



Hermantown City Council Meeting - Monday, May 15, 2023

Hermantown's upcoming City Council meeting will include both remote access and in-person access to Council Chambers. The remote access will be available through the platform, "Zoom," which allows the public to view and participate in the meeting via phone or computer. Interested parties can also choose to attend the City Council meetings in person at City Hall.

Remote access to the 6:30 p.m. City Council Meeting via Zoom:

<https://us02web.zoom.us/j/84409952143?pwd=cGdaNzZmU2NYdGxsUDIQVDVxeU9LQT09>

and/or by calling the number (312) 626-6799 and utilizing the meeting ID number of 844 0995 2143 and the passcode of 0260647091.

Public comment may also be submitted in advance of the meeting. Comments, questions, or concerns can be e-mailed to Community Engagement Director, 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 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
- Everyone has varying levels of comfort regarding remote technology, 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.



AGENDA

Pre-Agenda Meeting Monday, May 15, 2023 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 Monday, May 15, 2023 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, May 15, 2023 at 4:30 p.m.
Council Chambers, City Hall - Hermantown Governmental Services Building**

**City Council Meeting Monday, May 15, 2023 at 6:30 p.m.
Council Chambers, City Hall - Hermantown Governmental Services Building**

1. **CALL TO ORDER**
2. **PLEDGE OF ALLEGIANCE**
3. **ROLL CALL**
4. **ANNOUNCEMENTS** **6**
 - A. **Peace Officer's Memorial Day - May 15**
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.
6. **COMMUNICATIONS**
 - A. Correspondence 23-75 through 23-80 placed on file **7**
7. **PRESENTATIONS**
 - A. **Broadband Update**
John Mulder, City Administrator
(Pre-Agenda Only)
 - B. **Fire Department Annual Report** **9**
Mike Marshall, Fire Chief
(Pre-Agenda Only)
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. **MOTIONS**
 - A. Motion to approve/deny THC License Applications for the following effective June 1, 2023 through December 31, 2024 contingent upon complete applications being received, successful background checks and license fees paid in full:

Dima Corporation 5193 Miller Trunk Hwy

Turning Leaf Duluth LLC	4120 Richard Ave
Adolph Store	3710 Midway Rd
Stokke's Liquor	3706 Midway Rd

10. **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 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 May 1, 2023 City Council Continuation Minutes **35**

11. **ORDINANCES**

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. **2023-61 RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR AND CITY CLERK TO EXECUTE AND DELIVER A MUTUAL AID AGREEMENT WITH ST LOUIS COUNTY** **40**

(motion, roll call)

- B. **2023-62 RESOLUTION AUTHORIZING THE CITY OF HERMANTOWN TO ENTER A GRANT AGREEMENT WITH THE STATE OF MINNESOTA'S STATE TRANSPORTATION FUND FOR LOCAL ROAD IMPROVEMENT FOR SAP 202-080-003** **49**

(motion, roll call)

- C. **2023-63 RESOLUTION APPROVING FINAL PLANS AND SPECIFICATIONS AND ORDERING ADVERTISEMENT FOR BIDS FOR SEWER IMPROVEMENT PROJECT NO. 451 (OKERSTROM ROAD AND SEWER)** **81**

(motion, roll call)

- D. **2023-64 RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR AND CITY CLERK TO EXECUTE AND DELIVER WATER TOWER LEASE AGREEMENT BETWEEN THE CITY OF HERMANTOWN AND COMMNET CELLULAR, INC. D/B/A VERIZON WIRELESS** **87**

(motion, roll call)

- E. **2023-65 RESOLUTION AWARING CONTRACT TO NORTHLAND CONSTRUCTORS FOR A WATER VALVE REPLACEMENT AT THE CORNER OF HAINES ROAD AND ARROWHEAD ROAD FOR \$18,567.23** **119**

(motion, roll call)

13. **RECESS**

**CITY OF HERMANTOWN
PROCLAMATION
Peace Officers Memorial Day
May 15, 2023**

WHEREAS, there are more than 800,000 law enforcement officers serving in communities across the United States, including the dedicated members of the Hermantown Police Department;

WHEREAS, since the first recorded death in 1786, there are currently 23,785 law enforcement officers in the United States have made the ultimate sacrifice and been killed in the line of duty,

WHEREAS, the names of these dedicated public servants are engraved on the walls of the National Law Enforcement Officers Memorial in Washington, DC;

WHEREAS, 556 new names of fallen heroes are being added to the National Law Enforcement Officers Memorial this spring, including 224 officers killed in 2022 and 332 officers killed in previous years;

WHEREAS, On October 1, 1962, U.S. President John F. Kennedy signed Public Law 87-726, a joint resolution of the 87th Congress designating May 15 as Peace Officer Memorial Day in honor of the federal, state, and municipal peace officers who have been killed or disabled in the line of duty.

***NOW, THEREFORE,** as the Mayor of Hermantown, I, Wayne Boucher, do hereby proclaim May 15, 2023 as Peace Officers Memorial Day in Hermantown, MN, and publicly salute the service of law enforcement officers in our community and in communities across the nation.*

***IN WITNESS WHEREOF,** I do hereby set my hand and cause the Corporate Seal of the City of Hermantown to be affixed this 15th day of May 2023.*

Wayne Boucher, Mayor

Date: May 10, 2023
To: City Council
From: John Mulder, City Administrator
RE: Correspondence

In your agenda 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 included in the agenda packet only the correspondence that we believe to be of special interest.

5/2/2023	23-75	Marianne Bohren, WLLSD	MN Pollution Control Agency	Sanitary Sewer Extension - Peyton Acres Phase 1C	4/25/2023
5/4/2023	23-76	MN Pollution Control Agency	City of Hermantown	Peyton Acres Phase 1C	5/4/2023
5/8/2023	23-77	John Mulder, City Administrator	Greg Ritchie, MN Power	Easement	5/8/2023
5/9/2023	23-78	Proctor & Hermantown Comm. Ed.	City of Hermantown	Aging Community Luncheon	4/24/2023
5/9/2023	23-79	MN Power	City Clerk	Duluth Loop Reliability Project	5/3/2023
5/9/2023	23-80	St. Louis County, Land & Minerals Dept.	City Clerk	Sale of Tax- Forfeited Land, 395- 0010-01671 & 395- 0010-05753	5/5/2023

Working together to serve and build our community.

5105 Maple Grove Road, Hermantown, MN 55811
218-729-3600 hermantownmn.com

2022 HERMANTOWN VOLUNTEER FIRE DEPARTMENT ANNUAL REPORT



2/28/2023

Providing Quality Fire and Emergency Medical Service to the Hermantown , MN Community

The Hermantown Volunteer Fire Department (HVFD) consists of 24 members. They are highly trained in Fire, Rescue, and Emergency, Medical Services.



Hermantown Volunteer Fire Department

Hermantown, MN, 2-28-2023

Mayor Wayne Boucher
Hermantown City Council
5111 Maple Grove Road,
Hermantown, MN 55811

Re: HVFD 2022 Annual Report

Dear Mr. Boucher and City Council Members:

Enclosed you will find the Hermantown Volunteer Fire Department's Annual Report for 2022 for your review. Once again, it was a busy year for our department, with a total of 1,241 dispatched calls and a total of 7,981 volunteer hours logged.

On behalf of our department, I would like to thank the city council for your continued support of our Fire and EMS First Responder efforts over the past year. Please let me know if you have any questions or if you would like additional information. We look forward to working with you this year.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Marshall".

Mike Marshall Fire Chief Hermantown Volunteer Fire Department

5111 Maple Grove Road
Hermantown, MN 55811
218-729-3661 Office Phone
218-590-8891 Cell Phone
MMARSHALL@hermantownmn.com

Attachment: **HVFD 2022 Annual Report**

cc: MM/File



HVFD 2022 Annual Report



Our History

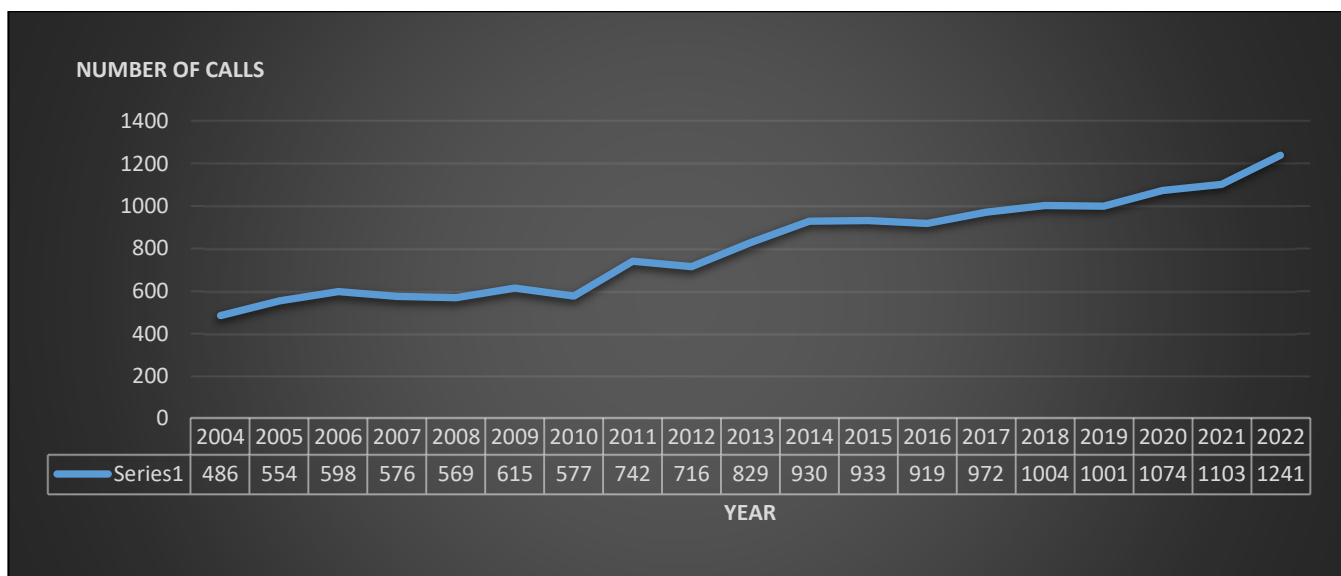
On July 25, 1951, the Hermantown Volunteer Fire Department was formed and held its first meeting. The first meeting consisted of 11 new members. The first fire hall was a one stall garage on Hermantown School property. In the early years of the department, community members would call the fire department number and the school janitor would answer the phone, gather pertinent information, and then set off an alarm to alert community members to relinquish their phone lines so he could start making calls to the firefighters and have them respond to the fire hall.

The volunteer fire department was created by several community members taking loans out on their own homes. That money was then used to purchase apparatus and equipment. The department owns its own equipment and contracts its services to the City of Hermantown. When the township of Hermantown was incorporated into a city in 1976 one of the key reasons this occurred was because of the fully functional and compliant fire department.

About Us

The Hermantown Volunteer Fire Department is a private, non-profit corporation that provides life safety and fire suppression support to the residents and businesses of the City of Hermantown. HVFD is committed to maintaining a fire department for the purpose of providing medical services, keeping the public fire conscious and to protect life and property from destruction by fire, disaster, and hazardous materials.

Response History 2004 to 2022



Total Number of Calls Answered

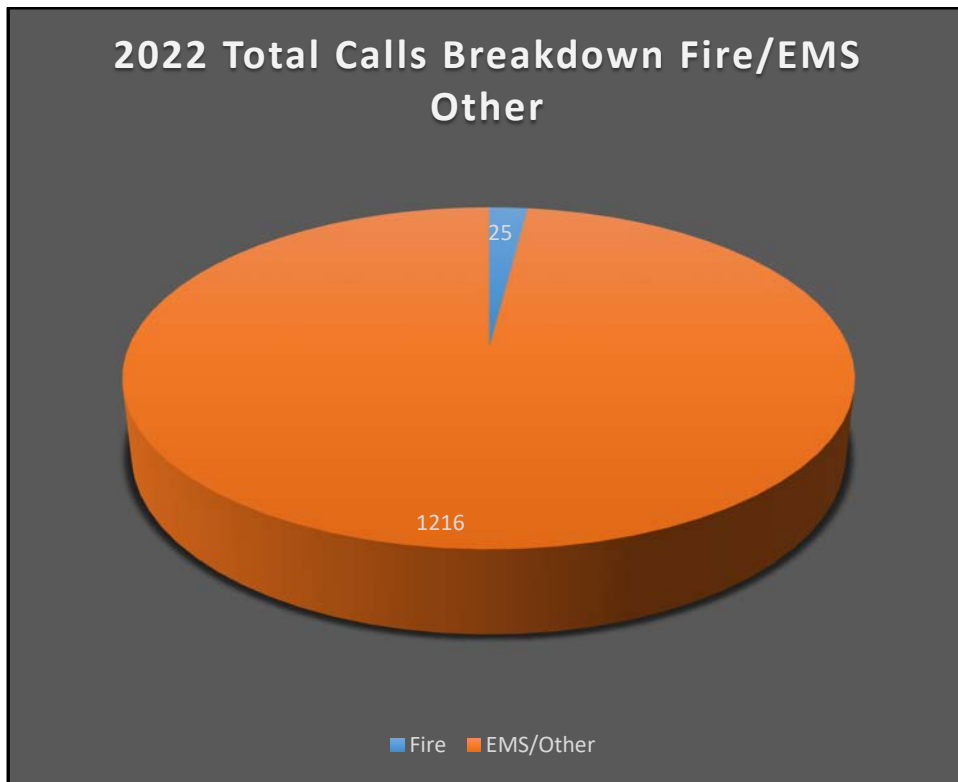


HVFD 2022 Annual Report



2022 Calls for Service Breakdown

The total number of responses for the HVFD have been on the rise since 2004. This year the department responded to 1,241 calls. This is a record number of calls for the department. These included medical emergencies, fires, car accidents gas leaks and other incidents within and outside the community.



The 1,241 Calls the department answered in 2022 were for 25 Fire responses and 1,216 Emergency medical calls and other service rescue related calls. Any 911 call that does not result in a fire or medical emergency is classified as “other” as a type of call by the Minnesota state fire data tracking system. The department supports surrounding communities in both fire and medical calls, several of these calls were for mutual aid to neighboring townships and departments. This call level of 1,241 was an increase in 138 total calls (12.5%) from the year 2021 to 2022. The total response time average was 8.4 minutes in 2022 for all calls and all units on scene as recorded by Saint Lois County Dispatch.

In 2021 the response time was 8.3 minutes, in 2022 there was a 1.2% increase which is directly influenced by the amount of Mutual aid calls to neighboring areas in 2022. With the implementation of daytime duty crew in Hermantown starting in 2017, approximately 50% of all of the 911 calls have

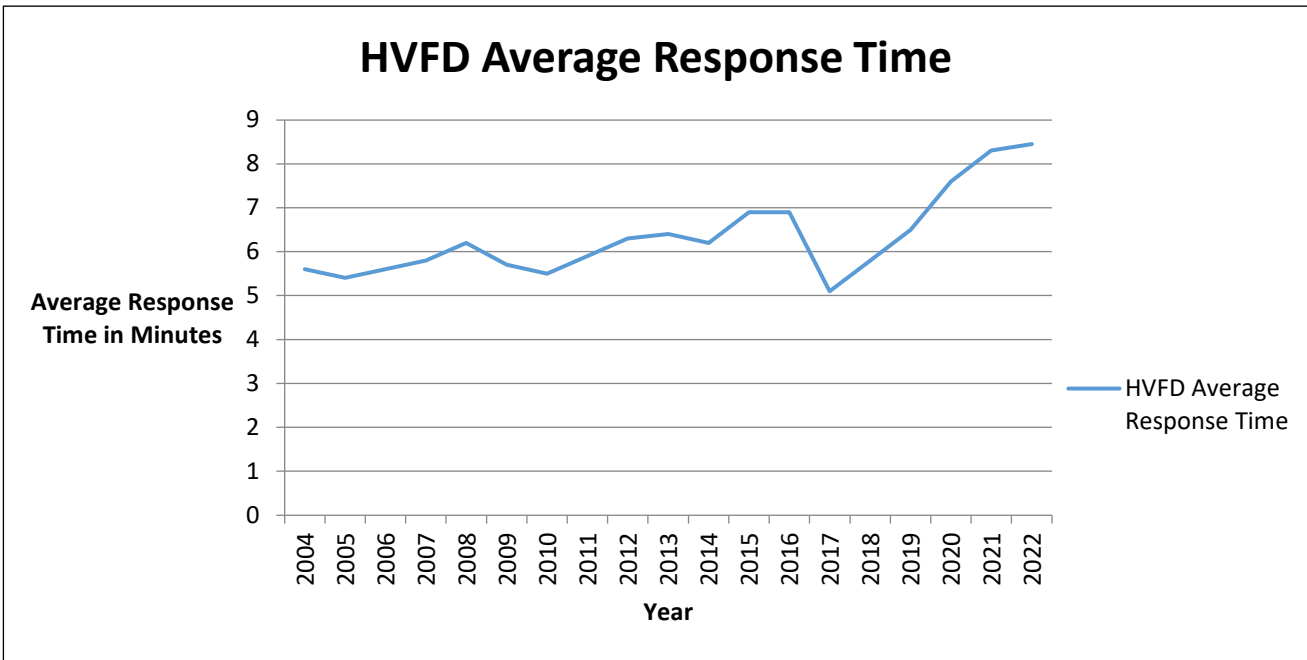


HVFD 2022 Annual Report



occurred during the duty crew staffing hours. Mutual aid calls supporting the surrounding cities and townships were 33 calls with 109 vehicle units dispatched in the year 2022. Many of those calls are for fire and other type response and take longer to get on scene due to the limited speed of large fire apparatus and longer distances traveled.

