing.

For purposes of this Agreement, Governmental Unit employees or contractors may use any of these methods to use BCA's systems and tools as described in this Agreement. Governmental Unit will select a

method of access and can change the methodology following the process in Clause 2.10.

- 2.3 **Federal Systems Access.** In addition, pursuant to 28 CFR §20.30-38 and Minn. Stat. §299C.58, BCA may provide Governmental Unit with access to the Federal Bureau of Investigation (FBI) National Crime Information Center.
- 2.4 **Governmental Unit Policies.** Both the BCA and the FBI's Criminal Justice Information Systems (FBI-CJIS) have policies, regulations and laws on access, use, audit, dissemination, hit confirmation, logging, quality assurance, screening (pre-employment), security, timeliness, training, use of the system, and validation. Governmental Unit has created its own policies to ensure that Governmental Unit's employees and contractors comply with all applicable requirements. Governmental Unit ensures this compliance through appropriate enforcement. These BCA and FBI-CJIS policies and regulations, as amended and updated from time to time, are incorporated into this Agreement by reference. The policies are available at <https://bcanextest.x.state.mn.us/launchpad/>.
- 2.5 **Governmental Unit Resources.** To assist Governmental Unit in complying with the federal and state requirements on access to and use of the various systems and tools, information is available at <https://sps.x.state.mn.us/sites/bcaservicecatalog/default.aspx>. Additional information on appropriate use is found in the Minnesota Bureau of Criminal Apprehension Policy on Appropriate Use of Systems and Data available at <https://bcanextest.x.state.mn.us/launchpad/cjisdocs/docs.cgi?cmd=FS&ID=795&TYPE=DOCS>.
- 2.6 **Access Granted.**
- A. Governmental Unit is granted permission to use all current and future BCA systems and tools for which Governmental Unit is eligible. Eligibility is dependent on Governmental Unit (i) satisfying all applicable federal or state statutory requirements; (ii) complying with the terms of this Agreement; and (iii) acceptance by BCA of Governmental Unit's written request for use of a specific system or tool.
- B. To facilitate changes in systems and tools, Governmental Unit grants its Authorized Representative authority to make written requests for those systems and tools provided by BCA that the Governmental Unit needs to meet its criminal justice obligations and for which Governmental Unit is eligible.
- 2.7 **Future Access.** On written request from the Governmental Unit, BCA also may provide Governmental Unit with access to those systems or tools which may become available after the signing of this Agreement, to the extent that the access is authorized by applicable state and federal law. Governmental Unit agrees to be bound by the terms and conditions contained in this Agreement that when utilizing new systems or tools provided under this Agreement.
- 2.8 **Limitations on Access.** BCA agrees that it will comply with applicable state and federal laws when making information accessible. Governmental Unit agrees that it will comply with applicable state and federal laws when accessing, entering, using, disseminating, and storing data. Each party is responsible for its own compliance with the most current applicable state and federal laws.
- 2.9 **Supersedes Prior Agreements.** This Agreement supersedes any and all prior agreements between the BCA and the Governmental Unit regarding access to and use of systems and tools provided by BCA.
- 2.10 **Requirement to Update Information.** The parties agree that if there is a change to any of the information whether required by law or this Agreement, the party will send the new information to the other party in writing within 30 days of the change. This clause does not apply to changes in systems or tools provided under this Agreement.

This requirement to give notice additionally applies to changes in the individual or organization serving the Governmental Unit as its prosecutor. Any change in performance of the prosecutorial function must be provided to the BCA in writing by giving notice to the Service Desk, BCA.ServiceDesk@state.mn.us.

- 2.11 **Transaction Record.** The BCA creates and maintains a transaction record for each exchange of data utilizing its systems and tools. In order to meet FBI-CJIS requirements and to perform the audits described in Clause 7, there must be a method of identifying which individual users at the Governmental Unit conducted a

particular transaction.

If Governmental Unit uses either direct access as described in Clause 2.2A or indirect access as described in Clause 2.2B, BCA's transaction record meets FBI-CJIS requirements.

When Governmental Unit's method of access is a computer-to-computer interface as described in Clause 2.2C, the Governmental Unit must keep a transaction record sufficient to satisfy FBI-CJIS requirements and permit the audits described in Clause 7 to occur.

If a Governmental Unit accesses data from the Driver and Vehicle Services Division in the Minnesota Department of Public Safety and keeps a copy of the data, Governmental Unit must have a transaction record of all subsequent access to the data that are kept by the Governmental Unit. The transaction record must include the individual user who requested access, and the date, time and content of the request. The transaction record must also include the date, time and content of the response along with the destination to which the data were sent. The transaction record must be maintained for a minimum of six (6) years from the date the transaction occurred and must be made available to the BCA within one (1) business day of the BCA's request.

- 2.12 Court Information Access.** Certain BCA systems and tools that include access to and/or submission of Court Records may only be utilized by the Governmental Unit if the Governmental Unit completes the Court Data Services Subscriber Amendment, which upon execution will be incorporated into this Agreement by reference. These BCA systems and tools are identified in the written request made by the Governmental Unit under Clause 2.6 above. The Court Data Services Subscriber Amendment provides important additional terms, including but not limited to privacy (see Clause 8.2, below), fees (see Clause 3 below), and transaction records or logs, that govern Governmental Unit's access to and/or submission of the Court Records delivered through the BCA systems and tools.
- 2.13 Vendor Personnel Screening.** The BCA will conduct all vendor personnel screening on behalf of Governmental Unit as is required by the FBI CJIS Security Policy. The BCA will maintain records of the federal, fingerprint-based background check on each vendor employee as well as records of the completion of the security awareness training that may be relied on by the Governmental Unit.

3 Payment

The Governmental Unit currently accesses the criminal justice data communications network described in Minn. Stat. §299C.46. The bills are sent quarterly for the amount of One Hundred Fifty Dollars (\$150.00) or a total annual cost of Six Hundred Dollars (\$600.00).

The Governmental Unit will identify its contact person for billing purposes, and will provide updated information to BCA's Authorized Representative within ten business days when this information changes.

If Governmental Unit chooses to execute the Court Data Services Subscriber Amendment referred to in Clause 2.12 in order to access and/or submit Court Records via BCA's systems, additional fees, if any, are addressed in that amendment.

4 Authorized Representatives

The BCA's Authorized Representative is the person below, or her successor:

Name: Dana Gotz, Deputy Superintendent
Address: Minnesota Department of Public Safety; Bureau of Criminal Apprehension
1430 Maryland Avenue
Saint Paul, MN 55106

Telephone: 651.793.1007
Email Address: Dana.Gotz@state.mn.us

The Governmental Unit's Authorized Representative is the person below, or his/her successor:

Name: James Crace, Chief
Address: 5111 Maple Grove Rd
Hermantown, MN 55811
Telephone: 218.729.1200
Email Address: jcrace@hermantownmn.com

5 Assignment, Amendments, Waiver, and Agreement Complete

- 5.1 **Assignment.** Neither party may assign nor transfer any rights or obligations under this Agreement.
- 5.2 **Amendments.** Any amendment to this Agreement, except those described in Clauses 2.6 and 2.7 above must be in writing and will not be effective until it has been signed and approved by the same parties who signed and approved the original agreement, their successors in office, or another individual duly authorized.
- 5.3 **Waiver.** If either party fails to enforce any provision of this Agreement, that failure does not waive the provision or the right to enforce it.
- 5.4 **Agreement Complete.** This Agreement contains all negotiations and agreements between the BCA and the Governmental Unit. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

6 Liability

Each party will be responsible for its own acts and behavior and the results thereof and shall not be responsible or liable for the other party's actions and consequences of those actions. The Minnesota Torts Claims Act, Minn. Stat. § 3.736 and other applicable laws govern the BCA's liability. The Minnesota Municipal Tort Claims Act, Minn. Stat. Ch. 466 and other applicable laws, governs the Governmental Unit's liability.

7 Audits

7.1 Under Minn. Stat. § 16C.05, subd. 5, the Governmental Unit's books, records, documents, internal policies and accounting procedures and practices relevant to this Agreement are subject to examination by the BCA, the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Agreement.

Under Minn. Stat. § 6.551, the State Auditor may examine the books, records, documents, and accounting procedures and practices of BCA. The examination shall be limited to the books, records, documents, and accounting procedures and practices that are relevant to this Agreement.

- 7.2 Under applicable state and federal law, the Governmental Unit's records are subject to examination by the BCA to ensure compliance with laws, regulations and policies about access, use, and dissemination of data.
- 7.3 If the Governmental Unit accesses federal databases, the Governmental Unit's records are subject to examination by the FBI and BCA; the Governmental Unit will cooperate with FBI and BCA auditors and make any requested data available for review and audit.
- 7.4 If the Governmental Unit accesses state databases, the Governmental Unit's records are subject to examination by the BCA; the Governmental Unit will cooperate with the BCA auditors and make any requested data available for review and audit.
- 7.5 To facilitate the audits required by state and federal law, Governmental Unit is required to have an inventory of the equipment used to access the data covered by this Agreement and the physical location of each.

8 Government Data Practices

- 8.1 BCA and Governmental Unit.** The Governmental Unit and BCA must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data accessible under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Governmental Unit under this Agreement. The remedies of Minn. Stat. §§ 13.08 and 13.09 apply to the release of the data referred to in this clause by either the Governmental Unit or the BCA.
- 8.2 Court Records.** If Governmental Unit chooses to execute the Court Data Services Subscriber Amendment referred to in Clause 2.12 in order to access and/or submit Court Records via BCA's systems, the following provisions regarding data practices also apply. The Court is not subject to Minn. Stat. Ch. 13 but is subject to the *Rules of Public Access to Records of the Judicial Branch* promulgated by the Minnesota Supreme Court. All parties acknowledge and agree that Minn. Stat. § 13.03, subdivision 4(e) requires that the BCA and the Governmental Unit comply with the *Rules of Public Access* for those data received from Court under the Court Data Services Subscriber Amendment. All parties also acknowledge and agree that the use of, access to or submission of Court Records, as that term is defined in the Court Data Services Subscriber Amendment, may be restricted by rules promulgated by the Minnesota Supreme Court, applicable state statute or federal law. All parties acknowledge and agree that these applicable restrictions must be followed in the appropriate circumstances.

9 Investigation of Alleged Violations; Sanctions

For purposes of this clause, "Individual User" means an employee or contractor of Governmental Unit.

- 9.1 Investigation.** The Governmental Unit and BCA agree to cooperate in the investigation and possible prosecution of suspected violations of federal and state law referenced in this Agreement. Governmental Unit and BCA agree to cooperate in the investigation of suspected violations of the policies and procedures referenced in this Agreement. When BCA becomes aware that a violation may have occurred, BCA will inform Governmental Unit of the suspected violation, subject to any restrictions in applicable law. When Governmental Unit becomes aware that a violation has occurred, Governmental Unit will inform BCA subject to any restrictions in applicable law.
- 9.2 Sanctions Involving Only BCA Systems and Tools.**
The following provisions apply to BCA systems and tools not covered by the Court Data Services Subscriber Amendment. None of these provisions alter the Governmental Unit internal discipline processes, including those governed by a collective bargaining agreement.
- 9.2.1** For BCA systems and tools that are not covered by the Court Data Services Subscriber Amendment, Governmental Unit must determine if and when an involved Individual User's access to systems or tools is to be temporarily or permanently eliminated. The decision to suspend or terminate access may be made as soon as alleged violation is discovered, after notice of an alleged violation is received, or after an investigation has occurred. Governmental Unit must report the status of the Individual User's access to BCA without delay. BCA reserves the right to make a different determination concerning an Individual User's access to systems or tools than that made by Governmental Unit and BCA's determination controls.
- 9.2.2** If BCA determines that Governmental Unit has jeopardized the integrity of the systems or tools covered in this Clause 9.2, BCA may temporarily stop providing some or all the systems or tools under this Agreement until the failure is remedied to the BCA's satisfaction. If Governmental Unit's failure is continuing or repeated, Clause 11.1 does not apply and BCA may terminate this Agreement immediately.
- 9.3 Sanctions Involving Only Court Data Services**
The following provisions apply to those systems and tools covered by the Court Data Services Subscriber Amendment, if it has been signed by Governmental Unit. As part of the agreement between the Court and

the BCA for the delivery of the systems and tools that are covered by the Court Data Services Subscriber Amendment, BCA is required to suspend or terminate access to or use of the systems and tools either on its own initiative or when directed by the Court. The decision to suspend or terminate access may be made as soon as an alleged violation is discovered, after notice of an alleged violation is received, or after an investigation has occurred. The decision to suspend or terminate may also be made based on a request from the Authorized Representative of Governmental Unit. The agreement further provides that only the Court has the authority to reinstate access and use.