The year 2022 was a year filled with many medical issues and responses. The department responded for an aircraft crash in Hermantown, MN. The small plane destroyed a home and killed all three persons on the aircraft, and no persons on the ground were injured. The department assisted the FAA and the NTSB in their investigation and the recovery effort at the site. No fire occurred as a result of this crash. Additionally, during the year HVFD responded to 43 incidents relating to motor vehicle accidents which resulted in vehicle damage or personal injury. Also, the COVID – 19 Virus Pandemic restrictions were reduced after the CDC removed distancing and masking requirements. The spread of this virus and the variants such as Delta and Omicron did still cause local lockdown actions at assisted living and medical facilities maintaining the masking and testing rules.



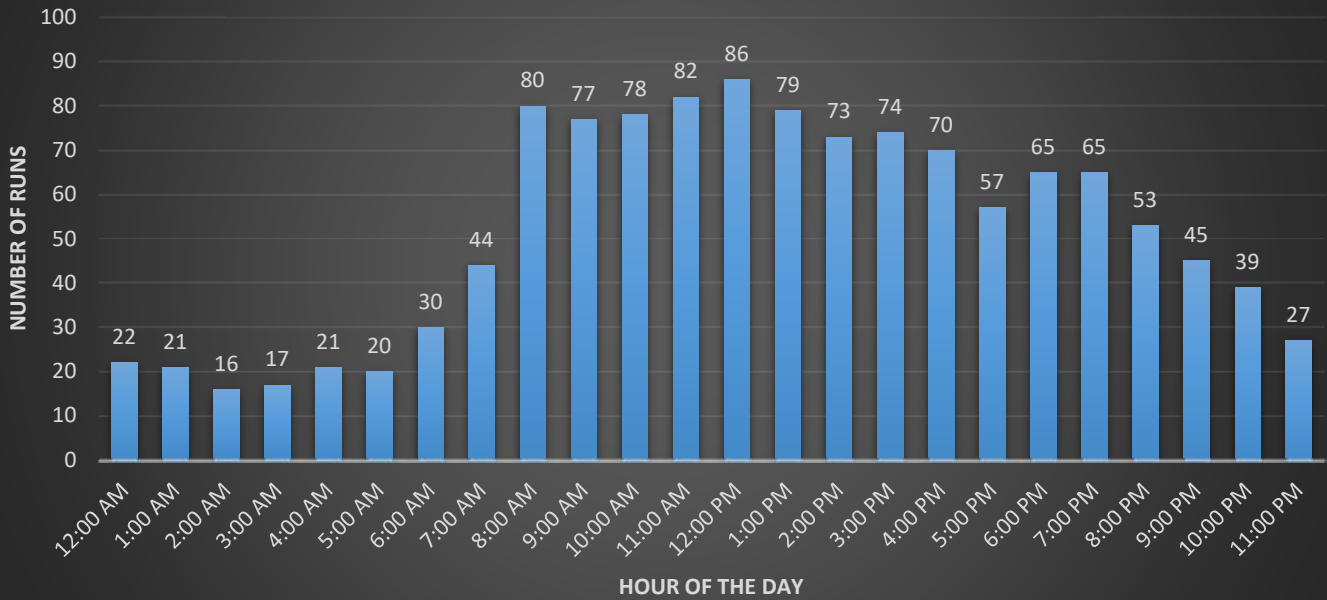


HVFD 2022 Annual Report

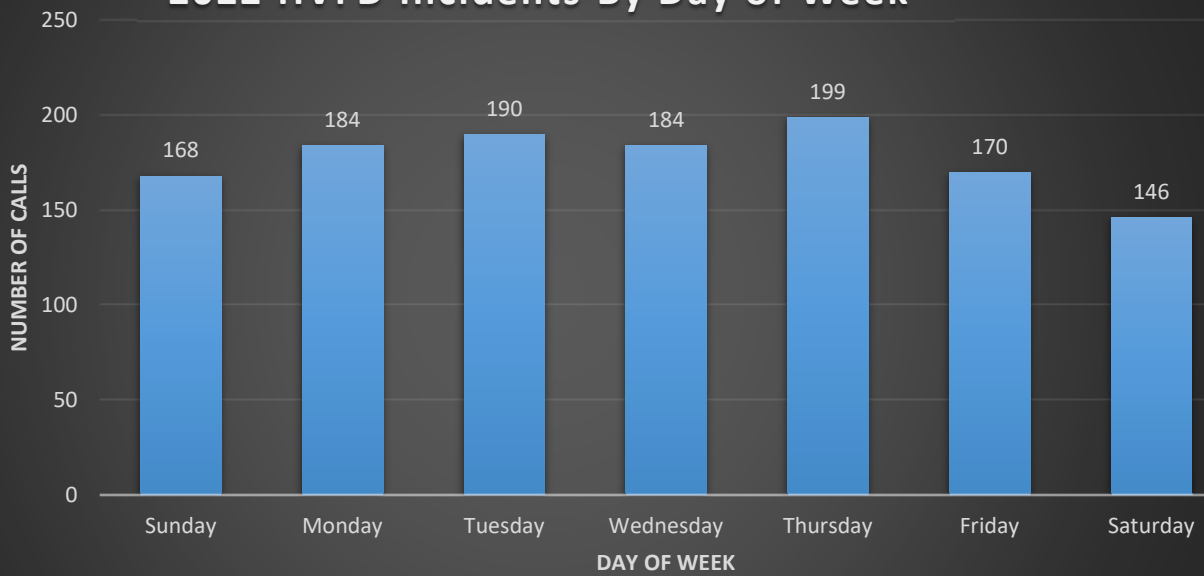


2022 Run Data

2022 HVFD Incidents by Hour of the Day



2022 HVFD Incidents By Day of Week





HVFD 2022 Annual Report



2022 Fire Calls Breakdown



The 25 fire calls answered in 2022 included 11 Structure Fires, 5 Passenger vehicle fires, 1 outdoor rubbish fires, 2 cooking fires, 3 fuel burner malfunctions, 1 off road –heavy vehicle fire, and 2 brush grass mixture fires. There were 0 fatalities due to fires in the city of Hermantown in 2022. The most notable fires HVFD responded to were in Proctor, MN for a boiler fire at the city office and community center and a vehicle fire at the Fleet farm store. Also, the department performed Wildland fire fighting duties supporting the region for grass fires in and around the Hermantown, MN city limits.



HVFD 2022 Annual Report



Fire Response Photos



Fire Response car fire at Fleet Farm store



Fire Response aircraft crash into house



Vehicle Fire Response HWY 53



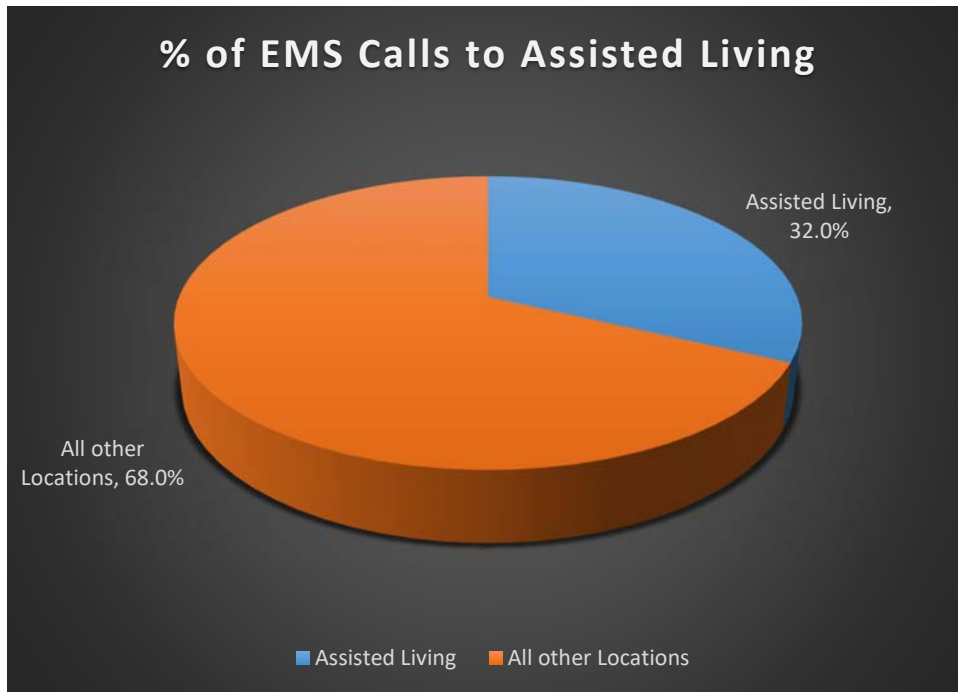
Vehicle Accident Response HWY 53



HVFD 2022 Annual Report



2022 EMS Calls Breakdown



There were 1,216 Emergency Medical Service (EMS) or other calls answered in 2022. EMS/Rescue calls make up 1,011 of this group. Those break down into 1,008 EMS medical calls and 3 Rescue/Search/Extraction calls. Many of these EMS calls, 323 were at assisted living facilities within the city limits of Hermantown, MN. That is 32% of the 1,008 EMS calls were made to assisted living facilities in 2022. An additional 80 of the medical only calls (7.9% of the total of EMS calls) were made to the Essentia, Saint Luke's, and Fresenius Kidney medical clinics within the city. A total of 40% of all of the medical calls in Hermantown last year were to licensed medical facilities.



HVFD 2022 Annual Report



Medical Response Photos



10-52 Response Extrication Maple Grove Road



10-52 Response HWY 53 and Arrowhead Road

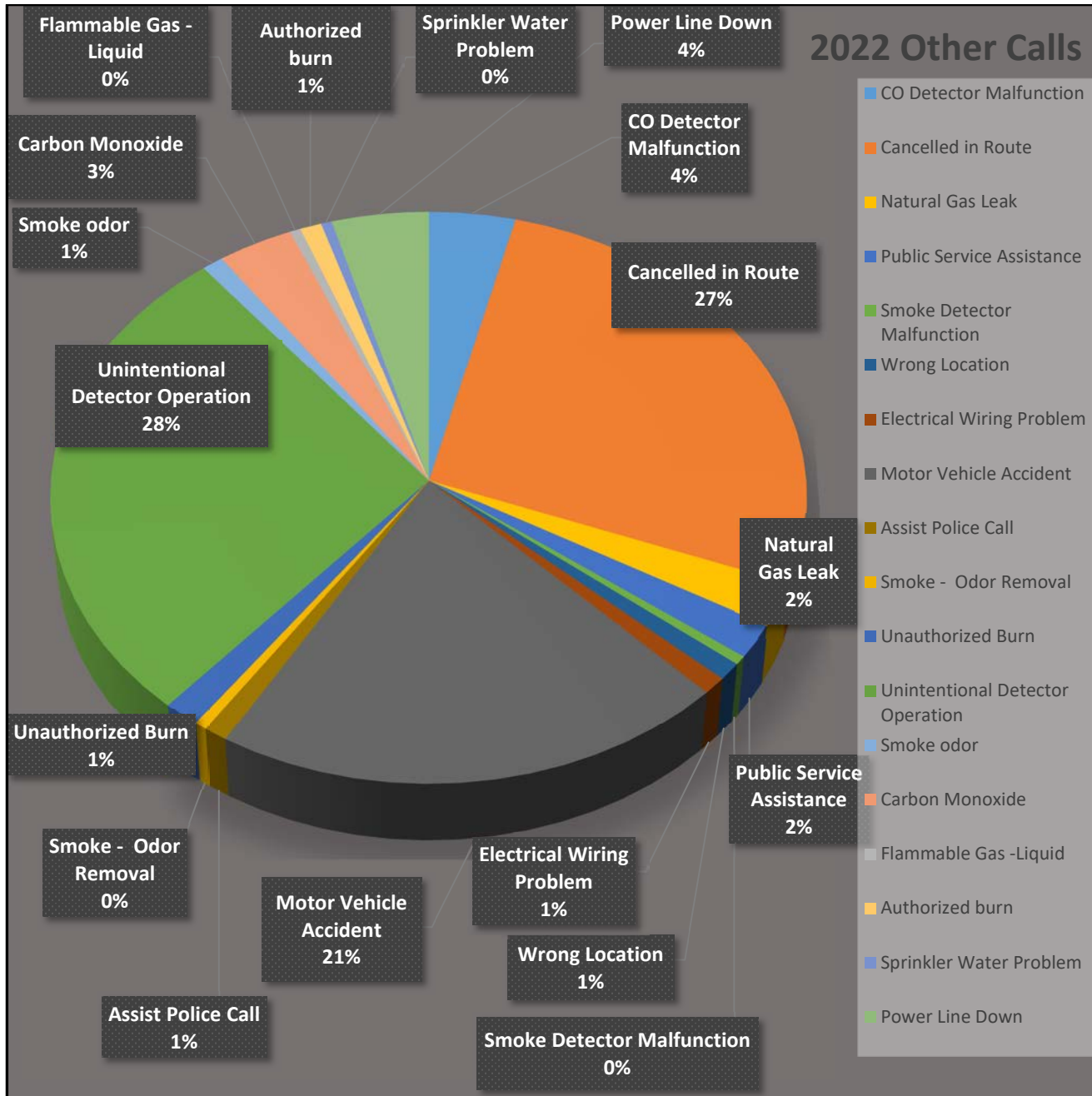


HVFD 2022 Annual Report



2022 Other Calls Breakdown

The other calls total 205 items and are spread across 18 different areas shown in the graph. A windy dry spring season, fuel leaks from vehicles and a number of natural gas leak events occurred during this year. The classification of these calls is determined by the primary response to each situation.





HVFD 2022 Annual Report



Apparatus

All current department apparatus as of the close of year 2022 are shown here.

Ladder 1



2003 E-One HP 75 Aerial Pumper

Utility Truck 1



2007 Ford F350 Super Duty Brush Rig

Tanker 1



2013 US Tanker 2000 Gallon

Engine 2



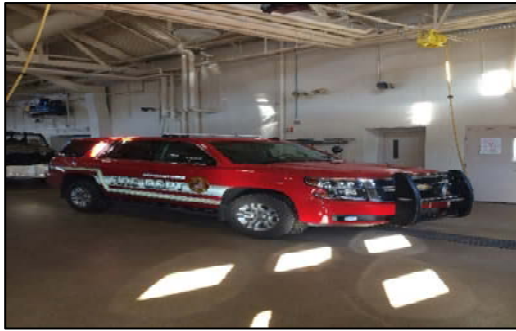
2016 E-One Rescue Pumper



HVFD 2022 Annual Report



Rescue 2



2019 Chevy Tahoe

Engine 1



2010 Sutphen Pumper

Engine 3



2021 E-One Pumper 2,500 Gallon

Rescue 3



2017 Chevy Tahoe

Rescue 4



2011 Ford F-250 Pickup

Rescue 1



2018 Chevy Tahoe



HVFD 2022 Annual Report



2022 Equipment Testing and Maintenance Information

Apparatus

Service was performed to pumps and engines on Engine 1, Ladder 1, Engine 2, Engine 3 and Tanker 1 in 2022 for operating hour requirements and general repairs as well as the ladder aerial inspection.

Engine 1 2.5 inch discharge ball valves replaced, 5 inch intake valves replaced, new rear brakes installed and serviced.

Ladder 1 fuel gauge dash wiring repaired, New tires for front and rear installed, New rear brakes installed and 2 new batteries installed.

Engine 2 new passenger side mirror installed, and Opticon Light sensor installed.

Engine 3 new pressure sensor for Pump discharge installed, Opticon Light Sensor installed, and Wiring repaired for the Federal Q siren.

Tanker Batteries replaced.

Routine weekly and monthly maintenance was performed on all apparatus during the year to confirm everything in good working order and in service.

Rescue 1 New tires installed, Engine starter replaced, and Kussmaul plug in battery charger replaced.

Additional Equipment Maintenance

In April, all department portable fire extinguishers were tested in accordance with NFPA 10 all tags updated and extinguisher placed in service.

In October, the department annual ladder testing was performed in accordance with NFPA 1932 and all records updated.

In July, the department annual hose testing was completed per NFPA 1962.

In January Self Contained Breathing Apparatus (SCBA) masks were flow tested in accordance with NFPA 1981.

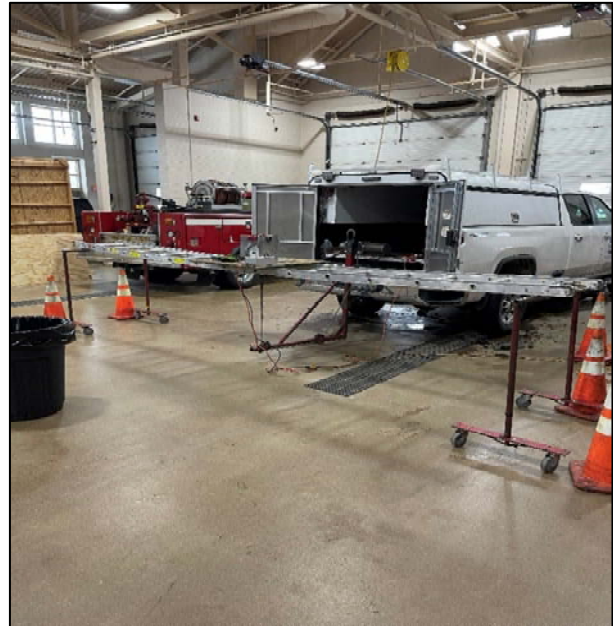
In March 2022 the SCBA Air Compressor was serviced to have new air filters installed and tested.



HVFD 2022 Annual Report



COVID -19 PPE Inventory and Storage



Ladder Testing 2022



HVFD 2022 Annual Report



2022 Training Information

HVFD Monthly Training Sessions

520 Training Hours

January	N/A
February	NREMT Recertification
March	Winter Training
April	Wildland & Weather
May	EMS Continuing Education
June	CPR & AED
July	National Night Out
August	Fire Apparatus Familiarization
September	ARMR Radio Training
October	Ambulance Training
November	Fireground Search & RIT
December	EMS Continuing Education

HVFD Emergency Medical Responder/Technicians

Members completed 40 hour refresher course & 120 hour certification for National Registered EMTs

Total of 640 hours

HVFD Individuals Continuing Education

Members completed daily and monthly assignments through the HVFD Training Plan.

Total of 400 Hours.

HVFD Firefighter I/II & Officer Certifications

Members completed 545 Hour Firefighter I & II course.

Total 2180 Hours

HVFD Community Education & Support

Members taught fire prevention, fire safety, conducted tours for business/schools, and performed numerous birthday visits, 5 childcare tours, and 3 car seat installation sessions.

Total of 60 Hours

Total hours of HVFD Training conducted in 2022 3800 hours



HVFD 2022 Annual Report



Fire Fighter Access Training



SCBA Turnout Gear Training





HVFD 2022 Annual Report



2022 Membership information

The department had 25 active members at the beginning of the year 2022.

5 new persons joined the department as a probationary member in 2022.

3 members completed probationary status and became full time members in 2022.

1 member retired in 2022.

6 members left the department in 2022.

2 members deployed on active duty military orders in 2022.

There are currently 23 active members at the end of the year 2022.

Statistics

At this time there are 5 members on the department with over 20 years of service and qualified for full retirement.

There is 1 member with greater than 10 years of service time but less than 20 years.

There are 5 members with more than 5 years of service time and less than 10 years total service time.

There are 14 members with less than 5 years of total service time.

There are currently 6 probationary members on the department.



HVFD 2022 Annual Report



2022 Fire Awareness and Community Outreach

- Provided on-site medical responders for home football games at Hermantown High School.
- Participated in local parade and celebrations in the community during the year.
- Participated in the national night out event at the city center Fire hall 1.
- Provided fire safety training to the students at the Hermantown elementary school on site for the public safety day.
- Provided traffic control and medical staff for the 5k race on St. Patricks day on Arrowhead and Stebner Road.
- Cub Scouts Hall 1 fire tour and badge training in April.
- Provided donations to two families in Hermantown for Christmas gifts.

Fire Awareness and Community Photos



National Night Out August 2022



National Night Out August 2022



HVFD 2022 Annual Report



Annual Summary for the HVFD

Members

Total Number of Active Members: 25

2022 Retired Members: 1

Members Eligible to Retire in 2022: 5*

Paramedics: 0

EMTs: 13

First Responders: 22

Probationary: 5

Medical Only: 1

Associate Members: 1

5% Increase in membership from Jan. to Dec.

*20 Years of Service full retirement vesting

Total Volunteer Hours Recorded

Business Meeting Hours: 208

Activity Report Hours: 705

Call Hours: 3,268

Training Hours: 3800

Total = 7,981

.3% Decrease in volunteer hours in 2022 from 2021

Overall Average Response Time:

8.4 minutes

Call Summary

Total Dispatches: 1,241

Rescue & Emergency Medical Services: 1,053**

Fire: 25

Hazardous Condition: 25

False Alarm – False Call: 66

Good Intent Call: 61

Service Calls: 11

12.5% increase in call volume in 2022 from 2021

** includes All car accidents

Mutual Aid Calls

Mutual Aid Given: 33

Mutual Aid Received: 7

Average Attendance Per Call

Number of members on Scene: 3.8



HVFD 2022 Annual Report



Additional HVFD 2022 Annual Report Summary Discussion

Successes in 2022

The department answered all but 23 of its 911 calls in a busy year of both fire and emergency medical service requirements. Mutual aid was utilized to support the department on the unanswered calls. The addition of a Monday through Friday daytime duty crew in 2017 has reduced the department call response time by an overall average of approximately 1.5 minutes during times when the duty crew is staffed. Response time to calls during the day for the duty crew averages 6.5 minutes. This is a major step in providing top quality care and response to the community. The COVID -19 pandemic required additional efforts in scheduling and testing of the members to ensure enough people would always be available during the crisis to respond. The Department equipment was kept in service and the operational availability of each hall was maintained at 100% by rotating vehicles and planning maintenance among the apparatus. Training and qualifications were maintained and met for all members in the year 2022.

Opportunities in 2022

The department had more opportunities to interact with the public this year due to the COVID -19 restrictions being reduced. The national night out event was held at the Hermantown city hall in August with HVFD providing fire tours and demonstrations. The fire department began an advertising campaign on Facebook and worked with local media to create a commercial aired during local news hours for the need to have new members join the department. Additional personnel have been housed at hall 1 this year as members of HVFD while in training as students or working at the Air national Guard base. The number of fully qualified and available staff had dropped during the year to 14 members.

Challenges in 2022

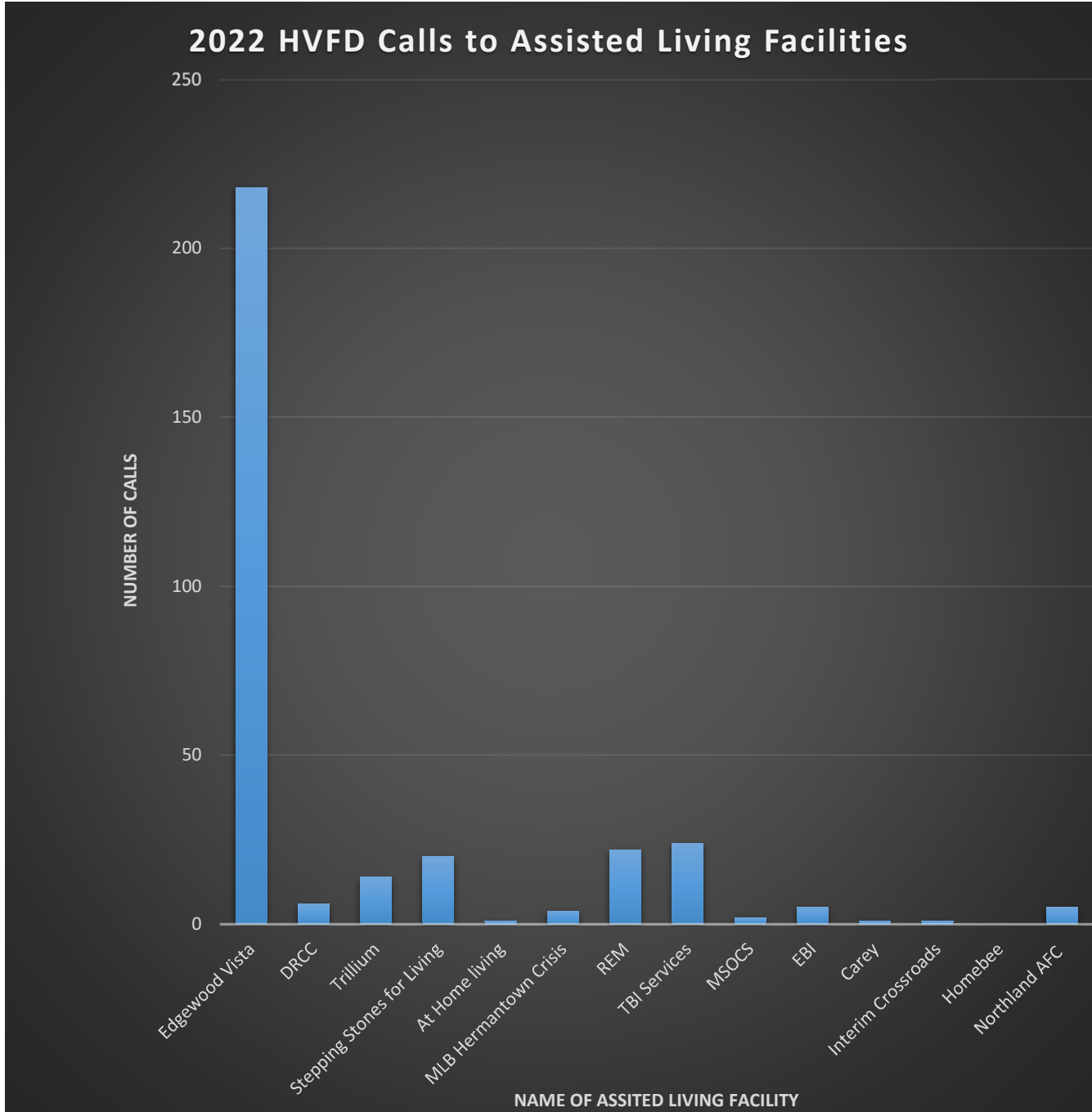
The department continues to face increases in emergency medical calls each year. The largest portion of them to assisted living facilities and medical clinics. There are now numerous times each month where we have multiple calls occurring at the same time of the day. As we evaluate our performance, a plan to extend duty crew hour ranges and timing is the next logical step for the highest call hours of the day. Personnel staffing and availability have created burnout and difficulty in responding to 911 calls during different times of the year. Discussions held with the city this year focused on this as a key point to manage continued service levels. The chart on the next page details the facilities we service in Hermantown and the number of total calls to each in 2022. Our department answered more calls in 2022 than the four surrounding departments combined (Proctor, Grand Lake, Solway and Canosia). Although, we did this with the same number of staff as any one of the other departments, and this continues to put a strain on our members.



HVFD 2022 Annual Report



2022 Run Data for Assisted Living Facilities in Hermantown





HVFD 2022 Annual Report



Appendix 1: Minnesota State Fire Report Data:

NFIRS Run Data Report - Alarm to Arrival

This Report Doesn't Include Times Greater Than 90 Minutes

Response Times	Number of Incidents	Percent of Total
0 - 1.0 Minutes	5	0.42%
1 - 2.0 Minutes	8	0.67%
2 - 3.0 Minutes	27	2.28%
3 - 4.0 Minutes	76	6.41%
4 - 5.0 Minutes	132	11.13%
5 - 6.0 Minutes	146	12.31%
6 - 7.0 Minutes	147	12.39%
7 - 8.0 Minutes	116	9.78%
8 - 9.0 Minutes	124	10.46%
9 - 10.0 Minutes	102	8.60%
10 - 11.0 Minutes	84	7.08%
11 - 12.0 Minutes	69	5.82%
12 - 13.0 Minutes	50	4.22%
13 - 14.0 Minutes	32	2.70%
14 - 15.0 Minutes	18	1.52%
15 - 16.0 Minutes	21	1.77%
16 - 17.0 Minutes	7	0.59%
17 - 18.0 Minutes	9	0.76%
18 - 19.0 Minutes	6	0.51%
19 - 20.0 Minutes	6	0.51%
21 - 22.0 Minutes	1	0.08%
Total: 1,186		Total: 100.00%

95% Fractile responses

Description

This Report Doesn't Include Times Greater Than 90 Minutes



HVFD 2022 Annual Report



Annual Fire Situation Report Summary

Annual Fire Situation Report - Summary	
Basic Incident Type Code And Description (FD1.21)	Total Fires
111 - Building fire	11
113 - Cooking fire, confined to container	2
116 - Fuel burner/boiler malfunction, fire confined	3
118 - Trash or rubbish fire, contained	1
131 - Passenger vehicle fire	5
138 - Off-road vehicle or heavy equipment fire	1
143 - Grass fire	2
321 - EMS call, excluding vehicle accident with injury	1,008
322 - Motor vehicle accident with injuries	37
323 - Motor vehicle/pedestrian accident (MV Ped)	1
324 - Motor vehicle accident with no injuries.	5
341 - Search for person on land	1
353 - Removal of victim(s) from stalled elevator	1
411 - Gasoline or other flammable liquid spill	1
412 - Gas leak (natural gas or LPG)	5
424 - Carbon monoxide incident	7
440 - Electrical wiring/equipment problem, other	2
444 - Power line down	9
462 - Aircraft standby	1
520 - Water problem, other	1
531 - Smoke or odor removal	1
551 - Assist police or other governmental agency	2
553 - Public service	4
561 - Unauthorized burning	3
611 - Dispatched and cancelled en route	55
621 - Wrong location	1
622 - No incident found on arrival at dispatch address	1
631 - Authorized controlled burning	2
651 - Smoke scare, odor of smoke	2
736 - CO detector activation due to malfunction	8
743 - Smoke detector activation, no fire - unintentional	1
744 - Detector activation, no fire - unintentional	57
Total: 1,241	
Report Filters	
Basic Incident Date Time: is between '1/1/2022 12:00 AM' and '12/31/2022 11:30 PM'	



HVFD 2022 Annual Report



Annual Fire Alarm Report Summary

Annual Alarm Report - Summary	
Basic Incident Type Category (FD1.21)	Total Alarms
1 - Fire	25
3 - Rescue & Emergency Medical Service Incident	1,053
4 - Hazardous Condition (No Fire)	25
5 - Service Call	11
6 - Good Intent Call	61
7 - False Alarm & False Call	66
	Total: 1,241

Report Filters

Basic Incident Date Time: is between '1/1/2022 12:00 AM' and '12/31/2022 11:30 PM'

Annual Apparatus Run Report Summary

NFIRS Run Data Report - Average Non- Transport Call PSAP to Alarm			
Apparatus Resource Vehicle Call Sign	Total Incidents	Total Call Time	Average Call Time
Brush Truck	12		
Engine 1	37		
Engine 2	26		
Engine 3	77		
Ladder 1	5		
POV	877	0	0.00
Rescue 1	751	0	0.00
Rescue 2	454	0	0.00
Rescue 3	122		
Rescue 4	26		
Tanker 1	7		



HVFD 2022 Annual Report



Mutual Aid Summary Report

NFIRS Run Data Report - Mutual Aid Given Summary

Basic Incident Type Code And Description (FD1.21)	Number of Incidents
Basic Aid Given Their Fire Department ID (FD1.23): (None)	
111 - Building fire	3
116 - Fuel burner/boiler malfunction, fire confined	1
321 - EMS call, excluding vehicle accident with injury	5
	Total: 9
Basic Aid Given Their Fire Department ID (FD1.23): 69111	
143 - Grass fire	1
321 - EMS call, excluding vehicle accident with injury	2
424 - Carbon monoxide incident	1
	Total: 4
Basic Aid Given Their Fire Department ID (FD1.23): 69128	
111 - Building fire	1
	Total: 1
Basic Aid Given Their Fire Department ID (FD1.23): 69149	
111 - Building fire	1
321 - EMS call, excluding vehicle accident with injury	8
341 - Search for person on land	1
	Total: 10
Basic Aid Given Their Fire Department ID (FD1.23): 69152	
116 - Fuel burner/boiler malfunction, fire confined	1
321 - EMS call, excluding vehicle accident with injury	7
444 - Power line down	1
	Total: 9
	Total: 33

NFIRS Run Data Report - Mutual Aid Received Summary

Basic Incident Type Code And Description (FD1.21)	Number of Incidents
111 - Building fire	2
113 - Cooking fire, confined to container	1
138 - Off-road vehicle or heavy equipment fire	1
143 - Grass fire	1
321 - EMS call, excluding vehicle accident with injury	1
462 - Aircraft standby	1
	Total: 7

**CITY OF HERMANTOWN
CITY COUNCIL MEETING**

Monday, May 1, 2023
6:30 PM Central

MEETING CONDUCTED IN PERSON & VIA ZOOM

Mayor Wayne Boucher: Present
Councilor John Geissler: Present
Councilor Andy Hjelle: Present
Councilor Ellie Jones: Absent
Councilor Brian LeBlanc: Present

CITY STAFF: John Mulder, City Administrator; Eric Johnson; Community Development Director; Joe Wicklund, Communications & Community Engagement Director; Gunnar Johnson, City Attorney

VISITORS: 1

1. **CALL TO ORDER**
2. **PLEDGE OF ALLEGIANCE**
3. **ROLL CALL**
4. **ANNOUNCEMENTS**
5. **PUBLIC HEARING**
6. **COMMUNICATIONS**

A. Correspondence 23-57 through 23-74 placed on file

7. **PRESENTATIONS**

A. First Quarter Financial Report

Kevin Orme, Director of Finance & Administration
(Pre-Agenda Only)

B. Ice Arena Design Discussion

John Gerzina, Architect DSGW
(Pre-Agenda Only)

8. **PUBLIC DISCUSSION**
9. **MOTIONS**
10. **CONSENT AGENDA**

A. **Minutes** - Approval or correction of April 17, 2023 City Council Continuation Minutes

B. Accounts Payable - Approve general city warrants from April 16, 2023 through April 30, 2023 in the amount of \$428,562.93

Motion to the approve the Consent Agenda. This motion, made by Councilor Andy Hjelle and seconded by Councilor Brian LeBlanc, Carried.