9.3.1 Governmental Unit understands that if it has signed the Court Data Services Subscriber Amendment and if Governmental Unit's Individual Users violate the provisions of that Amendment, access and use will be suspended by BCA or Court. Governmental Unit also understands that reinstatement is only at the direction of the Court.

9.3.2 Governmental Unit further agrees that if Governmental Unit believes that one or more of its Individual Users have violated the terms of the Amendment, it will notify BCA and Court so that an investigation as described in Clause 9.1 may occur.

10 Venue

Venue for all legal proceedings involving this Agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

11 Termination

11.1 Termination. The BCA or the Governmental Unit may terminate this Agreement at any time, with or without cause, upon 30 days' written notice to the other party's Authorized Representative.

11.2 Termination for Insufficient Funding. Either party may immediately terminate this Agreement if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written notice to the other party's authorized representative. The Governmental Unit is not obligated to pay for any services that are provided after notice and effective date of termination. However, the BCA will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. Neither party will be assessed any penalty if the agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. Notice of the lack of funding must be provided within a reasonable time of the affected party receiving that notice.

12 Continuing Obligations

The following clauses survive the expiration or cancellation of this Agreement: Liability; Audits; Government Data Practices; 9. Investigation of Alleged Violations; Sanctions; and Venue.

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the BCA for the delivery of the systems and tools that are covered by the Court Data Services Subscriber Amendment, BCA is required to suspend or terminate access to or use of the systems and tools either on its own initiative or when directed by the Court. The decision to suspend or terminate access may be made as soon as an alleged violation is discovered, after notice of an alleged violation is received, or after an investigation has occurred. The decision to suspend or terminate may also be made based on a request from the Authorized Representative of Governmental Unit. The agreement further provides that only the Court has the authority to reinstate access and use.

9.3.1 Governmental Unit understands that if it has signed the Court Data Services Subscriber Amendment and if Governmental Unit's Individual Users violate the provisions of that Amendment, access and use will be suspended by BCA or Court. Governmental Unit also understands that reinstatement is only at the direction of the Court.

9.3.2 Governmental Unit further agrees that if Governmental Unit believes that one or more of its Individual Users have violated the terms of the Amendment, it will notify BCA and Court so that an investigation as described in Clause 9.1 may occur.

10 Venue

Venue for all legal proceedings involving this Agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

11 Termination

11.1 Termination. The BCA or the Governmental Unit may terminate this Agreement at any time, with or without cause, upon 30 days' written notice to the other party's Authorized Representative.

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The following clauses survive the expiration or cancellation of this Agreement: Liability; Audits; Government Data Practices; 9. Investigation of Alleged Violations; Sanctions; and Venue.

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TO: Mayor & City Council

FROM: Jim Crace, Chief of Police



DATE: November 24, 2021

Meeting Date: 12/6/21

SUBJECT: Court Data Services
Subscriber Agreement

Agenda Item: 12-K **Resolution 2021-162**

REQUESTED ACTION

Approve the attached Court Data Services Subscriber Agreement which allows us to submit, receive and transmit records between the department and the court. This agreement would approve the continued use of this system and authorizes this action between the Hermantown Police Department and the MN Department of Public Safety.

BACKGROUND

The HPD utilizes the Court Data Services systems daily to upload case information and receive information back from the court.

SOURCE OF FUNDS (if applicable)

General Fund - Police

ATTACHMENTS

Court Data Services Subscriber Agreement

Resolution No. 2021- 162

RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR AND CITY CLERK TO EXECUTE AND DELIVER THE COURT DATA SERVICES SUBSCRIBER AMENDMENT WITH THE CITY OF HERMANTOWN ON BEHALF OF ITS POLICE DEPARTMENT

WHEREAS, the City of Hermantown on behalf of its Prosecuting Attorney and Police Department desires to enter into a Court Data Services Subscriber Amendment (“Agreement”) with the State of Minnesota, acting through its Department of Public Safety, Bureau of Criminal Apprehension to use systems and tools available over the State’s criminal justice data communications network for which the City is eligible.

WHEREAS, the City Council has considered this matter and believes that it is in the best interests of the City of Hermantown to approve the Agreement as shown on the **Exhibit A**.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Hermantown, Minnesota as follows:

1. That the Agreement by and between the State of Minnesota acting through its Department of Public Safety, Bureau of Criminal Apprehension and the City of Hermantown on behalf of its Police Department, are hereby approved.

2. That the Mayor and City Clerk are authorized to sign the Agreement attached hereto as **Exhibit A**.

Councilor _____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor _____, and upon a vote being taken thereon, the following voted in favor thereof:

and the following voted in opposition thereto:

WHEREUPON, such resolution was declared duly passed and adopted on December 6, 2021.

EXHIBIT A

COURT DATA SERVICES SUBSCRIBER AMENDMENT TO CJDN SUBSCRIBER AGREEMENT

This Court Data Services Subscriber Amendment (“Subscriber Amendment”) is entered into by the State of Minnesota, acting through its Department of Public Safety, Bureau of Criminal Apprehension, (“BCA”) and the City of Hermantown on behalf of its Police Department (“Agency”), and by and for the benefit of the State of Minnesota acting through its State Court Administrator’s Office (“Court”) who shall be entitled to enforce any provisions hereof through any legal action against any party.