Councilor Andy Hjelle: Yea
Councilor Brian LeBlanc: Yea
Councilor Ellie Jones: Absent
Councilor John Geissler: Yea
Mayor Wayne Boucher: Yea
Yea: 4, Nay: 0, Absent: 1

11. **ORDINANCES**

12. **RESOLUTIONS**

A. 2023-53 Resolution Approving Preliminary Plat Of Peyton Acres Phase 2A And Imposing Conditions On The Final Plat

(motion, roll call)

Motion to approve 2023-53 Resolution Approving Preliminary Plat Of Peyton Acres Phase 2A And Imposing Conditions On The Final Plat. This motion, made by Councilor John Geissler and seconded by Councilor Brian LeBlanc, Carried.

Councilor Andy Hjelle: Yea
Councilor Brian LeBlanc: Yea
Councilor Ellie Jones: Absent
Councilor John Geissler: Yea
Mayor Wayne Boucher: Yea
Yea: 4, Nay: 0, Absent: 1

B. 2023-54 Resolution Approving A Special Use Permit For The Construction Of A Two-Family Home In A R-3 Residential Zoning District

(motion, roll call)

Motion to approve 2023-54 Resolution Approving A Special Use Permit For The Construction Of A Two-Family Home In A R-3 Residential Zoning District. This motion, made by Councilor Andy Hjelle and seconded by Councilor John Geissler, Carried.

Councilor Andy Hjelle: Yea
Councilor Brian LeBlanc: Yea
Councilor Ellie Jones: Absent
Councilor John Geissler: Yea
Mayor Wayne Boucher: Yea
Yea: 4, Nay: 0, Absent: 1

C. 2023-55 Resolution Approving A Special Use Permit For Grading And Filling Within A Recreational Shoreland Overlay Area

(motion, roll call)

Motion to approve 2023-55 Resolution Approving A Special Use Permit For Grading And Filling Within A Recreational Shoreland Overlay Area. This motion, made by Councilor Andy Hjelle and seconded by Councilor Brian LeBlanc, Carried.

Councilor Andy Hjelle: Yea
Councilor Brian LeBlanc: Yea
Councilor Ellie Jones: Absent
Councilor John Geissler: Yea
Mayor Wayne Boucher: Yea
Yea: 4, Nay: 0, Absent: 1

D. 2023-56 Resolution Adopting The Hermantown Business Park Alternative Urban Areawide Review (AUAR) Scoping Document And Authorizing Publication Of The AUAR Scoping Document With The Minnesota Environmental Quality Board (EQB)

(motion, roll call)

Motion to approve 2023-56 Resolution Adopting The Hermantown Business Park Alternative Urban Areawide Review (AUAR) Scoping Document And Authorizing Publication Of The AUAR Scoping Document With The Minnesota Environmental Quality Board (EQB). This motion, made by Councilor John Geissler and seconded by Councilor Andy Hjelle, Carried.

Councilor Andy Hjelle: Yea
Councilor Brian LeBlanc: Yea
Councilor Ellie Jones: Absent
Councilor John Geissler: Yea
Mayor Wayne Boucher: Yea
Yea: 4, Nay: 0, Absent: 1

E. 2023-57 Resolution Authorizing The Disposal Of Surplus City Property

(motion, roll call)

Motion to approve 2023-57 Resolution Authorizing The Disposal Of Surplus City Property. This motion, made by Councilor Brian LeBlanc and seconded by Councilor John Geissler, Carried.

Councilor Andy Hjelle: Yea
Councilor Brian LeBlanc: Yea
Councilor Ellie Jones: Absent
Councilor John Geissler: Yea
Mayor Wayne Boucher: Yea
Yea: 4, Nay: 0, Absent: 1

F. 2023-58 Resolution Of The City Of Hermantown, Minnesota, Providing For The Sale Of \$1,600,000 General Obligation Improvement Bonds, Series 2023A

(motion, roll call)

Motion to approve 2023-58 Resolution Of The City Of Hermantown, Minnesota, Providing For The Sale Of \$1,600,000 General Obligation Improvement Bonds, Series 2023A. This motion, made by Councilor John Geissler and seconded by Councilor Brian LeBlanc, Carried.

Councilor Andy Hjelle: Yea
Councilor Brian LeBlanc: Yea
Councilor Ellie Jones: Absent
Councilor John Geissler: Yea
Mayor Wayne Boucher: Yea

Yea: 4, Nay: 0, Absent: 1

G. 2023-59 Resolution Authorizing And Directing Mayor And City Clerk To Execute And Deliver Agreement Between The Minnesota Department Of Transportation And City Of Hermantown For Federal Participation In Construction

(motion, roll call)

Motion to approve 2023-59 Resolution Authorizing And Directing Mayor And City Clerk To Execute And Deliver Agreement Between The Minnesota Department Of Transportation And City Of Hermantown For Federal Participation In Construction. This motion, made by Councilor Andy Hjelle and seconded by Councilor John Geissler, Carried.

Councilor Andy Hjelle: Yea
Councilor Brian LeBlanc: Yea
Councilor Ellie Jones: Absent
Councilor John Geissler: Yea
Mayor Wayne Boucher: Yea

Yea: 4, Nay: 0, Absent: 1

H. 2023-60 Resolution Authorizing And Directing Mayor And City Clerk To Execute An Acceptance Of Permanent Easement Agreement And Temporary Easement Agreement To The City Of Hermantown From Allete, Inc. And Waiving Costs And Assessment

(motion, roll call)

Motion to approve 2023-60 Resolution Authorizing And Directing Mayor And City Clerk To Execute An Acceptance Of Permanent Easement Agreement And Temporary Easement Agreement To The City Of Hermantown From Allete, Inc. And Waiving Costs And Assessment. This motion, made by Councilor Brian LeBlanc and seconded by Councilor Andy Hjelle, Carried.

Councilor Andy Hjelle: Yea
Councilor Brian LeBlanc: Yea
Councilor Ellie Jones: Absent
Councilor John Geissler: Yea
Mayor Wayne Boucher: Yea

Yea: 4, Nay: 0, Absent: 1

13. **CLOSED SESSION**

Motion to close the meeting of the Hermantown City Council pursuant to Minnesota Statutes Section 13D.05 Subd 3 (c) (3) to develop and consider an offer or counteroffer for the transfer of real property with the Hermantown School District within the City of Hermantown. Following this closed session, the Hermantown City Council will re-convene in open session.

Motion to close the meeting of the Hermantown City Council at 6:55 p.m. pursuant to Minnesota Statutes Section 13D.05 Subd 3 (c) (3) to develop and consider an offer or counteroffer for the transfer of real property with the Hermantown School District within the City of Hermantown. This motion, made by Councilor John Geissler and seconded by Councilor Brian LeBlanc, Carried.

Councilor Andy Hjelle: Yea
Councilor Brian LeBlanc: Yea
Councilor Ellie Jones: Absent
Councilor John Geissler: Yea
Mayor Wayne Boucher: Yea

Yea: 4, Nay: 0, Absent: 1

Motion to reconvene into open session. This motion, made by Mayor Boucher, seconded by Brian LeBlanc at 7:45. Motion carried.

14. **RECESS**

Motion to recess at 7:46 p.m. This motion, made by Councilor John Geissler and seconded by Councilor Andy Hjelle, Carried.

Councilor Andy Hjelle: Yea
Councilor Brian LeBlanc: Yea
Councilor Ellie Jones: Absent
Councilor John Geissler: Yea
Mayor Wayne Boucher: Yea

Yea: 4, Nay: 0, Absent: 1

Mayor

ATTEST:

City Clerk



CITY COUNCIL MEETING DATE: May 15, 2023

TO: Mayor & City Council

FROM: Jim Crace, Chief of Police

SUBJECT: Mutual Aid Agreement

RESOLUTION: 2023-61 **ORDINANCE:** 2023-xx **OTHER:** Add Name

REQUESTED ACTION

The Chief of Police recommends that the City Council approve the attached Mutual Aid agreement.

BACKGROUND

The Police Department, for decades, has had a mutual aid agreement with St. Louis County which authorizes joint and cooperative exercise of powers. The attached agreement is simply an update to an old agreement.

SOURCE OF FUNDS (if applicable)

ATTACHMENTS

Mutual Aid Agreement

Resolution No. 2023-61

**RESOLUTION AUTHORIZING AND DIRECTING
THE MAYOR AND CITY CLERK TO EXECUTE AND DELIVER
A MUTUAL AID AGREEMENT WITH ST LOUIS COUNTY**

WHEREAS, St. Louis County Board approved Resolution 23-181 on February 28, 2023 authorizing the execution of a Mutual Aid Agreement with police agencies; and

WHEREAS, the intent of that agreement is to allow equipment, personnel, and other resources available to be shared among political subdivisions; and

WHEREAS, the City has had a mutual aid agreement with St. Louis County for several years; and

WHEREAS, the City desires to renew and update the mutual aid agreement between the City of Hermantown and St. Louis County Sherriff's office; and

WHEREAS, the City Council has duly considered this matter and believes it is in the best interest of the City to approve the mutual aid agreement attached hereto and to authorize and direct the Mayor and City Clerk to enter into such 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 Mutual Aid Agreement attached hereto as Exhibit A is hereby approved.
2. The Mayor and City Clerk are hereby authorized and directed to execute and deliver the Mutual Aid Agreement on behalf of the City of Hermantown.

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 May 15, 2023.

EXHIBIT A

**ST. LOUIS COUNTY SHERIFF'S OFFICE
LAW ENFORCEMENT MUTUAL AID AGREEMENT**

Purpose

This agreement is made and entered into between the County of St. Louis, a body politic and corporate existing under the laws of the State of Minnesota, and the Political Subdivision identified under Paragraph 8, pursuant to: authority granted in St. Louis County Board Resolution 23-151 (February 28, 2023); and Minnesota Statutes § 471.59, which authorizes the joint and cooperative exercise of powers common to contracting parties. The intent of this agreement is to make equipment, personnel, and other resources available between the political subdivisions subject to this Agreement.

Definitions

Party - means a political subdivision.

Requesting Official - means the person designated by a Party who is responsible for requesting assistance from the other Party.

Requesting Party - means the party that requests assistance from other parties.

Responding Official - means the person designated by the party who is responsible to determine whether and to what extent that party should provide assistance to the Requesting Party.

Responding Party - means a party that provides assistance to the Requesting Party.

Assistance Type - Law enforcement personnel and equipment.

1. Procedure

1.1. Request for Assistance: Immediate Response / Short Term

1.1.1 Request for Assistance. Whenever, in the opinion of a Requesting Party there is an immediate need for assistance from the other party, the Requesting Party may call upon the Responding Party for assistance.

1.1.2 Responding to Request. Upon the request for assistance from a Requesting Party, the Responding Party may authorize and direct personnel to provide assistance to the Requesting Party. This decision will be made after considering the needs of the Responding Party and the availability of other law enforcement personnel and equipment to the Responding Party.

1.1.3 Method. Whenever practical the Requesting Party shall request immediate assistance through the 911 Emergency Communications Operations Center and the Responding Party shall indicate its intended response using the same method.

1.1.4 Command of Scene. Except as provided in Section 1.1.4.1, the Requesting Party shall be in command of the mutual aid scene. The personnel and equipment of the Responding Party shall be under the direction and control of the Requesting Party until the Responding Official determines to withdraw assistance.

1.1.4.1 Specialized Forces. When a Requesting Party requests the assistance of specialized forces from a Responding Party, such as a Tactical Command, Canine Units, Bomb Squads, Rescue Squad, etc., the personnel and equipment of the Responding Party shall be under the direction of the Responding Party.

1.1.5 Recall of Assistance. The Responding Official may at any time recall assistance provided hereunder to the Requesting Party when in his or her best judgment or by an order from the governing body of the Responding Party, it is considered to be in the best interest of the Responding Party to recall or withdraw the assistance provided by it.

1.1.6 Release of Assistance. The Requesting Party may at any time advise the Responding party that the assistance of the Responding Party is no longer needed. In such event the Responding Party shall withdraw its assistance at the earliest possible time that it is safe for its personnel and equipment to withdraw.

1.2 Request for Assistance: Long Term

1.2.1 Request for Assistance. Whenever, in the opinion of a Requesting Official, there is need for assistance from the other party that will reasonably be expected to continue beyond eight (8) hours, the Requesting Official may call upon the Responding Official of any other party to furnish assistance.

1.2.2 Responding to Request. Upon the request for assistance from a Requesting Official on behalf of the Requesting Party, the Responding Official may authorize and direct his/her party's personnel to provide assistance to the Requesting Party. This decision will be made after considering the needs of the Responding Party and the availability of other law enforcement personnel and equipment to the Responding Party.

1.2.3 Method. A request for Long Term Assistance shall be made to the Responding Official and the Responding Official shall indicate the intended response of the Responding Party to the Requesting Official.

1.2.4 Recall of Assistance. The Responding Official may at any time recall such assistance when in his or her best judgment or by any order from the governing body of the Responding Party, is considered to be in the best interests of the Responding Party to do so.

1.2.5 Command of Scene. The Requesting Party shall be in command of the mutual aid scene. The personnel and equipment of the Responding Party shall be under the direction and control of the Requesting Party until the Responding Official determines to withdraw assistance.

2. Worker's Compensation

Each party shall be responsible for injuries or death of its own personnel. Each party will maintain workers' compensation insurance or self-insurance coverage, covering its own personnel while they are providing assistance pursuant to this Agreement. Each party waives the right to sue any other party for any workers' compensation benefits paid to its own employee, volunteer or their dependents, even if the injuries were caused wholly or partially by the negligence of any other party or its officers, employees, or volunteers.

3. Damage to Equipment

Each party shall be responsible for damages to or loss of its own equipment. Each party waives the right to sue any other party for any damage to or loss of its equipment, even if the damages or losses were caused wholly or partially by the negligence of any other party or its officers, employees, or volunteers.

4. Liability

4.1 Requesting Party Liable. For the purpose of the Minnesota Municipal Tort Liability Act (Minn. Stat. Ch. 466), the employees and officers of the Responding Party are deemed to be employees (as defined in Minn. Stat. § 466.01, subdivision 6) of the Requesting Party. This is specifically agreed and intended to be applicable to situations covered by Section 1.1.4.1 of this Agreement.

4.2 Indemnification and Defense. The Requesting Party agrees to defend and indemnify the Responding Party against any claims brought or actions filed against the Responding Party or any officer, employee, or volunteer of the Responding Party for injury to, death of, or damage to the property of any third person or persons, arising from the performance and provisions of assistance in responding to a request for assistance by the Requesting Party pursuant to this Agreement.

Under no circumstances, however, shall a party be required to pay on behalf of itself and other parties, any amounts in excess of the limits on liability established in Minnesota Statutes Chapter 466 applicable to any

one party. The limits of liability for some or all of the parties may not be added together to determine the maximum amount of liability for any party.

The intent of this subdivision is to impose on each Requesting Party a limited duty to defend and indemnify a Responding Party for claims arising within the Requesting Party's jurisdiction subject to the limits of liability under Minnesota Statute Chapter 466. The purpose of creating this duty to defend and indemnify is to simplify the defense of claims against multiple defendants from a single occurrence to be defended by a single attorney or a single law firm.

- 4.3 No Liability.** No party to this Agreement nor any officer, employee, agent or official of any Party shall be liable to any other Party or to any other person for failure of any Party to furnish assistance to any other Party, or for recalling assistance, both as described in this Agreement.

5. Charges to the Requesting Party

- 5.1** No charges will be levied by a Responding Party to this Agreement for assistance rendered to the Requesting Party under the terms of this Agreement pursuant to Section 1.1 hereof except as provided in Section 4 hereof. If assistance is provided under this Agreement pursuant to Section 1.2 hereof, the Responding Party may submit to the Requesting Party an itemized bill for the actual cost of any assistance provided pursuant to Section 1.2 herein, including salaries, overtime, materials and supplies and other necessary expenses and the Requesting Party will pay the Responding Party providing the assistance that amount.
- 5.2** Such charges are not contingent upon the availability of federal or state government funds.

6. Duration

This Agreement will be in force until terminated by any Party hereto. Any Party may withdraw from this Agreement and terminate this Agreement with respect to it upon thirty- days (30) written notice to the other party or parties to the Agreement.

7. Miscellaneous

- 7.1 Minnesota Law to Govern.** This Agreement will be governed by and construed in accordance with the substantive and procedural laws in the State of Minnesota without giving effect to the principles of conflict of laws. All proceedings related to this Agreement shall be venued in the State of Minnesota District Court for the Sixth Judicial District in Duluth, Minnesota.

7.2 **Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same Agreement.

8. **Execution**

Each Party hereto has the authority to enter into this Agreement, and has read, agreed to and executed this Mutual Aid Agreement on this date indicated.

This Agreement shall be construed as complementary to and not inconsistent with the provisions of Minnesota Statutes Section 12.331, which authorizes inter-agency disaster assistance. By signature below, the authorized representative of a governmental unit hereby enters into the foregoing agreement, effective upon the date of signature.

POLITICAL SUBDIVISION:

BY: _____

NAME: _____

TITLE: _____

BY: _____


NAME: _____


TITLE: _____

Dated: _____

COUNTY OF ST. LOUIS

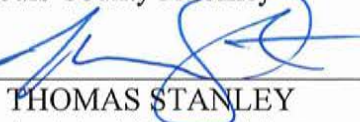
BY: 
GORDON RAMSAY
Sheriff

BY: 
PATRICK BOYLE
Chair of County Board

BY: 
NANCY NILSEN / *Phil Chapman*
Auditor/Clerk of the Board / *Deputy Auditor*

APPROVED AS TO FORM &
EXECUTION:

KIMBERLY MAKI
St. Louis County Attorney

BY: 
THOMAS STANLEY
Assistant County Attorney

Dated: 3-31-23
2023-0187

The governing body resolutions or other authorizations to enter into this Agreement are attached hereto.



Resolution
of the
Board of County Commissioners
St. Louis County, Minnesota
Adopted on: February 28, 2023 Resolution No. 23-151
Offered by Commissioner: Harala

Sheriff's Office Law Enforcement Mutual Aid Agreement Update

WHEREAS, On March 22, 2005, the St. Louis County Board approved Resolution No. 05-153, authorizing the Sheriff to enter into law enforcement mutual aid agreements with the Minnesota Sheriffs' Association (MSA) District II Sheriffs' Offices; and

WHEREAS, The St. Louis County Board also approved Resolution No. 08-635 on December 2, 2008, to enter into law enforcement mutual aid agreements with participating police agencies within the MSA District II; and

WHEREAS, Due to the age of these agreements, few if any of those who authorized the previous mutual aid agreements remain in their positions, requiring an update to this agreement; and

WHEREAS, The intent of the agreement is to allow equipment, personnel, and other resources available to be shared among political subdivisions; and

WHEREAS, This agreement will supersede all previous mutual aid agreements with those agencies.

THEREFORE, BE IT RESOLVED, That the St. Louis County Board authorizes the execution of an updated Mutual Aid Agreement with the participating counties and police agencies which make up the Minnesota Sheriffs' Association District II.

RESOLVED FURTHER, That the appropriate County officials are authorized to sign and execute the agreement.

Commissioner Harala moved the adoption of the Resolution and it was declared adopted upon the following vote:

Yeas – Commissioners Harala, Grimm, McDonald, Musolf, Nelson, Jugovich and Chair Boyle – 7

Nays – None

STATE OF MINNESOTA
Office of County Auditor, ss.
County of St. Louis

I, **NANCY NILSEN**, Auditor of the County of St. Louis, do hereby certify that I have compared the foregoing with the original resolution filed in my office on the 28th day of February, A.D. 2023, and that this is a true and correct copy.

WITNESS MY HAND AND SEAL OF OFFICE at Duluth, Minnesota, this 28th day of February, A.D., 2023.

NANCY NILSEN, COUNTY AUDITOR

By:

Clerk of the County Board/Deputy Auditor



CITY COUNCIL MEETING DATE: May 15, 2023

TO: Mayor & City Council

FROM: John Mulder, City Administrator

SUBJECT: Local Road Improvement Grant

RESOLUTION: 2023-62 **ORDINANCE:** 2023-xx **OTHER:** Add Name

REQUESTED ACTION

Approve a grant agreement for a Local Road Improvement Grant for road improvements in the Hermantown Marketplace i

BACKGROUND

The City has been awarded a Local Road Improvement Grant from the State of MN for improvements to the roads in the Hermantown Marketplace. To receive the funding, the City must enter into a grant agreement with the State of MN.

SOURCE OF FUNDS (if applicable)

ATTACHMENTS

Resolution
Grant Agreement

Resolution No. 2023-62

RESOLUTION AUTHORIZING THE CITY OF HERMANTOWN TO ENTER A GRANT AGREEMENT WITH THE STATE OF MINNESOTA'S STATE TRANSPORTATION FUND FOR LOCAL ROAD IMPROVEMENT FOR SAP 202-080-003

WHEREAS, The City of Hermantown has applied to the Commissioner of Transportation for a grant from the Minnesota State Transportation Fund for Local Road Improvement; and

WHEREAS, the Commissioner of Transportation has given notice that funding for this project is available; and

WHEREAS, the amount of the grant has been determined to be \$750,000 by reason of the lowest responsible bid;

NOW THEREFORE, be it resolved by the City Council that The City of Hermantown as follows:

1. Hereby agree to the terms and conditions of the grant consistent with Minnesota Statutes, section 174.52
2. Will pay any additional amount by which the cost exceeds the estimate
3. Will return to the Minnesota State Transportation Fund any amount appropriated for the project but not required.
4. The Mayor and City Clerk are authorized to execute a grant agreement and any amendments thereto with the Commissioner of Transportation concerning the above-referenced grant.

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 May 15, 2023.

**LOCAL ROAD IMPROVEMENT PROGRAM (LRIP)
 GRANT AGREEMENT**

This Agreement between the Minnesota Department of Transportation (“MnDOT”) and the Grantee named below is made pursuant to Minnesota Statutes Section 174.52 and pursuant to Minn. Laws 2020, 5th Special Session, Chapter 3- H.F. 1. The provisions in that section and the Exhibits attached hereto and incorporated by reference constitute this Agreement and the persons signing below agree to fully comply with all of the requirements of this Agreement. This Agreement will be effective on the date State obtains all required signatures under Minnesota Statutes §16C.05, subdivision 2.

1. Public Entity (Grantee) name, address and contact person:

City of Hermantown
 5105 Maple Grove Road
 Hermantown, MN 55811
 218.729.3600
 Contact: John Mulder, City Administrator

2. Project(s):

Name of Project & Project Number (See Exhibit C for location)	Amount of LRIP Funds	Amount of Required Matching Funds	Completion Date
SAP 202-080-003	\$750,000.00	\$1,459,180.00	December 31, 2025

3. Total Amount of LRIP Grant for all projects under this Agreement: \$750,000.00

4. The following Exhibits for each project are attached and incorporated by reference as part of this Agreement:

- Exhibit A Completed Sources and Uses of Funds Schedule
- Exhibit B Project Schedule
- Exhibit C Bond Financed Property Certification
- Exhibit D Grant Application
- Exhibit E Grantee Resolution Approving Grant Agreement
- Exhibit F General Terms and Conditions

5. Additional requirements, if any:

6. Any modification of this Agreement must be in writing and signed by both parties.

(The remaining portion of this page was intentionally left blank.)

PUBLIC ENTITY (GRANTEE)

DEPARTMENT OF TRANSPORTATION

Approval and Certifying Encumbrance

By: _____

By: _____

State Aid Programs Manager

Title: _____

Date: _____

Date: _____

Office of Contract Management

By: _____

By: _____

Contract Administrator

Title: _____

Date: _____

Date: _____

EXHIBIT A

SOURCES AND USES OF FUNDS SCHEDULE

SOURCES OF FUNDS		USES OF FUNDS	
Entity Supplying Funds	Amount	Expenses	Amount
State Funds:		Items Paid for with LRIP Grant Funds:	
LRIP Grant (Acct 331)	\$750,000.00	Roadway, curb and gutter, storm sewer	\$750,000.00
Other:			\$
	\$		\$
	\$		\$
	\$		\$
Subtotal	\$750,000.00	Subtotal	\$750,000.00
Public Entity Funds:		Items paid for with Non-LRIP Grant Funds:	
Matching Funds		Roadway, curb and gutter, storm sewer	\$1,459,180.00
Local Match	\$1,459,180.00		\$
Other:			\$
	\$		\$
	\$		\$
	\$		\$
Subtotal	\$1,459,180.00	Subtotal	\$1,459,180.00
TOTAL FUNDS	\$2,209,180.00	TOTAL PROJECT COSTS	\$2,209,180.00

EXHIBIT B

PROJECT SCHEDULE

Award Date 4/17/23
Construction Start Date 5/22/23
Construction Substantial Complete Date 10/14/23
Contract Final Completion Date December 31, 2025

EXHIBIT C

BOND FINANCED PROPERTY CERTIFICATION

State of Minnesota
General Obligation Bond Financed Property

The undersigned states that it has a fee simple, leasehold and/or easement interest in the real property located in the County(ies) of **St. Louis**, State of Minnesota that is generally described or illustrated graphically in **Attachment 1** attached hereto and all improvements thereon (the “Restricted Property”) and acknowledges that the Restricted Property is or may become State bond-financed property. To the extent that the Restricted Property is or becomes State bond-financed property, the undersigned acknowledges that:

- A. The Restricted Property is State bond-financed property under Minn. Stat. Sec. 16A.695, is subject to the requirements imposed by that statute, and cannot be sold, mortgaged, encumbered or otherwise disposed of without the approval of the Commissioner of Minnesota Management and Budget; and
- B. The Restricted Property is subject to the provisions of the Local Road Improvement Program Grant Agreement between the Minnesota Department of Transportation and the undersigned dated _____, 20__; and
- C. The Restricted Property shall continue to be deemed State bond-financed property for 37.5 years or until the Restricted Property is sold with the written approval of the Commissioner of Minnesota Management and Budget.

Date: _____, 20__

[name of Public Entity grantee], a political
subdivision of the State of Minnesota

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Attachment 1 to Exhibit C

GENERAL DESCRIPTION OF RESTRICTED PROPERTY

(Insert a narrative or graphic description of the Restricted Property for the project. It need not be a legal description if a legal description is unavailable.)

SE ¼ of the SE ¼ of Section 13 T50N R15W

EXHIBIT D

GRANT APPLICATION

Attach the grant application for the project

A. Applicant Information		
1. Name (First & Last): John Mulder	2. Phone Number: 218.729.3601	
3. E-mail: jmulder@hermantownmn.com	4. Agency Type: State Aid City	
5. Agency Name: City of Hermantown		
6. Street Address: 5105 Maple Grove Road		
7. City: Hermantown	8. State: MN	9. Zip Code: 55811
10. Sponsoring County and County Engineer name (required if applicant is small city or township) St. Louis County - James Foldesi, P.E.		

B. Project Location	
1. MnDOT District: D1	2. County: St. Louis
3. City: Hermantown	4. Township:
5. Name of Road: Richard Avenue and Lindgren Road	6. Type of Road: Local Street
7. Road Authority Type <i>(which agency owns and has jurisdiction of the road)</i> : State Aid City	
8. Project Termini: From MSA 107	9. To: CSAH 91

C. Project Description
1. Type of Project. New Construction
2. Select the LRIP Account requested for funding. Routes of Regional Significance
<p>3. Provide a summary of the proposed project and the transportation deficiencies that will be eliminated, including a description of operational and general safety benefits of the project. Projects seeking funding from the Rural Road Safety Account will need to provide a more detailed description of safety issues and benefits under Section D3.</p> <p>This project is in the heart of Hermantown's Market Place zoning district. Richard Avenue is an unimproved platted street approximately 200' in length. Lindgren Road is an improved 18' wide gravel local street. The operational benefits include connecting a network of local streets. This connection would prevent unnecessary and extra travel time and reduce turning movements on and off a CSAH route. Two major deficiencies that exist today include 1) Lindgren Road is gravel and narrow. It can not safely handle large delivery and semi trucks 2) Richard Avenue is not improved. It is a disconnect to the rest of the Market Place. There are a number of housing and assisted living facilities in close proximity to these roads. Pedestrians and motorized scooters are seen regularly. By making these improvements to these 2 roads, both the vehicular and pedestrian traffic will benefit.</p>

D. LRIP Account Considerations and Eligibility

D1. Trunk Highway Corridor Account Considerations and Eligibility

1. Describe the state trunk highway project and how the local road(s) will be impacted by the trunk highway project. Funds from this account are for local road improvements impacted by trunk highway projects where local agencies have cost responsibility. It is not intended to be used for improvements or projects on the trunk highway or within the trunk highway corridor right of way that require local cost sharing per MnDOT's Cost Participation Policy.

N/A

D2. Routes of Regional Significance Account Considerations and Eligibility

1. For Routes of Regional Significance projects, which of the following criteria does your project meet (select all that apply)?

- | | |
|---|---|
| <input type="checkbox"/> Farm to Market route | <input type="checkbox"/> Part of a 10-ton route network |
| <input checked="" type="checkbox"/> Part of an economic development plan | <input type="checkbox"/> Connect to regional tourist destination |
| <input type="checkbox"/> Provides capacity or congestion relief to a parallel trunk highway system or county road | <input checked="" type="checkbox"/> Is a connection to the regional system, trunk highway, or a county road |

2. Describe the number of persons and potential multiple local agencies that will be positively impacted by the project and how they will benefit.

The affected persons will primarily be the consumers visiting the Market Place. The City of Hermantown and St. Louis County would be economic benefactors of this planned improvement. The benefit to the community and region would be additional businesses and services provided from the new development.

D2. Routes of Regional Significance Account Considerations and Eligibility

3. Describe the project contribution to the local, regional or state economy, and economic development or redevelopment efforts.

This area is in the middle of the Market Place but access is poor to nonexistent. Recent investment to the roads in the Market Place have yielded great success in attracting both new and redevelopment. Examples of these include a new Fleet Farm, Holiday Inn Express, new clinic and a Super Walmart. Hermantown is excited and confident an investment in these 2 new roads will spur additional development. The city has been working with a local developer for 4 years bringing new businesses to this corridor. Sams' Club is adjacent to each of these roadways, which is a regional destination. Sams' is a huge traffic generator, and development adjacent will have that added benefit to succeed. Hermantown is in its 3rd year of designing and constructing a multiuse trail that crosses the City. One of the termini is 1/2 block from this project. Via the sidewalk network one would be able to access the Market Place from the trail.

D3. Rural Road Safety Account Considerations and Eligibility (Only County State Aid Highways are eligible)

1. Is this project on a County State Aid Highway? No

2. Is this project or components of this project identified in a County Road Safety Plan? No

N/A

3. Identify the appropriate focus area that your project/safety strategy aligns with in the [Minnesota Strategic Highway Safety Plan](#). Intersections

D3. Rural Road Safety Account Considerations and Eligibility (Only County State Aid Highways are eligible)

4. Identify the type of crash or safety hazard this project is trying to address. Respond even if project is in a county safety plan or the Minnesota Strategic Highway Safety Plan.

N/A

5. Describe how this project improves safety, reduce traffic crashes, fatalities, injuries, and property damages. Respond even if project is in a county safety plan or the Minnesota Strategic Highway Safety Plan.

N/A

E. Project Readiness and Ability to Maintain

1. Estimated Construction Year: 2023

2. Are there railroad impacts (RR xing or RR tracks within 600' of the project)? No RR xings or tracks within 600'

3. What is the status of the engineering and design work on the project? Design work not started
The city will start the consultant selection process for the engineering work in July 2021.

4. Has this project been selected for federal funding, and if so what year in the STIP? No

5. Is right of way acquisition required? If so, describe the status of these efforts. ROW acquisition yet to begin
It is anticipated that ROW acquisition will be needed for the Lindgren Road. There are 4 affected properties.

6. Describe the local agency's ability to adequately provide for the safe operation and maintenance of the facility upon completion.
Lindgren Road is currently a 18' gravel road and Richard Avenue is unapproved but has a 66' platted Right of Way. The Public Works Department provides the maintenance and plowing of these 2 roads.

F. Multimodal/Complete Streets

Identify infrastructure improvements for non-motorized and/or transit users on this project.

1) Sidewalks - Neither of these roads have sidewalks. These roads will be built with sidewalk on one side. These walks will complete a network of walks that connect multi family and assisted living units to the Market Place. These new sidewalks will also be within 700' of the public transportation route.

2) Regional Trail - The city has built 2 sections of the trail and other sections are being planned currently. This trail will provide both recreation and transportation opportunities to the surrounding community. One of the termini of this trail is 1/2 block from this project location.

G. Estimated Project Cost

Source of Funding

1. LRIP Request: \$ 750,000.00
2. Federal Funds: \$ 0.00
3. State Aid Funds: \$ 0.00
4. Local/Other Funds: \$ 750,000.00
5. MnDOT Trunk Highway Funds: \$ 0.00
6. Total Project Cost: \$ 1,500,000.00

H. Attachments

- At least one project location map with routes and project termini labeled
- Engineer's Estimate with an itemized breakdown
- Project schedule
- Local agency resolution **It is on the 3/15 council agenda and will be forwarded to SALT on 3/16.**
- Resolution of support from sponsoring county agreeing to be sponsor and agreeing to perform sponsor tasks as identified above in section "Project Selection" (required for applications by townships and cities under 5,000 population)
- Other letters of concurrence or support

When you are ready to submit the application, save the application form with LRIP, agency and road in the name of the document; e.g. LRIP_RamseyCounty_CSAH30.pdf.