Recitals

This Subscriber Amendment modifies and supplements the Agreement between the BCA and Agency, SWIFT Contract number 200507, of even or prior date, for Agency use of BCA systems and tools (referred to herein as “the CJDN Subscriber Agreement”). Certain BCA systems and tools that include access to and/or submission of Court Records may only be utilized by the Agency if the Agency completes this Subscriber Amendment. The Agency desires to use one or more BCA systems and tools to access and/or submit Court Records to assist the Agency in the efficient performance of its duties as required or authorized by law or court rule. Court desires to permit such access and/or submission. This Subscriber Amendment is intended to add Court as a party to the CJDN Subscriber Agreement and to create obligations by the Agency to the Court that can be enforced by the Court. It is also understood that, pursuant to the Master Joint Powers Agreement for Delivery of Court Data Services to CJDN Subscribers (“Master Authorization Agreement”) between the Court and the BCA, the BCA is authorized to sign this Subscriber Amendment on behalf of Court. Upon execution the Subscriber Amendment will be incorporated into the CJDN Subscriber Agreement by reference. The BCA, the Agency and the Court desire to amend the CJDN Subscriber Agreement as stated below.

The CJDN Subscriber Agreement is amended by the addition of the following provisions:

1. **TERM; TERMINATION; ONGOING OBLIGATIONS.** This Subscriber Amendment shall be effective on the date finally executed by all parties and shall remain in effect until expiration or termination of the CJDN Subscriber Agreement unless terminated earlier as provided in this Subscriber Amendment. Any party may terminate this Subscriber Amendment with or without cause by giving written notice to all other parties. The effective date of the termination shall be thirty days after the other party's receipt of the notice of termination, unless a later date is specified in the notice. The provisions of sections 5 through 9, 12.b., 12.c., and 15 through 24 shall survive any termination of this Subscriber Amendment as shall any other provisions which by their nature are intended or expected to survive such termination. Upon termination, the Subscriber shall perform the responsibilities set forth in paragraph 7(f) hereof.

2. **Definitions.** Unless otherwise specifically defined, each term used herein shall have the meaning assigned to such term in the CJDN Subscriber Agreement.

a. **“Authorized Court Data Services”** means Court Data Services that have been authorized for delivery to CJDN Subscribers via BCA systems and tools pursuant to an Authorization Amendment to the Joint Powers Agreement for Delivery of Court Data Services to CJDN Subscribers (“Master Authorization Agreement”) between the Court and the BCA.

b. **“Court Data Services”** means one or more of the services set forth on the Justice Agency Resource webpage of the Minnesota Judicial Branch website (for which the current address is www.courts.state.mn.us) or other location designated by the Court, as the same may be amended from time to time by the Court.

c. **“Court Records”** means all information in any form made available by the Court to Subscriber through the BCA for the purposes of carrying out this Subscriber Amendment, including:

i. **“Court Case Information”** means any information in the Court Records that conveys information about a particular case or controversy, including without limitation Court Confidential Case Information, as defined herein.

ii. **“Court Confidential Case Information”** means any information in the Court Records that is inaccessible to the public pursuant to the Rules of Public Access and that conveys information about a particular case or controversy.

iii. **“Court Confidential Security and Activation Information”** means any information in the Court Records that is inaccessible to the public pursuant to the Rules of Public Access and that explains how to use or gain access to Court Data Services, including but not limited to login account names, passwords, TCP/IP addresses, Court Data Services user manuals, Court Data Services Programs, Court Data Services Databases, and other technical information.

iv. **“Court Confidential Information”** means any information in the Court Records that is inaccessible to the public pursuant to the Rules of Public Access, including without limitation both i) Court Confidential Case Information; and ii) Court Confidential Security and Activation Information.

d. **“DCA”** shall mean the district courts of the state of Minnesota and their respective staff.

e. **“Policies & Notices”** means the policies and notices published by the Court in connection with each of its Court Data Services, on a website or other location designated by the Court, as the same may be amended from time to time by the Court. Policies & Notices for each Authorized Court Data Service identified in an approved request form under section 3, below, are hereby made part of this Subscriber Amendment

by this reference and provide additional terms and conditions that govern Subscriber's use of Court Records accessed through such services, including but not limited to provisions on access and use limitations.

f. “**Rules of Public Access**” means the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court, as the same may be amended from time to time, including without limitation lists or tables published from time to time by the Court entitled *Limits on Public Access to Case Records or Limits on Public Access to Administrative Records*, all of which by this reference are made a part of this Subscriber Amendment. It is the obligation of Subscriber to check from time to time for updated rules, lists, and tables and be familiar with the contents thereof. It is contemplated that such rules, lists, and tables will be posted on the Minnesota Judicial Branch website, for which the current address is www.courts.state.mn.us.

g. “**Court**” shall mean the State of Minnesota, State Court Administrator's Office.

h. “**Subscriber**” shall mean the Agency.

i. “**Subscriber Records**” means any information in any form made available by the Subscriber to the Court for the purposes of carrying out this Subscriber Amendment.

3. REQUESTS FOR AUTHORIZED COURT DATA SERVICES. Following execution of this Subscriber Amendment by all parties, Subscriber may submit to the BCA one or more separate requests for Authorized Court Data Services. The BCA is authorized in the Master Authorization Agreement to process, credential and approve such requests on behalf of Court and all such requests approved by the BCA are adopted and incorporated herein by this reference the same as if set forth verbatim herein.

a. Activation. Activation of the requested Authorized Court Data Service(s) shall occur promptly following approval.

b. Rejection. Requests may be rejected for any reason, at the discretion of the BCA and/or the Court.

c. Requests for Termination of One or More Authorized Court Data Services. The Subscriber may request the termination of an Authorized Court Data Services previously requested by submitting a notice to Court with a copy to the BCA. Promptly upon receipt of a request for termination of an Authorized Court Data Service, the BCA will deactivate the service requested. The termination of one or more Authorized Court Data Services does not terminate this Subscriber Amendment. Provisions for termination of this Subscriber Amendment are set forth in section 1. Upon termination of Authorized Court Data Services, the Subscriber shall perform the responsibilities set forth in paragraph 7(f) hereof.

4. SCOPE OF ACCESS TO COURT RECORDS LIMITED. Subscriber's access to and/or submission of the Court Records shall be limited to Authorized Court Data

Services identified in an approved request form under section 3, above, and other Court Records necessary for Subscriber to use Authorized Court Data Services. Authorized Court Data Services shall only be used according to the instructions provided in corresponding Policies & Notices or other materials and only as necessary to assist Subscriber in the efficient performance of Subscriber's duties required or authorized by law or court rule in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body. Subscriber's access to the Court Records for personal or non-official use is prohibited. Subscriber will not use or attempt to use Authorized Court Data Services in any manner not set forth in this Subscriber Amendment, Policies & Notices, or other Authorized Court Data Services documentation, and upon any such unauthorized use or attempted use the Court may immediately terminate this Subscriber Amendment without prior notice to Subscriber.