The application and attachments are due by 4:00 p.m. on **March 3, 2021**. Applications and attachments should be submitted electronically to saltirhelp.dot@state.mn.us. Please limit the file size transmitted via email to no more than 10 MB. State Aid will send a reply acknowledging receipt of the application. If you haven't received a reply from State Aid within a few days of submittal, send an email to saltirhelp.dot@state.mn.us to inquire about the status of the application.

More information is available at:

- LRIP website at: <http://www.dot.state.mn.us/stateaid/lrip.html>.
- PowerPoint on LRIP at: <http://www.dot.state.mn.us/stateaid/training/lrip.pptx>

If you have questions regarding this solicitation, contact Marc Brieese at 651-366-3802 or marc.brieese@state.mn.us.

EXHIBIT E

GRANTEE RESOLUTION APPROVING GRANT AGREEMENT

Resolution No. 2023-___

RESOLUTION AUTHORIZING THE CITY OF HERMANTOWN TO ENTER A GRANT AGREEMENT WITH THE STATE OF MINNESOTA’S STATE TRANSPORTATION FUND FOR LOCAL ROAD IMPROVEMENT FOR SAP 202-080-003

WHEREAS, The City of Hermantown has applied to the Commissioner of Transportation for a grant from the Minnesota State Transportation Fund for Local Road Improvement; and

WHEREAS, the Commissioner of Transportation has given notice that funding for this project is available; and

WHEREAS, the amount of the grant has been determined to be \$750,000 by reason of the lowest responsible bid;

NOW THEREFORE, be it resolved by the City Council that The City of Hermantown as follows:

1. Hereby agree to the terms and conditions of the grant consistent with Minnesota Statutes, section 174.52
2. Will pay any additional amount by which the cost exceeds the estimate
3. Will return to the Minnesota State Transportation Fund any amount appropriated for the project but not required.
4. The Mayor and City Clerk are authorized to execute a grant agreement and any amendments thereto with the Commissioner of Transportation concerning the above-referenced grant.

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 May 15, 2023.

EXHIBIT F

GENERAL TERMS AND CONDITIONS FOR LOCAL ROAD IMPROVEMENT PROGRAM (LRIP) GRANTS

Article I DEFINITIONS

Section 1.01 **Defined Terms.** The following terms shall have the meanings set out respectively after each such term (the meanings to be equally applicable to both the singular and plural forms of the terms defined) unless the context specifically indicates otherwise:

“Advance(s)” - means an advance made or to be made by MnDOT to the Public Entity and disbursed in accordance with the provisions contained in Article VI hereof.

“Agreement” - means the Local Road Improvement Program Grant Agreement between the Public Entity and the Minnesota Department of Transportation to which this Exhibit is attached.

“Certification” - means the certification, in the form attached as **Exhibit C**, in which the Public Entity acknowledges that its interest in the Real Property is bond financed property within the meaning of Minn. Stat. Sec. 16A.695 and is subject to certain restrictions imposed thereby.

“Code” - means the Internal Revenue Code of 1986, as amended, and all treasury regulations, revenue procedures and revenue rulings issued pursuant thereto.

“Commissioner” - means the Commissioner of Minnesota Management & Budget.

“Commissioner’s Order” - means the “Fourth Order Amending Order of the Commissioner of Minnesota Management & Budget Relating to Use and Sale of State Bond Financed Property” dated July 30, 2012, as it may be amended or supplemented.

“Completion Date” - means the projected date for completion of the Project as indicated in the Agreement.

“Construction Contract Documents” - means the document or documents, in form and substance acceptable to MnDOT, including but not limited to any construction plans and specifications and any exhibits, amendments, change orders, modifications thereof or supplements thereto, which collectively form the contract between the Public Entity and the Contractor(s) for the completion of the Construction Items on or before the Completion Date for either a fixed price or a guaranteed maximum price.

“Construction Items” - means the work to be performed under the Construction Contract Documents.

“Contractor” - means any person engaged to work on or to furnish materials and supplies for the Construction Items including, if applicable, a general contractor.

“Draw Requisition” - means a draw requisition that the Public Entity, or its designee, submits to MnDOT when an Advance is requested, as referred to in Section 4.02.

“G.O. Bonds” - means the state general obligation bonds issued under the authority granted in Article XI, Sec. 5(a) of the Minnesota Constitution, the proceeds of which are used to fund the LRIP Grant, and any bonds issued to refund or replace such bonds.

“Grant Application” - means the grant application that the Public Entity submitted to MnDOT which is attached as **Exhibit D**.

“LRIP Grant” - means a grant from MnDOT to the Public Entity under the LRIP in the amount specified in the Agreement, as such amount may be modified under the provisions hereof.

“LRIP” - means the Local Road Improvement Program pursuant to Minn. Stat. Sec. 174.52 and rules relating thereto.

“MnDOT” - means the Minnesota Department of Transportation.

“Outstanding Balance of the LRIP Grant” - means the portion of the LRIP Grant that has been disbursed to the Public Entity minus any amounts returned to the Commissioner.

“Project” - means the Project identified in the Agreement to be totally or partially funded with a LRIP grant.

“Public Entity” - means the grantee of the LRIP Grant and identified as the Public Entity in the Agreement.

“Real Property” - means the real property identified in the Agreement on which the Project is located.

Article II GRANT

Section 2.01 **Grant of Monies.** MnDOT shall make the LRIP Grant to the Public Entity, and disburse the proceeds in accordance with the terms and conditions herein.

Section 2.02 **Public Ownership,** The Public Entity acknowledges and agrees that the LRIP Grant is being funded with the proceeds of G.O. Bonds, and as a result all of the Real Property must be owned by one or more public entities. The Public Entity represents and warrants to MnDOT that it has one or more of the following ownership interests in the Real Property: (i) fee simple ownership, (ii) an easement that is for a term that extends beyond the date that is 37.5 years from the Agreement effective date, or such shorter term as authorized by statute, and which cannot be modified or terminated early without the prior written consent of MnDOT and the Commissioner; and/or (iii) a prescriptive easement for a term that extends beyond the date that is 37.5 years from the Agreement effective date.

Section 2.03 **Use of Grant Proceeds.** The Public Entity shall use the LRIP Grant solely to reimburse itself for expenditures it has already made, or will make, to pay the costs of one of the following applicable activities: (i) preliminary, final construction and engineering and administration (ii) constructing or reconstructing city streets, county highways, or town roads with statewide or regional significance that have not been fully funded through other state, federal, or local funding sources; or (iii) capital improvement projects on county state-aid highways that are intended primarily to reduce traffic crashes, deaths, injuries, and property damage. The Public Entity shall not use the LRIP Grant for any other purpose, including but not limited to, any work to be done on a state trunk highway or within a trunk highway easement.

Section 2.04 Operation of the Real Property. The Real Property must be used by the Public Entity in conjunction with or for the operation of a county highway, county state-aid highway, town road, or city street and for other uses customarily associated therewith, such as trails and utility corridors, and for no other purposes or uses. The Public Entity shall have no intention on the effective date of the Agreement to use the Real Property as a trunk highway or any part of a trunk highway. The Public Entity must annually determine that the Real Property is being used for the purposes specified in this Section and, upon written request by either MnDOT or the Commissioner, shall supply a notarized statement to that effect.

Section 2.05 Sale or Lease of Real Property. The Public Entity shall not (i) sell or transfer any part of its ownership interest in the Real Property, or (ii) lease out or enter into any contract that would allow another entity to use or operate the Real Property without the written consent of both MnDOT and the Commissioner. The sale or transfer of any part of the Public Entity's ownership interest in the Real Property, or any lease or contract that would allow another entity to use or operate the Real Property, must comply with the requirements imposed by Minn. Stat. Sec. 16A.695 and the Commissioner's Order regarding such sale or lease.

Section 2.06 Public Entity's Representations and Warranties. The Public Entity represents and warrants to MnDOT that:

- A. It has legal authority to execute, deliver and perform the Agreement and all documents referred to therein, and it has taken all actions necessary to its execution and delivery of such documents.
- B. It has the ability and a plan to fund the operation of the Real Property for the purposes specified in Section 2.04, and will include in its annual budget all funds necessary for the operation of the Real Property for such purposes.
- C. The Agreement and all other documents referred to therein are the legal, valid and binding obligations of the Public Entity enforceable against the Public Entity in accordance with their respective terms.
- D. It will comply with all of the provisions of Minn. Stat. Sec. 16A.695, the Commissioner's Order and the LRIP. It has legal authority to use the G.O. Grant for the purpose or purposes described in this Agreement.
- E. All of the information it has submitted or will submit to MnDOT or the Commissioner relating to the LRIP Grant or the disbursement of the LRIP Grant is and will be true and correct.
- F. It is not in violation of any provisions of its charter or of the laws of the State of Minnesota, and there are no actions or proceedings pending, or to its knowledge threatened, before any judicial body or governmental authority against or affecting it relating to the Real Property, or its ownership interest therein, and it is not in default with respect to any order, writ, injunction, decree, or demand of any court or any governmental authority which would impair its ability to enter into the Agreement or any document referred to herein, or to perform any of the acts required of it in such documents.
- G. Neither the execution and delivery of the Agreement or any document referred to herein nor compliance with any of the provisions or requirements of any of such documents is prevented by, is a breach of, or will result in a breach of, any provision of any agreement or document to which it is now a party or by which it is bound.

- H. The contemplated use of the Real Property will not violate any applicable zoning or use statute, ordinance, building code, rule or regulation, or any covenant or agreement of record relating thereto.
- I. The Project will be completed and the Real Property will be operated in full compliance with all applicable laws, rules, ordinances, and regulations of any federal, state, or local political subdivision having jurisdiction over the Project and the Real Property.
- J. All applicable licenses, permits and bonds required for the performance and completion of the Project and for the operation of the Real Property as specified in Section 2.04 have been, or will be, obtained.
- K. It reasonably expects to possess its ownership interest in the Real Property described in Section 2.02 for at least 37.5 years, and it does not expect to sell such ownership interest.
- L. It does not expect to lease out or enter into any contract that would allow another entity to use or operate the Real Property.
- M. It will supply whatever funds are needed in addition to the LRIP Grant to complete and fully pay for the Project.
- N. The Construction Items will be completed substantially in accordance with the Construction Contract Documents by the Completion Date and all such items will be situated entirely on the Real Property.
- O. It will require the Contractor or Contractors to comply with all rules, regulations, ordinances, and laws bearing on its performance under the Construction Contract Documents.
- P. It shall furnish such satisfactory evidence regarding the representations and warranties described herein as may be required and requested by either MnDOT or the Commissioner.
- Q. It has made no material false statement or misstatement of fact in connection with its receipt of the G.O. Grant, and all the information it has submitted or will submit to the State Entity or Commissioner of MMB relating to the G.O. Grant or the disbursement of any of the G.O. Grant is and will be true and correct.

Section 2.07 Event(s) of Default. The following events shall, unless waived in writing by MnDOT and the Commissioner, constitute an Event of Default under the Agreement upon either MnDOT or the Commissioner giving the Public Entity 30 days' written notice of such event and the Public Entity's failure to cure such event during such 30-day time period for those Events of Default that can be cured within 30 days or within whatever time period is needed to cure those Events of Default that cannot be cured within 30 days as long as the Public Entity is using its best efforts to cure and is making reasonable progress in curing such Events of Default; however, in no event shall the time period to cure any Event of Default exceed six (6) months unless otherwise consented to, in writing, by MnDOT and the Commissioner.

- A. If any representation, covenant, or warranty made by the Public Entity herein or in any other document furnished pursuant to the Agreement, or to induce MnDOT to disburse the LRIP Grant, shall prove to have been untrue or incorrect in any material respect or materially misleading as of the time such representation, covenant, or warranty was made.

- B. If the Public Entity fails to fully comply with any provision, covenant, or warranty contained herein.
- C. If the Public Entity fails to fully comply with any provision, covenant or warranty contained in Minn. Stat. Sec. 16A.695, the Commissioner's Order, or Minn. Stat. Sec. 174.52 and all rules related thereto.
- D. If the Public Entity fails to use the proceeds of the LRIP Grant for the purposes set forth in Section 2.03, the Grant Application, and in accordance with the LRIP.
- E. If the Public Entity fails to operate the Real Property for the purposes specified in Section 2.04.
- F. If the Public Entity fails to complete the Project by the Completion Date.
- G. If the Public Entity sells or transfers any portion of its ownership interest in the Real Property without first obtaining the written consent of both MnDOT and the Commissioner.
- H. If the Public Entity fails to provide any additional funds needed to fully pay for the Project.
- I. If the Public Entity fails to supply the funds needed to operate the Real Property in the manner specified in Section 2.04.

Notwithstanding the foregoing, any of the above events that cannot be cured shall, unless waived in writing by MnDOT and the Commissioner, constitute an Event of Default under the Agreement immediately upon either MnDOT or the Commissioner giving the Public Entity written notice of such event.

Section 2.08 **Remedies.** Upon the occurrence of an Event of Default and at any time thereafter until such Event of Default is cured to the satisfaction of MnDOT, MnDOT or the Commissioner may enforce any or all of the following remedies.

- A. MnDOT may refrain from disbursing the LRIP Grant; provided, however, MnDOT may make such disbursements after the occurrence of an Event of Default without waiving its rights and remedies hereunder.
- B. If the Event of Default involves a sale of the Public Entity's interest in the Real Property in violation of Minn. Stat. Sec. 16A.695 or the Commissioner's Order, the Commissioner, as a third party beneficiary of the Agreement, may require that the Public Entity pay the amounts that would have been paid if there had been compliance with such provisions. For other Events of Default, the Commissioner may require that the Outstanding Balance of the LRIP Grant be returned to it.
- C. Either MnDOT or the Commissioner, as a third party beneficiary of the Agreement, may enforce any additional remedies it may have in law or equity.

The rights and remedies specified herein are cumulative and not exclusive of any rights or remedies that MnDOT or the Commissioner would otherwise possess.

If the Public Entity does not repay the amounts required to be paid under this Section or under any other provision contained herein within 30 days of demand by the Commissioner, or any amount ordered by a

court of competent jurisdiction within 30 days of entry of judgment against the Public Entity and in favor of MnDOT and/or the Commissioner, then such amount may, unless precluded by law, be offset against any aids or other monies that the Public Entity is entitled to receive from the State of Minnesota.

Section 2.09 Notification of Event of Default. The Public Entity shall furnish to MnDOT and the Commissioner, as soon as possible and in any event within seven (7) days after it has obtained knowledge of the occurrence of each Event of Default, a statement setting forth details of each Event of Default and the action which the Public Entity proposes to take with respect thereto.

Section 2.10 Effect of Event of Default. The Agreement shall survive Events of Default and remain in full force and effect, even upon full disbursement of the LRIP Grant, and shall only be terminated under the circumstances set forth in Section 2.11.

Section 2.11 Termination of Agreement and Modification of LRIP Grant.

A. If the Project is not started within five (5) years after the effective date of the Agreement or the LRIP Grant has not been disbursed within four (4) years after the date the Project was started, MnDOT's obligation to fund the LRIP Grant shall terminate. In such event, (i) if none of the LRIP Grant has been disbursed by such date, MnDOT shall have no obligation to fund the LRIP Grant and the Agreement will terminate, and (ii) if some but not all of the LRIP Grant has been disbursed by such date, MnDOT shall have no further obligation to provide any additional funding for the LRIP Grant and the Agreement shall remain in force but shall be modified to reflect the amount of the LRIP Grant that was actually disbursed and the Public Entity is still obligated to complete the Project by the Completion Date.

B. The Agreement shall terminate upon the Public Entity's sale of its interest in the Real Property and transmittal of the required portion of the proceeds of the sale to the Commissioner in compliance with Minn. Stat. Sec. 16A.695 and the Commissioner's Order, or upon the termination of the Public Entity's ownership interest in the Real Property if such ownership interest is an easement.

Section 2.12 Excess Funds. If the full amount of the G.O. Grant and any matching funds referred to in Section 5.13 are not needed to complete the Project, then, unless language in the G.O. Bonding Legislation indicates otherwise, the G.O. Grant shall be reduced by the amount not needed.

Article III

**COMPLIANCE WITH MINNESOTA STATUTE, SEC. 16A.695
AND THE COMMISSIONER'S ORDER**

Section 3.01 State Bond Financed Property. The Public Entity acknowledges that its interest in the Real Property is, or when acquired by it will be, "state bond financed property", as such term is used in Minn. Stat. Sec. 16A.695 and the Commissioner's Order and, therefore, the provisions contained in such statute and order apply, or will apply, to its interest in the Real Property, even if the LRIP Grant will only pay for a portion of the Project.

Section 3.02 Preservation of Tax Exempt Status. In order to preserve the tax-exempt status of the G.O. Bonds, the Public Entity agrees as follows:

A. It will not use the Real Property or use or invest the LRIP Grant or any other sums treated as "bond proceeds" under Section 148 of the Code (including "investment proceeds," "invested

sinking funds” and “replacement proceeds”) in such a manner as to cause the G.O. Bonds to be classified as “arbitrage bonds” under Code Section 148.