5. GUARANTEES OF CONFIDENTIALITY. Subscriber agrees:

a. To not disclose Court Confidential Information to any third party except where necessary to carry out the Subscriber's duties as required or authorized by law or court rule in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body.

b. To take all appropriate action, whether by instruction, agreement, or otherwise, to insure the protection, confidentiality and security of Court Confidential Information and to satisfy Subscriber's obligations under this Subscriber Amendment.

c. To limit the use of and access to Court Confidential Information to Subscriber's bona fide personnel whose use or access is necessary to effect the purposes of this Subscriber Amendment, and to advise each individual who is permitted use of and/or access to any Court Confidential Information of the restrictions upon disclosure and use contained in this Subscriber Amendment, requiring each individual who is permitted use of and/or access to Court Confidential Information to acknowledge in writing that the individual has read and understands such restrictions. Subscriber shall keep such acknowledgements on file for one year following termination of the Subscriber Amendment and/or CJDN Subscriber Agreement, whichever is longer, and shall provide the Court with access to, and copies of, such acknowledgements upon request. For purposes of this Subscriber Amendment, Subscriber's bona fide personnel shall mean individuals who are employees of Subscriber or provide services to Subscriber either on a voluntary basis or as independent contractors with Subscriber.

d. That, without limiting section 1 of this Subscriber Amendment, the obligations of Subscriber and its bona fide personnel with respect to the confidentiality and security of Court Confidential Information shall survive the termination of this Subscriber Amendment and the CJDN Subscriber Agreement and the termination of their relationship with Subscriber.

e. That, notwithstanding any federal or state law applicable to the nondisclosure obligations of Subscriber and Subscriber's bona fide personnel under this Subscriber Amendment, such obligations of Subscriber and Subscriber's bona fide personnel are founded independently on the provisions of this Subscriber Amendment.

6. APPLICABILITY TO PREVIOUSLY DISCLOSED COURT RECORDS.

Subscriber acknowledges and agrees that all Authorized Court Data Services and related Court Records disclosed to Subscriber prior to the effective date of this Subscriber Amendment shall be subject to the provisions of this Subscriber Amendment.

7. LICENSE AND PROTECTION OF PROPRIETARY RIGHTS. During the term of this Subscriber Amendment, subject to the terms and conditions hereof, the Court hereby grants to Subscriber a nonexclusive, nontransferable, limited license to use Court Data Services Programs and Court Data Services Databases to access or receive the Authorized Court Data Services identified in an approved request form under section 3, above, and related Court Records. Court reserves the right to make modifications to the Authorized Court Data Services, Court Data Services Programs, and Court Data Services Databases, and related materials without notice to Subscriber. These modifications shall be treated in all respects as their previous counterparts.

a. Court Data Services Programs. Court is the copyright owner and licensor of the Court Data Services Programs. The combination of ideas, procedures, processes, systems, logic, coherence and methods of operation embodied within the Court Data Services Programs, and all information contained in documentation pertaining to the Court Data Services Programs, including but not limited to manuals, user documentation, and passwords, are trade secret information of Court and its licensors.

b. Court Data Services Databases. Court is the copyright owner and licensor of the Court Data Services Databases and of all copyrightable aspects and components thereof. All specifications and information pertaining to the Court Data Services Databases and their structure, sequence and organization, including without limitation data schemas such as the Court XML Schema, are trade secret information of Court and its licensors.

c. Marks. Subscriber shall neither have nor claim any right, title, or interest in or use of any trademark used in connection with Authorized Court Data Services, including but not limited to the marks "MNCIS" and "Odyssey."

d. Restrictions on Duplication, Disclosure, and Use. Trade secret information of Court and its licensors will be treated by Subscriber in the same manner as Court Confidential Information. In addition, Subscriber will not copy any part of the Court Data Services Programs or Court Data Services Databases, or reverse engineer or otherwise attempt to discern the source code of the Court Data Services Programs or Court Data Services Databases, or use any trademark of Court or its licensors, in any way or for any purpose not specifically and expressly authorized by this Subscriber Amendment. As used herein, "trade secret information of Court and its licensors" means any information possessed by Court which derives independent economic value from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. "Trade secret information of Court and its licensors" does not, however, include information which was known to Subscriber prior to Subscriber's receipt thereof, either directly or indirectly, from Court or its licensors, information which is independently developed by Subscriber without reference to or use of information received from Court or its licensors, or information which would not qualify as a trade secret under Minnesota law. It will not be a violation of this section 7, sub-section d, for Subscriber to make up to one copy of

training materials and configuration documentation, if any, for each individual authorized to access, use, or configure Authorized Court Data Services, solely for its own use in connection with this Subscriber Amendment. Subscriber will take all steps reasonably necessary to protect the copyright, trade secret, and trademark rights of Court and its licensors and Subscriber will advise its bona fide personnel who are permitted access to any of the Court Data Services Programs and Court Data Services Databases, and trade secret information of Court and its licensors, of the restrictions upon duplication, disclosure and use contained in this Subscriber Amendment.

e. Proprietary Notices. Subscriber will not remove any copyright or proprietary notices included in and/or on the Court Data Services Programs or Court Data Services Databases, related documentation, or trade secret information of Court and its licensors, or any part thereof, made available by Court directly or through the BCA, if any, and Subscriber will include in and/or on any copy of the Court Data Services Programs or Court Data Services Databases, or trade secret information of Court and its licensors and any documents pertaining thereto, the same copyright and other proprietary notices as appear on the copies made available to Subscriber by Court directly or through the BCA, except that copyright notices shall be updated and other proprietary notices added as may be appropriate.

f. Title; Return. The Court Data Services Programs and Court Data Services Databases, and related documentation, including but not limited to training and configuration material, if any, and logon account information and passwords, if any, made available by the Court to Subscriber directly or through the BCA and all copies, including partial copies, thereof are and remain the property of the respective licensor. Except as expressly provided in section 12.b., within ten days of the effective date of termination of this Subscriber Amendment or the CJDN Subscriber Agreement or within ten days of a request for termination of Authorized Court Data Service as described in section 4, Subscriber shall either: (i) uninstall and return any and all copies of the applicable Court Data Services Programs and Court Data Services Databases, and related documentation, including but not limited to training and configuration materials, if any, and logon account information, if any; or (2) destroy the same and certify in writing to the Court that the same have been destroyed.

8. INJUNCTIVE RELIEF. Subscriber acknowledges that the Court, Court's licensors, and DCA will be irreparably harmed if Subscriber's obligations under this Subscriber Amendment are not specifically enforced and that the Court, Court's licensors, and DCA would not have an adequate remedy at law in the event of an actual or threatened violation by Subscriber of its obligations. Therefore, Subscriber agrees that the Court, Court's licensors, and DCA shall be entitled to an injunction or any appropriate decree of specific performance for any actual or threatened violations or breaches by Subscriber or its bona fide personnel without the necessity of the Court, Court's licensors, or DCA showing actual damages or that monetary damages would not afford an adequate remedy. Unless Subscriber is an office, officer, agency, department, division, or bureau of the state of Minnesota, Subscriber shall be liable to the Court, Court's licensors, and DCA for reasonable attorneys fees incurred by the Court, Court's licensors, and DCA in obtaining any relief pursuant to this Subscriber Amendment.

9. LIABILITY. Subscriber and the Court agree that, except as otherwise expressly provided herein, each party will be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of any others and the results

thereof. Liability shall be governed by applicable law. Without limiting the foregoing, liability of the Court and any Subscriber that is an office, officer, agency, department, division, or bureau of the state of Minnesota shall be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes, section 3.376, and other applicable law. Without limiting the foregoing, if Subscriber is a political subdivision of the state of Minnesota, liability of the Subscriber shall be governed by the provisions of Minn. Stat. Ch. 466 (Tort Liability, Political Subdivisions) or other applicable law. Subscriber and Court further acknowledge that the liability, if any, of the BCA is governed by a separate agreement between the Court and the BCA dated December 13, 2010 with DPS-M -0958.

10. AVAILABILITY. Specific terms of availability shall be established by the Court and communicated to Subscriber by the Court and/or the BCA. The Court reserves the right to terminate this Subscriber Amendment immediately and/or temporarily suspend Subscriber's Authorized Court Data Services in the event the capacity of any host computer system or legislative appropriation of funds is determined solely by the Court to be insufficient to meet the computer needs of the courts served by the host computer system.

11. [reserved]

12. ADDITIONAL USER OBLIGATIONS. The obligations of the Subscriber set forth in this section are in addition to the other obligations of the Subscriber set forth elsewhere in this Subscriber Amendment.

a. Judicial Policy Statement. Subscriber agrees to comply with all policies identified in Policies & Notices applicable to Court Records accessed by Subscriber using Authorized Court Data Services. Upon failure of the Subscriber to comply with such policies, the Court shall have the option of immediately suspending the Subscriber's Authorized Court Data Services on a temporary basis and/or immediately terminating this Subscriber Amendment.

b. Access and Use; Log. Subscriber shall be responsible for all access to and use of Authorized Court Data Services and Court Records by Subscriber's bona fide personnel or by means of Subscriber's equipment or passwords, whether or not Subscriber has knowledge of or authorizes such access and use. Subscriber shall also maintain a log identifying all persons to whom Subscriber has disclosed its Court Confidential Security and Activation Information, such as user ID(s) and password(s), including the date of such disclosure. Subscriber shall maintain such logs for a minimum period of six years from the date of disclosure, and shall provide the Court with access to, and copies of, such logs upon request. The Court may conduct audits of Subscriber's logs and use of Authorized Court Data Services and Court Records from time to time. Upon Subscriber's failure to maintain such logs, to maintain accurate logs, or to promptly provide access by the Court to such logs, the Court may terminate this Subscriber Amendment without prior notice to Subscriber.

c. Personnel. Subscriber agrees to investigate, at the request of the Court and/or the BCA, allegations of misconduct pertaining to Subscriber's bona fide personnel having access to or use of Authorized Court Data Services, Court Confidential Information, or trade secret information of the Court and its licensors where such persons are alleged to have violated the provisions of this Subscriber Amendment, Policies &

Notices, Judicial Branch policies, or other security requirements or laws regulating access to the Court Records.

d. Minnesota Data Practices Act Applicability. If Subscriber is a Minnesota Government entity that is subject to the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, Subscriber acknowledges and agrees that: (1) the Court is not subject to Minn. Stat. Ch. 13 (see section 13.90) but is subject to the Rules of Public Access and other rules promulgated by the Minnesota Supreme Court; (2) Minn. Stat. section 13.03, subdivision 4(e) requires that Subscriber comply with the Rules of Public Access and other rules promulgated by the Minnesota Supreme Court for access to Court Records provided via the BCA systems and tools under this Subscriber Amendment; (3) the use of and access to Court Records may be restricted by rules promulgated by the Minnesota Supreme Court, applicable state statute or federal law; and (4) these applicable restrictions must be followed in the appropriate circumstances.

13. FEES; INVOICES. Unless the Subscriber is an office, officer, department, division, agency, or bureau of the state of Minnesota, Subscriber shall pay the fees, if any, set forth in applicable Policies & Notices, together with applicable sales, use or other taxes. Applicable monthly fees commence ten (10) days after notice of approval of the request pursuant to section 3 of this Subscriber Amendment or upon the initial Subscriber transaction as defined in the Policies & Notices, whichever occurs earlier. When fees apply, the Court shall invoice Subscriber on a monthly basis for charges incurred in the preceding month and applicable taxes, if any, and payment of all amounts shall be due upon receipt of invoice. If all amounts are not paid within 30 days of the date of the invoice, the Court may immediately cancel this Subscriber Amendment without notice to Subscriber and pursue all available legal remedies. Subscriber certifies that funds have been appropriated for the payment of charges under this Subscriber Amendment for the current fiscal year, if applicable.

14. MODIFICATION OF FEES. Court may modify the fees by amending the Policies & Notices as provided herein, and the modified fees shall be effective on the date specified in the Policies & Notices, which shall not be less than thirty days from the publication of the Policies & Notices. Subscriber shall have the option of accepting such changes or terminating this Subscriber Amendment as provided in section 1 hereof.