- B. It will deposit and hold the LRIP Grant in a segregated non-interest-bearing account until such funds are used for payments for the Project.
- C. It will, upon written request, provide the Commissioner all information required to satisfy the informational requirements set forth in the Code, including Sections 103 and 148, with respect to the G.O. Bonds.
- D. It will, upon the occurrence of any act or omission by the Public Entity that could cause the interest on the G.O. Bonds to no longer be tax exempt and upon direction from the Commissioner, take such actions and furnish such documents as the Commissioner determines to be necessary to ensure that the interest to be paid on the G.O. Bonds is exempt from federal taxation, which such action may include: (i) compliance with proceedings intended to classify the G.O. Bonds as a “qualified bond” within the meaning of Code Section 141(e), or (ii) changing the nature of the use of the Real Property so that none of the net proceeds of the G.O. Bonds will be deemed to be used, directly or indirectly, in an “unrelated trade or business” or for any “private business use” within the meaning of Code Sections 141(b) and 145(a).
- E. It will not otherwise use any of the LRIP Grant or take, permit or cause to be taken, or omit to take, any action that would adversely affect the exemption from federal income taxation of the interest on the G.O. Bonds, and if it should take, permit or cause to be taken, or omit to take, as appropriate, any such action, it shall take all lawful actions necessary to correct such actions or omissions promptly upon obtaining knowledge thereof.

Section 3.03 **Changes to G.O. Compliance Legislation or the Commissioner’s Order.** If Minn. Stat. Sec. 16A.695 or the Commissioner’s Order is amended in a manner that reduces any requirement imposed against the Public Entity, or if the Public Entity’s interest in the Real Property becomes exempted from Minn. Stat. Sec. 16A.695 and the Commissioner’s Order, then upon written request by the Public Entity, MnDOT shall execute an amendment to the Agreement to implement such amendment or exempt the Public Entity’s interest in the Real Property from Minn. Stat. Sec. 16A.695 and the Commissioner’s Order.

Article IV DISBURSEMENT OF GRANT PROCEEDS

Section 4.01 **The Advances.** MnDOT agrees, on the terms and subject to the conditions set forth herein, to make Advances of the LRIP Grant to the Public Entity from time to time in an aggregate total amount not to exceed the amount of the LRIP Grant. If the amount of LRIP Grant that MnDOT cumulatively disburses hereunder to the Public Entity is less than the amount of the LRIP Grant delineated in Section 1.01, then MnDOT and the Public Entity shall enter into and execute whatever documents MnDOT may request in order to amend or modify this Agreement to reduce the amount of the LRIP Grant to the amount actually disbursed. Provided, however, in accordance with the provisions contained in Section 2.11, MnDOT’s obligation to make Advances shall terminate as of the dates specified in Section 2.11 even if the entire LRIP Grant has not been disbursed by such dates.

Advances shall only be for expenses that (i) are for those items of a capital nature delineated in Source and Use of Funds that is attached as **Exhibit A**, (ii) accrued no earlier than the effective date of the legislation that appropriated the funds that are used to fund the LRIP Grant, or (iii) have otherwise been

consented to, in writing, by the Commissioner.

It is the intent of the parties hereto that the rate of disbursement of the Advances shall not exceed the rate of completion of the Project or the rate of disbursement of the matching funds required, if any, under Section 5.13. Therefore, the cumulative amount of all Advances disbursed by the State Entity at any point in time shall not exceed the portion of the Project that has been completed and the percentage of the matching funds required, if any, under Section 5.13 that have been disbursed as of such point in time. This requirement is expressed by way of the following two formulas:

Formula #1:

$$\text{Cumulative Advances} \leq (\text{Program Grant}) \times (\text{percentage of matching funds, if any, required under Section 5.13 that have been disbursed})$$

Formula #2:

$$\text{Cumulative Advances} \leq (\text{Program Grant}) \times (\text{percentage of Project completed})$$

Section 4.02 Draw Requisitions. Whenever the Public Entity desires a disbursement of a portion of the LRIP Grant the Public Entity shall submit to MnDOT a Draw Requisition duly executed on behalf of the Public Entity or its designee. Each Draw Requisition with respect to construction items shall be limited to amounts equal to: (i) the total value of the classes of the work by percentage of completion as approved by the Public Entity and MnDOT, plus (ii) the value of materials and equipment not incorporated in the Project but delivered and suitably stored on or off the Real Property in a manner acceptable to MnDOT, less (iii) any applicable retainage, and less (iv) all prior Advances.

Notwithstanding anything herein to the contrary, no Advances for materials stored on or off the Real Property will be made by MnDOT unless the Public Entity shall advise MnDOT, in writing, of its intention to so store materials prior to their delivery and MnDOT has not objected thereto.

At the time of submission of each Draw Requisition, other than the final Draw Requisition, the Public Entity shall submit to MnDOT such supporting evidence as may be requested by MnDOT to substantiate all payments which are to be made out of the relevant Draw Requisition or to substantiate all payments then made with respect to the Project.

The final Draw Requisition shall not be submitted before completion of the Project, including any correction of material defects in workmanship or materials (other than the completion of punch list items). At the time of submission of the final Draw Requisition the Public Entity shall submit to MnDOT: (I) such supporting evidence as may be requested by MnDOT to substantiate all payments which are to be made out of the final Draw Requisition or to substantiate all payments then made with respect to the Project, and (ii) satisfactory evidence that all work requiring inspection by municipal or other governmental authorities having jurisdiction has been duly inspected and approved by such authorities and that all requisite certificates and other approvals have been issued.

If on the date an Advance is desired the Public Entity has complied with all requirements of this Agreement and MnDOT approves the relevant Draw Requisition, then MnDOT shall disburse the amount of the requested Advance to the Public Entity.

Section 4.03 Additional Funds. If MnDOT shall at any time in good faith determine that the sum of the undisbursed amount of the LRIP Grant plus the amount of all other funds committed to the Project is less than the amount required to pay all costs and expenses of any kind which reasonably may be anticipated in connection with the Project, then MnDOT may send written notice thereof to the Public

Entity specifying the amount which must be supplied in order to provide sufficient funds to complete the Project. The Public Entity agrees that it will, within 10 calendar days of receipt of any such notice, supply or have some other entity supply the amount of funds specified in MnDOT's notice.

Section 4.04 **Condition Precedent to Any Advance.** The obligation of MnDOT to make any Advance hereunder (including the initial Advance) shall be subject to the following conditions precedent:

- A. MnDOT shall have received a Draw Requisition for such Advance specifying the amount of funds being requested, which such amount when added to all prior requests for an Advance shall not exceed the amount of the LRIP Grant set forth in Section 1.01.
- B. No Event of Default under this Agreement or event which would constitute an Event of Default but for the requirement that notice be given or that a period of grace or time elapse shall have occurred and be continuing.
- C. No determination shall have been made by MnDOT that the amount of funds committed to the Project is less than the amount required to pay all costs and expenses of any kind that may reasonably be anticipated in connection with the Project, or if such a determination has been made and notice thereof sent to the Public Entity under Section 4.03, then the Public Entity has supplied, or has caused some other entity to supply, the necessary funds in accordance with such section or has provided evidence acceptable to MnDOT that sufficient funds are available.
- D. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Public Entity has sufficient funds to fully and completely pay for the Project and all other expenses that may occur in conjunction therewith.
- E. The Public Entity has supplied to the State Entity all other items that the State Entity may reasonably require

Section 4.05 **Processing and Disbursement of Advances.** The Public Entity acknowledges and agrees as follows:

- A. Advances are not made prior to completion of work performed on the Project.
- B. All Advances are processed on a reimbursement basis.
- C. The Public Entity must first document expenditures to obtain an Advance.
- D. Reimbursement requests are made on a partial payment basis or when the Project is completed.
- E. All payments are made following the "Delegated Contract Process or State Aid Payment Request" as requested and approved by the appropriate district state aid engineer.

Section 4.06 **Construction Inspections.** The Public Entity shall be responsible for making its own inspections and observations regarding the completion of the Project, and shall determine to its own satisfaction that all work done or materials supplied have been properly done or supplied in accordance with all contracts that the Public Entity has entered into regarding the completion of the Project.

Article V
MISCELLANEOUS

Section 5.01 **Insurance.** If the Public Entity elects to maintain general comprehensive liability insurance regarding the Real Property, then the Public Entity shall have MnDOT named as an additional named insured therein.

Section 5.02 **Condemnation.** If, after the Public Entity has acquired the ownership interest set forth in Section 2.02, all or any portion of the Real Property is condemned to an extent that the Public Entity can no longer comply with Section 2.04, then the Public Entity shall, at its sole option, either: (i) use the condemnation proceeds to acquire an interest in additional real property needed for the Public Entity to continue to comply with Section 2.04 and to provide whatever additional funds that may be needed for such purposes, or (ii) submit a request to MnDOT and the Commissioner to allow it to sell the remaining portion of its interest in the Real Property. Any condemnation proceeds which are not used to acquire an interest in additional real property shall be applied in accordance with Minn. Stat. Sec. 16A.695 and the Commissioner's Order as if the Public Entity's interest in the Real Property had been sold. If the Public Entity elects to sell its interest in the portion of the Real Property that remains after the condemnation, such sale must occur within a reasonable time period after the date the condemnation occurred and the cumulative sum of the condemnation and sale proceeds applied in accordance with Minn. Stat. Sec. 16A.695 and the Commissioner's Order.

If MnDOT receives any condemnation proceeds referred to herein, MnDOT agrees to or pay over to the Public Entity all of such condemnation proceeds so that the Public Entity can comply with the requirements of this Section.

Section 5.03 **Use, Maintenance, Repair and Alterations.** The Public Entity shall not, without the written consent of MnDOT and the Commissioner, (i) permit or allow the use of any of the Real Property for any purpose other than the purposes specified in Section 2.04, (ii) substantially alter any of the Real Property except such alterations as may be required by laws, ordinances or regulations, or such other alterations as may improve the Real Property by increasing its value or which improve its ability to be used for the purposes set forth in Section 2.04, (iii) take any action which would unduly impair or depreciate the value of the Real Property, (iv) abandon the Real Property, or (v) commit or permit any act to be done in or on the Real Property in violation of any law, ordinance or regulation.

If the Public Entity fails to maintain the Real Property in accordance with this Section, MnDOT may perform whatever acts and expend whatever funds necessary to so maintain the Real Property, and the Public Entity irrevocably authorizes MnDOT to enter upon the Real Property to perform such acts as may be necessary to so maintain the Real Property. Any actions taken or funds expended by MnDOT shall be at its sole discretion, and nothing contained herein shall require MnDOT to take any action or incur any expense and MnDOT shall not be responsible, or liable to the Public Entity or any other entity, for any such acts that are performed in good faith and not in a negligent manner. Any funds expended by MnDOT pursuant to this Section shall be due and payable on demand by MnDOT and will bear interest from the date of payment by MnDOT at a rate equal to the lesser of the maximum interest rate allowed by law or 18% per year based upon a 365-day year.

Section 5.04 **Recordkeeping and Reporting.** The Public Entity shall maintain books and records pertaining to Project costs and expenses needed to comply with the requirements contained herein, Minn. Stat. Sec. 16A.695, the Commissioner's Order, and Minn. Stat. Sec. 174.52 and all rules related thereto, and upon request shall allow MnDOT, its auditors, the Legislative Auditor for the State of Minnesota, or the State Auditor for the State of Minnesota, to inspect, audit, copy, or abstract all of such items. The Public

Entity shall use generally accepted accounting principles in the maintenance of such items, and shall retain all of such books and records for a period of six years after the date that the Project is fully completed and placed into operation.

Section 5.05 Inspections by MnDOT. The Public Entity shall allow MnDOT to inspect the Real Property upon reasonable request by MnDOT and without interfering with the normal use of the Real Property.

Section 5.06 Liability. The Public Entity and MnDOT agree that each will be responsible for its own acts and the results thereof to the extent authorized by law, and neither shall be responsible for the acts of the other party and the results thereof. The liability of MnDOT and the Commissioner is governed by the provisions of Minn. Stat. Sec. 3.736. If the Public Entity is a “municipality” as that term is used in Minn. Stat. Chapter 466, then the liability of the Public Entity is governed by the provisions of Chapter 466. The Public Entity’s liability hereunder shall not be limited to the extent of insurance carried by or provided by the Public Entity, or subject to any exclusion from coverage in any insurance policy.

Section 5.07 Relationship of the Parties. Nothing contained in the Agreement is to be construed as establishing a relationship of co-partners or joint venture among the Public Entity, MnDOT, or the Commissioner, nor shall the Public Entity be considered to be an agent, representative, or employee of MnDOT, the Commissioner, or the State of Minnesota in the performance of the Agreement or the Project.

No employee of the Public Entity or other person engaging in the performance of the Agreement or the Project shall be deemed have any contractual relationship with MnDOT, the Commissioner, or the State of Minnesota and shall not be considered an employee of any of those entities. Any claims that may arise on behalf of said employees or other persons out of employment or alleged employment, including claims under the Workers’ Compensation Act of the State of Minnesota, claims of discrimination against the Public Entity or its officers, agents, contractors, or employees shall in no way be the responsibility of MnDOT, the Commissioner, or the State of Minnesota. Such employees or other persons shall not require nor be entitled to any compensation, rights or benefits of any kind whatsoever from MnDOT, the Commissioner, or the State of Minnesota, including tenure rights, medical and hospital care, sick and vacation leave, disability benefits, severance pay and retirement benefits.

Section 5.08 Notices. In addition to any notice required under applicable law to be given in another manner, any notices required hereunder must be in writing and personally served or sent by prepaid, registered, or certified mail (return receipt requested), to the address of the party specified below or to such different address as may in the future be specified by a party by written notice to the others:

To the Public Entity: At the address indicated on the first page of the Agreement.

To MnDOT at: Minnesota Department of Transportation
Office of State Aid
395 John Ireland Blvd., MS 500
Saint Paul, MN 55155
Attention: Marc Briese, State Aid Programs Engineer

To the Commissioner at: Minnesota Management & Budget
400 Centennial Office Bldg.
658 Cedar St.
St. Paul, MN 55155
Attention: Commissioner

Section 5.09 **Assignment or Modification.** Neither the Public Entity nor MnDOT may assign any of its rights or obligations under the Agreement without the prior written consent of the other party.

Section 5.10 **Waiver.** Neither the failure by the Public Entity, MnDOT, or the Commissioner, as a third party beneficiary of the Agreement, in one or more instances to insist upon the complete observance or performance of any provision hereof, nor the failure of the Public Entity, MnDOT, or the Commissioner to exercise any right or remedy conferred hereunder or afforded by law shall be construed as waiving any breach of such provision or the right to exercise such right or remedy thereafter. In addition, no delay by any of the Public Entity, MnDOT, or the Commissioner in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude other or further exercise thereof or the exercise of any other right or remedy.

Section 5.11 **Choice of Law and Venue.** All matters relating to the validity, interpretation, performance, or enforcement of the Agreement shall be determined in accordance with the laws of the State of Minnesota. All legal actions arising from any provision of the Agreement shall be initiated and venued in the State of Minnesota District Court located in St. Paul, Minnesota.

Section 5.12 **Severability.** If any provision of the Agreement is finally judged by any court to be invalid, then the remaining provisions shall remain in full force and effect and they shall be interpreted, performed, and enforced as if the invalid provision did not appear herein.

Section 5.13 **Matching Funds.** Any matching funds as shown on Page 1 of the Grant Agreement that are required to be obtained and supplied by the Public Entity must either be in the form of (i) cash monies, (ii) legally binding commitments for money, or (iii) equivalent funds or contributions, including equity, which have been or will be used to pay for the Project. The Public Entity shall supply to MnDOT whatever documentation MnDOT may request to substantiate the availability and source of any matching funds.

Section 5.14 **Sources and Uses of Funds.** The Public Entity represents to MnDOT and the Commissioner that the Sources and Uses of Funds Schedule attached as **Exhibit A** accurately shows the total cost of the Project and all of the funds that are available for the completion of the Project. The Public Entity will supply any other information and documentation that MnDOT or the Commissioner may request to support or explain any of the information contained in the Sources and Uses of Funds Schedule. If any of the funds shown in the Sources and Uses of Funds Schedule have conditions precedent to the release of such funds, the Public Entity must provide to MnDOT a detailed description of such conditions and what is being done to satisfy such conditions.

Section 5.15 **Project Completion Schedule.** The Public Entity represents to MnDOT and the Commissioner that the Project Completion Schedule attached as **Exhibit B** correctly and accurately sets forth the projected schedule for the completion of the Project.

Section 5.16 **Third-Party Beneficiary.** The Governmental Program will benefit the State of Minnesota and the provisions and requirements contained herein are for the benefit of both the State Entity and the State of Minnesota. Therefore, the State of Minnesota, by and through its Commissioner of MMB, is and shall be a third-party beneficiary of this Agreement.

Section 5.17 **Public Entity Tasks.** Any tasks that the Agreement imposes upon the Public Entity may be performed by such other entity as the Public Entity may select or designate, provided that the failure of such other entity to perform said tasks shall be deemed to be a failure to perform by the Public Entity.