15. WARRANTY DISCLAIMERS.

a. WARRANTY EXCLUSIONS. EXCEPT AS SPECIFICALLY AND EXPRESSLY PROVIDED HEREIN, COURT, COURT'S LICENSORS, AND DCA MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, NOR ARE ANY WARRANTIES TO BE IMPLIED, WITH RESPECT TO THE INFORMATION, SERVICES OR COMPUTER PROGRAMS MADE AVAILABLE UNDER THIS AGREEMENT.

b. ACCURACY AND COMPLETENESS OF INFORMATION. WITHOUT LIMITING THE GENERALITY OF THE PRECEDING PARAGRAPH,

COURT, COURT'S LICENSORS, AND DCA MAKE NO WARRANTIES AS TO THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED IN THE COURT RECORDS.

16. RELATIONSHIP OF THE PARTIES. Subscriber is an independent contractor and shall not be deemed for any purpose to be an employee, partner, agent or franchisee of the Court, Court's licensors, or DCA. Neither Subscriber nor the Court, Court's licensors, or DCA shall have the right nor the authority to assume, create or incur any liability or obligation of any kind, express or implied, against or in the name of or on behalf of the other.

17. NOTICE. Except as provided in section 2 regarding notices of or modifications to Authorized Court Data Services and Policies & Notices, any notice to Court or Subscriber hereunder shall be deemed to have been received when personally delivered in writing or seventy-two (72) hours after it has been deposited in the United States mail, first class, proper postage prepaid, addressed to the party to whom it is intended at the address set forth on page one of this Agreement or at such other address of which notice has been given in accordance herewith.

18. NON-WAIVER. The failure by any party at any time to enforce any of the provisions of this Subscriber Amendment or any right or remedy available hereunder or at law or in equity, or to exercise any option herein provided, shall not constitute a waiver of such provision, remedy or option or in any way affect the validity of this Subscriber Amendment. The waiver of any default by either Party shall not be deemed a continuing waiver, but shall apply solely to the instance to which such waiver is directed.

19. FORCE MAJEURE. Neither Subscriber nor Court shall be responsible for failure or delay in the performance of their respective obligations hereunder caused by acts beyond their reasonable control.

20. SEVERABILITY. Every provision of this Subscriber Amendment shall be construed, to the extent possible, so as to be valid and enforceable. If any provision of this Subscriber Amendment so construed is held by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, such provision shall be deemed severed from this Subscriber Amendment, and all other provisions shall remain in full force and effect.

21. ASSIGNMENT AND BINDING EFFECT. Except as otherwise expressly permitted herein, neither Subscriber nor Court may assign, delegate and/or otherwise transfer this Subscriber Amendment or any of its rights or obligations hereunder without the prior written consent of the other. This Subscriber Amendment shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns, including any other legal entity into, by or with which Subscriber may be merged, acquired or consolidated.

22. GOVERNING LAW. This Subscriber Amendment shall in all respects be governed by and interpreted, construed and enforced in accordance with the laws of the United States and of the State of Minnesota.

23. VENUE AND JURISDICTION. Any action arising out of or relating to this Subscriber Amendment, its performance, enforcement or breach will be venued in a state or federal court situated within the State of Minnesota. Subscriber hereby irrevocably consents and submits itself to the personal jurisdiction of said courts for that purpose.

24. INTEGRATION. This Subscriber Amendment contains all negotiations and agreements between the parties. No other understanding regarding this Subscriber Amendment, whether written or oral, may be used to bind either party, provided that all terms and conditions of the CJDN Subscriber Agreement and all previous amendments remain in full force and effect except as supplemented or modified by this Subscriber Amendment.

IN WITNESS WHEREOF, the Parties have, by their duly authorized officers, executed this Subscriber Amendment in duplicate, intending to be bound thereby.

1. SUBSCRIBER (AGENCY)

Subscriber must attach written verification of authority to sign on behalf of and bind the entity, such as an opinion of counsel or resolution.

Name: **City of Hermantown**

By _____
Wayne Boucher, Its Mayor

Date: _____

And by _____
John Mulder, Its Acting City Clerk

Date: _____

**2. DEPARTMENT OF PUBLIC SAFETY,
BUREAU OF CRIMINAL APPREHENSION**

Name: _____
(PRINTED)

Signed: _____

Title: _____
(with delegated authority)

Date: _____

**3. COMMISSIONER OF
ADMINISTRATION**
delegated to Materials Management Division

By: _____

Date: _____

4. COURTS
Authority granted to Bureau of Criminal Apprehension

Name: _____
(PRINTED)

Signed: _____

Title: _____
(with authorized authority)

Date: _____

TO: Mayor & City Council
FROM: John Mulder, City Administrator
DATE: November 24, 2021
SUBJECT: Labor Contract with AFSCME
Local 66 City Hall Employees



Meeting Date: 12/6/21

Agenda Item: 12-L **Resolution 2021-163**

REQUESTED ACTION

Approve tentative agreements with the AFSCME Local 66 (City Hall Employees) for January 1, 2022 through December 31, 2024

BACKGROUND

The City and Union met on one occasion in negotiations in attempt to settle the successor labor agreement for the one that will expire on December 31, 2021. If approved by the City Council, a new contract reflecting these changes would be prepared for signatures by the Mayor and Clerk as well as the Union.

SOURCE OF FUNDS (if applicable)

The Costs for these positons are charged either to the General Fund, Sewer Fund, or the Water Fund

ATTACHMENTS

Resolution
Tentative Agreement

**Tentative Agreements between
the City of Hermantown and
AFSCME Local # 66
November 9, 2021**

ARTICLE 5 - PROMOTIONS, VACANCIES & TRANSFERS

Section 1. All vacancies the City wishes to fill shall be posted for a five-day period. Employees wishing to be considered for such vacancies shall submit a written statement to that effect which shall include their qualifications for the vacant position. The Employer shall make a determination as to any employee's qualifications, **and** ability according to the provisions of Section 2, below.

ARTICLE 10 - DISCIPLINE

Section 5. ~~Discharges will be preceded by a five (5) calendar day suspension without pay.~~

Renumber the remaining paragraphs.

ARTICLE 14 - SALARY PROGRESSION

Section 3. Employees shall remain at the assigned step as specified above ~~until the beginning of the next pay period~~ until their anniversary date of employment following completion of twelve (12) months service in a permanent position; at which time he shall advance one (1) step in pay range in Addendum A; and the employee shall thereafter advance one (1) step in the pay range for each additional twelve (12) months of service.

ARTICLE 16 - OVERTIME

New Section 1 b. At the employee's request, employees will be allowed to flex their daily schedule on occasion, with management approval, and work more than 8 hours per day without receiving overtime or compensatory time as long as they do not work over 40 hours per week.

ARTICLE 17 - SICK LEAVE

Section 1. All employees will accumulate sick leave at the rate of eight (8) hours per month ~~Upon completion of the probationary period, an employee will be credited with six (6) days of sick leave and will continue to accumulate sick leave at the rate of one (1) day per month to a maximum of 560 hours seventy (70) days. Such additional accumulation shall be at the rate of one (1) day per month.~~ In the event of excessive utilization of the sick leave provisions contained herein, the employee, upon the request of the City, shall be required to furnish a doctor's certificate of illness. It is the responsibility of the employee to immediately notify her supervisor if she is unable to report for her normally scheduled tour of work. In the

event of abuse of this Section, same shall be subject to the grievance provisions of this Contract.

ARTICLE 19 - VACATIONS

Section 1. ~~Employees shall be entitled to a paid vacation~~ earn paid vacation based on the table below. ~~based upon service in the previous year and shall become eligible for vacation pay only upon completion of one (1) year's continuous service.~~

~~Annual leave shall be earned as follows:~~

During the first year of employment	.42 days/month
During the <u>1st</u> 2nd through 4th year of employment	.83 days/month
During the 5th through 9th year of employment	1.25 days/month
During the 10th through the 14th year of employment	1.67 days/month
During the 15th through the 19th year of employment	2.08 days/month
During and after the 20 th year of employment	2.5 days/month

ARTICLE 21 - HOSPITALIZATION

Section 1. A new employee regularly scheduled to work thirty (30) or more hours a week shall be eligible to receive hospitalization coverage on the first of the month following 60 days of continuous employment. At the time of enrollment, the employee must inform her supervisor whether she desires single or family coverage. The Employer agrees to provide insurance coverage equal to or better than the benefits ~~contained within the Summary Plan Description of the Triple Gold Health Plan for benefits effective January 1, 2013~~ in effect on January 1, 2021

Section 2 Affordable Care Act ~~Final regulations have not been issued under many provisions of the Patient Protection and Affordable Care Act (ACA). This creates considerable uncertainty regarding the Employer's financial obligations as well as maintaining the aggregate level of benefits as provided for in this CBA. This agreement may be reopened and all material terms of compensation, hours and fringe benefits (includes health benefits) shall be subject to negotiations if in fact changes are necessary to comply with the ACA. Either party to the Agreement that requests a reopener under this provision shall be obligated to provide specific documentation as to the provision of the ACA that is cause for the requested reopener at the time such a request is made. This section will only apply to the 2014 2015 Contract and will automatically expire at the end of the contract.~~

Renumber the remaining paragraphs.

DURATION:

Three year contract

WAGES:

1/1/22	3.75%
1/1/23	3.25%
1/1/24	3.25%

ARTICLE 14 - SALARY PROGRESSION

Section 6. Classifications covered by this Agreement have the following Grades:

New Grade	Old GRADE	CLASSIFICATION
	5	Receptionist
2	6	Administrative Assistant/Receptionist/
3	7	Account Clerk
		Planning and Zoning Coordinator
3	15B	Law Enforcement Secretary <u>Police Records Technician</u>
4	15A	Utility Billing Clerk
4		Geographic Information Systems (GIS) Tech
4	20	Lead Law Enforcement Secretary <u>Police</u> <u>Records Technician</u>
		Law Enforcement Sec/Evidence <u>Police Records</u> <u>Technician</u>
4	22	Environmental Resources Specialist

Clean Addendum A to put job titles in their respective classifications.

The City and Union agree to continue discussions about possible alternative schedules outside the scope of contract negotiations

Resolution No. 2021-164

RESOLUTION OF THE CITY OF HERMANTOWN ACCEPTING SUPPLEMENTAL DISTRIBUTION OF THE AMERICAN RESCUE PLAN ACT FUNDS

WHEREAS, Congress adopted the American Rescue Plan Act in March 2021 (“ARPA”) which included \$65 billion in recovery funds for cities across the country in connection with the ongoing coronavirus disease 2019 (COVID-19) (“Pandemic”); and

WHEREAS, the City of Hermantown (“City”) accepted \$509,879.32 of Coronavirus Local Fiscal Recovery Funds Established Under the American Rescue Plan Act by Resolution No. 2021-120 on September 20, 2021; and

WHEREAS, the City is defined as a “non-entitlement city” because it has a population less than 50,000; and

WHEREAS, on November 22, 2021, non-entitlement cities received additional American Rescue Plan Act funds as part of a redistribution of unrequested funds; and

WHEREAS, the City received an additional \$16,697.14; and

WHEREAS, a similar amount should be received in approximately a year by the City of Hermantown (“City”) pursuant to the ARPA (“Allocation”); and

WHEREAS, the State of Minnesota will distribute the supplemental ARPA funds to the City because its population is less than 50,000.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hermantown, Minnesota:

1. The City intends to collect its share of supplemental ARPA funds from the State of Minnesota to use in a manner consistent with the Department of Treasury’s guidance.
2. City staff, together with the Mayor and the City Attorney are hereby authorized to take any actions necessary to receive the City’s share of the supplemental ARPA funds from the State of Minnesota for expenses incurred because of the Pandemic as provided for in Resolution No. 2021-120.
3. City staff, together with the Mayor and the City Attorney are hereby authorized to make recommendations to the City Council for future expenditures that may be reimbursed with ARPA funds.

Councilor _____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor _____ and upon a vote being taken thereon, the following voted in favor thereof:

and the following voted in opposition thereto:

WHEREUPON, such resolution was declared duly passed and adopted on December 6, 2021