Section 5.18 **Data Practices.** The Public Entity agrees with respect to any data that it possesses regarding the G.O. Grant or the Project to comply with all of the provisions and restrictions contained in the Minnesota Government Data Practices Act contained in Minnesota Statutes Chapter 13, as such may subsequently be amended or replaced from time to time.

Section 5.19 **Non-Discrimination.** The Public Entity agrees to not engage in discriminatory employment practices regarding the Project and it shall fully comply with all of the provisions contained in Minnesota Statutes Chapters 363A and 181, as such may subsequently be amended or replaced from time to time.

Section 5.20 **Worker's Compensation.** The Public Entity agrees to comply with all of the provisions relating to worker's compensation contained in Minn. Stat. Secs. 176.181 subd. 2 and 176.182, as they may be amended or replaced from time to time with respect to the Project.

Section 5.21 **Antitrust Claims.** The Public Entity hereby assigns to MnDOT and the Commissioner of MMB all claims it may have for over charges as to goods or services provided with respect to the Project that arise under the antitrust laws of the State of Minnesota or of the United States of America.

Section 5.22 **Prevailing Wages.** The Public Entity agrees to comply with all of the applicable provisions contained in Minnesota Statutes Chapter 177, and specifically those provisions contained in Minn. Stat. §. 177.41 through 177.435 as they may be amended or replaced from time to time with respect to the Project. By agreeing to this provision, the Public Entity is not acknowledging or agreeing that the cited provisions apply to the Project.

Section 5.23 **Entire Agreement.** The Agreement and all of the exhibits attached thereto embody the entire agreement between the Public Entity and MnDOT, and there are no other agreements, either oral or written, between the Public Entity and MnDOT on the subject matter hereof.

Section 5.24 **E-Verification.** The Public Entity agrees and acknowledges that it is aware of Minn.Stat. § 16C.075 regarding e-verification of employment of all newly hired employees to confirm that such employees are legally entitled to work in the United States, and that it will, if and when applicable, fully comply with such order.

Section 5.25 **Telecommunications Certification.** If federal funds are included in Exhibit A, by signing this agreement, Contractor certifies that, consistent with Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232 (Aug. 13, 2018), and 2 CFR 200.216, Contractor will not use funding covered by this agreement to procure or obtain, or to extend, renew, or enter into any contract to procure or obtain, any equipment, system, or service that uses "covered telecommunications equipment or services" (as that term is defined in Section 889 of the Act) as a substantial or essential component of any system or as critical technology as part of any system. Contractor will include this certification as a flow down clause in any contract related to this agreement.

Section 5.26 **Title VI/Non-discrimination Assurances.** Public Entity agrees to comply with all applicable US DOT Standard Title VI/Non-Discrimination Assurances contained in DOT Order No. 1050.2A, and in particular Appendices A and E, which can be found at: https://edocs-public.dot.state.mn.us/edocs_public/DMResultSet/download?docId=11149035. If federal funds are included in Exhibit A, Public Entity will ensure the appendices and solicitation language within the assurances are inserted into contracts as required. MnDOT may conduct a review of the Public Entity's compliance with this provision. The Public Entity must cooperate with MnDOT throughout the review pr

process by supplying all requested information and documentation to MnDOT, making Public Entity staff and officials available for meetings as requested, and correcting any areas of non-compliance as determined by MnDOT.

Section 5.27 **Electronic Records and Signatures.** The parties agree to contract by electronic means. This includes using electronic signatures and converting original documents to electronic records.

Section 5.28 **Certification.** By signing this Agreement, the Grantee certifies that it is not suspended or debarred from receiving federal or state awards.



CITY COUNCIL MEETING DATE: May 15, 2023

TO: Mayor & City Council

FROM: John Mulder, City Administrator

SUBJECT: Approve Plans for Sewer Improvement District 451 (Okerstrom Road and Sewer)

RESOLUTION: 2023-63 **ORDINANCE:** **OTHER:**

REQUESTED ACTION

Approve Plans and authorize advertisement for bids to Sewer Improvement District 451 (Okerstrom Road and Sewer).

BACKGROUND

The City is planning on extending the Trunkline and making improvements on Okerstrom Road north of Anderson Road. This project is being funded by sales tax as part of the extension of the City sewer trunk line. This sewer will then allow the City to eliminate the lift station at the end of Oak Ridge Drive.

The City Council hired Northland Consulting Engineers LLP to prepare plans and specifications for this project. A complete plan set is available from the City Clerk. This work would be done in the summer of 2023.

The Council is asked to approve the plans and authorize the advertisement for bids for the project. If approved, bids would be accepted and the Council will be asked to award a contract for the project in June.

SOURCE OF FUNDS (if applicable)

240-432510-305 Project 451

ATTACHMENTS

Resolution & Ads
Plan set excerpts

Resolution No. 2023-63

**RESOLUTION APPROVING FINAL PLANS AND SPECIFICATIONS AND ORDERING
ADVERTISEMENT FOR BIDS FOR SEWER IMPROVEMENT
PROJECT NO. 451 (OKERSTROM ROAD AND SEWER)**

WHEREAS, Northland Consulting Engineers, LLP, the City Engineer has prepared final plans and specifications For Sewer Improvement Project No. 451 (Okerstrom Road And Sewer) 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, 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 Northland Consulting Engineers, LLP are hereby approved and ordered placed on file in the office of the City Clerk.

2. The City Clerk is hereby directed to file such final plans and specifications in the permanent records of the City.

3. 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 Sewer Improvement Project No. 451 (Okerstrom Road And Sewer) in accordance with the plans and specifications approved by the City Council. The advertisement for bids shall be published in the Hermantown Star on May 18, 2023, May 25, 2023 and June 1, 2023.

4. 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, June 8, 2023 at 10:00 a.m., that the tabulated bids will be considered at the City Council meeting on **June 19, 2023 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.

5. 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:
aye.

and the following voted in opposition thereto:

WHEREUPON, such resolution was declared duly passed and adopted May 15, 2023.

EXHIBIT A

ADVERTISEMENT FOR BIDS

NOTICE IS HEREBY GIVEN that the City Council of the City of Hermantown, Minnesota, will receive bids at the office of the City Clerk until **10:00 a.m. Local Time, Thursday, June 8th, 2023** for the reconstruction of Okerstrom Road. The project takes place in the City of Hermantown in accordance with the plans and specifications on file in the office of the City Clerk, the Duluth Builders Exchange, Minnesota Builders Exchange and QuestCDN. Major work items include: roadway reconstruction; access road construction; stormwater pond excavation; storm sewer construction; lift station removal; sanitary main and services; water main and services; bituminous paving; sidewalk paving; curb and gutter; and aggregate base.

All bids shall be made on the proposal form contained in the specifications and shall be accompanied by a cashier's check, bid bond or certified check payable to the order of the City of Hermantown for not less than five percent (5%) of the amount bid.

Digital image copies of the Bidding Documents are available QuestCDN. These documents may be downloaded by selecting this project from the PROJECT BID INFORMATION on the SEARCH PROJECTS page. For assistance and free membership registration, contact QuestCDN at 952.233.1632 or info@questcdn.com.

Bids shall be mailed or delivered to the City Clerk, securely sealed and endorsed upon the outside wrapper with a brief statement or summary as to the work for which the bid is made.

The City Council reserves the right to reject all bids. All bids and the award of bid shall be subject to the Competitive Bidding Rules of the City of Hermantown.

Bids will be opened and compiled by the City Clerk and the City Engineer at **10:00 a.m. Local Time, Thursday, June 8th, 2023** at the Hermantown Government Services Building. Any questions regarding the project should be directed to the City Engineer, David Bolf, P.E. at 218-727-5995 or david@nce-duluth.com.

Authorized by the City Council.

John Mulder, Acting City Clerk
City of Hermantown

ADVERTISEMENT FOR BIDS

NOTICE IS HEREBY GIVEN that the City Council of the City of Hermantown, Minnesota, will receive bids at the office of the City Clerk until **10:00 a.m. Local Time, Thursday, June 8th, 2023** for the reconstruction of Okerstrom Road. The project takes place in the City of Hermantown in accordance with the plans and specifications on file in the office of the City Clerk, the Duluth Builders Exchange, Minnesota Builders Exchange and QuestCDN. Major work items include: roadway reconstruction; access road construction; stormwater pond excavation; storm sewer construction; lift station removal; sanitary main and services; water main and services; bituminous paving; sidewalk paving; curb and gutter; and aggregate base.

All bids shall be made on the proposal form contained in the specifications and shall be accompanied by a cashier's check, bid bond or certified check payable to the order of the City of Hermantown for not less than five percent (5%) of the amount bid.

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Authorized by the City Council.

_____, CLERK
City of Hermantown



CITY COUNCIL MEETING DATE: May 15, 2023

TO: Mayor & City Council

FROM: John Mulder, City Administrator

SUBJECT: Verizon Lease – Hawk Circle Water Tower

RESOLUTION: 2023-64 **ORDINANCE:** 2023-xx **OTHER:** Add Name

REQUESTED ACTION

Approve a cell antennae lease with Verizon on the Hawk Circle Water Tower.

BACKGROUND

In 2018, The City Council approved a cell antennae lease with Verizon on the Hawk Circle Water tower. At that time, Verizon did not proceed to install their equipment. They now wish to proceed with the installation of the equipment. This is an amendment and restatement of the lease that was previously approved. The City had their plans reviewed by SEH and we have negotiated a lease generally following our standard lease for cell antennae on the City’s water tower. Verizon will be required to reimburse the City for costs related to the engineering review and the legal work on the lease. That rent is comparable to the amount paid by AT&T for space on the same water tower.

SOURCE OF FUNDS (if applicable)

ATTACHMENTS

Resolution
Lease

Resolution No. 2023-64

**RESOLUTION AUTHORIZING AND DIRECTING
THE MAYOR AND CITY CLERK TO EXECUTE AND DELIVER
WATER TOWER LEASE AGREEMENT
BETWEEN THE CITY OF HERMANTOWN AND
COMMNET CELLULAR, INC. D/B/A VERIZON WIRELESS**

WHEREAS, CommNet Cellular, Inc. d/b/a Verizon Wireless (“Verizon”) desires to lease certain land and access to the water tower structure which is owned and operated by the City of Hermantown for access, parking, utilities, inspection, maintenance, installation, construction, operation, repair, removal and placement for and of a communications facility, together with the non-exclusive right to ingress and egress.

WHEREAS, the City of Hermantown desires to lease the land, property, and water tower access to Verizon pursuant to the terms of a Water Tower Lease Agreement, substantially in the form of the one attached hereto as Exhibit A (“Lease Agreement”); and

WHEREAS, pursuant to the terms of the Lease Agreement, in addition to rent, Verizon will reimburse the City for engineering and legal costs incurred by the City in consideration of the Lease Agreement; and

WHEREAS, the City Council has determined that it is in the best interests of the City of Hermantown to enter into Lease Agreement with Verizon.

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

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

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 May 15, 2023.

**FIRST AMENDMENT TO AND RESTATEMENT
OF WATER TOWER LEASE AGREEMENT**

This First Amendment to and Restatement of Water Tower Lease Agreement (this "Amendment and Restatement of Lease") is made and entered into as of the ____ day of _____, 2023, by and between the **City of Hermantown** ("LESSOR"), and **CommNet Cellular Inc.** d/b/a Verizon Wireless ("LESSEE").

RECITALS:

WHEREAS, LESSOR and LESSEE, or their predecessors in interest, are parties to the Water Tower Lease Agreement, dated November 28, 2018 (the "Agreement"), whereby LESSOR agreed to lease a portion of its water tower to LESSEE; and

WHEREAS, LESSOR and LESSEE desire to amend the Agreement to (i) amend the Commencement Date; (ii) increase initial Base Rent; (iii) replace the description of LESSEE's permitted equipment, antennas, and appurtenances as set forth in Exhibit B; and (iv) otherwise amend the Agreement as set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the facts contained in the Recitals above, the mutual covenants and conditions below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions. Any capitalized terms used in this Amendment and Restatement of Lease that are not defined herein shall have the meanings given those terms in the Agreement.
2. Initial Term; Rental. Paragraph 3.1 of the Agreement is hereby deleted in its entirety and is replaced with the following:

The Parties acknowledge and agree that the Agreement is effective as of November 29, 2018; provided, however, the initial term shall be for ten (10) years and shall commence on the Commencement Date (as hereinafter defined) at which time rental payments shall commence and be due at a total annual rental ("Base Rent") of Thirty-three Thousand and No/100 Dollars (\$33,000.00) to be paid in annual installments in advance beginning on the Commencement Date, and on each anniversary of the Commencement Date during the Term (as defined in **Paragraph 5** below), to LESSOR or to such other person, firm or place as LESSOR may, from time to time, designate in writing at least thirty (30) days in advance of any rental payment date by notice given in accordance with **Paragraph 21** below. The Agreement shall commence on the first day of June, 2023 (the "Commencement Date"). LESSOR and LESSEE acknowledge and agree that the initial annual rental payment may not be delivered by LESSEE until ninety (90) days after the later of (i) the Commencement Date or (ii) the date on which both Parties have executed and delivered this Amendment and Restatement of Lease.

3. Exhibit B. Exhibit B of the Agreement is hereby deleted in its entirety and replaced with Exhibit B (First Amendment), which is attached hereto and made a part hereof. For all

purposes under the Agreement, all references to Exhibit "B" shall hereafter refer to Exhibit B (First Amendment).

4. Signing Bonus. As additional rent for LESSOR's covenants under this Amendment and Restatement of Lease, LESSEE shall pay to LESSOR a signing bonus in the amount of \$2,500.00, which signing bonus shall be payable within 90 days after both LESSEE and LESSOR have executed and delivered this Amendment and Restatement of Lease, and regardless of whether LESSEE exercises any right or option to terminate the Agreement, such signing bonus being deemed earned by LESSOR upon the execution and delivery of this Amendment and Restatement of Lease by the Parties. The terms of this Paragraph shall survive any termination of the Agreement.

5. Authority. LESSOR and LESSEE each hereby represent and warrant to the other that the person executing this Amendment and Restatement of Lease on behalf of the warranting Party has the full right, power and authority to enter into, and execute, this Amendment and Restatement of Lease on that Party's behalf, and that no authorization, approval or consent from any other person or entity is necessary as a condition precedent to the legal effect of this Amendment and Restatement of Lease or the terms and conditions as set forth herein.

6. Continued Effect. Except as specifically amended by this Amendment and Restatement of Lease, all of the terms and conditions of the Agreement shall remain in full force and effect, and LESSOR and LESSEE hereby restate, ratify, and reaffirm all of the covenants, representations and warranties in the Agreement, a copy of which is attached hereto as Attachment 1 and incorporated herein by this reference. In the event of a conflict between any terms and provisions of the Agreement and this Amendment and Restatement of Lease, the terms and provisions of this Amendment and Restatement of Lease shall control. Except where otherwise expressly indicated herein, the terms and provisions of this Amendment and Restatement of Lease shall be deemed effective from and after the date hereof.

[Remainder of Page Intentionally Left Blank]

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment to Water Tower Lease Agreement the day and year first written above.

LESSOR:

City of Hermantown

By: _____

Print Name: _____

Title: _____

Date: _____

LESSEE:

CommNet Cellular Inc.
d/b/a Verizon Wireless

By: _____

Print Name: _____

Title: _____

Date: _____

EXHIBIT B (FIRST AMENDMENT)

**(Radio Communications Equipment,
Antennas and Appurtenances)**

Up to nine (9) antennas at the 88-foot centerline above ground level, equipment platform with outdoor cabinets and communications/power supply equipment, telephone and electrical facilities, and all associated equipment and appurtenances, including cabling and radios, related to the aforementioned antennas, equipment and facilities.

ATTACHMENT 1

November 29, 2018 Water Tower Lease

(See Attached)

SITE NAME: DUL Hawks
SITE NUMBER: 20141150956

WATER TOWER LEASE AGREEMENT

This Agreement, made this 29th day of November, 2018, between the **City of Hermantown**, with its principal offices at 5105 Maple Grove Road, Hermantown, Minnesota 55811 hereinafter designated LESSOR and **CommNet Cellular Inc.** d/b/a Verizon Wireless, with its principal offices located at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 (telephone number 866-862-4404), hereinafter designated LESSEE. The LESSOR and LESSEE are at times collectively referred to hereinafter as the "Parties" or individually as the "Party".

WITNESSETH

In consideration of the mutual covenants contained herein and intending to be legally bound hereby, the Parties hereto agree as follows:

1. PREMISES. LESSOR hereby leases to the LESSEE a portion of that certain space ("the Tower Space") on the LESSOR's water tower, hereinafter referred to as the "Tower", located at **Hawk Circle Drive, Hermantown, Minnesota**, as being further described in Exhibit A attached hereto and made a part hereof (the entirety of LESSOR's property is referred to hereinafter as the "Property"), together with a parcel of land (the "Land Space") sufficient for the installation of LESSEE's equipment building; together with the non-exclusive right ("the Right of Way") for ingress and egress, seven (7) days a week, twenty-four (24) hours a day, on foot or motor vehicle, including trucks, and for the installation and maintenance of utility wires, poles, cables, conduits, and pipes over, under, or along a right-of-way extending from the nearest public right-of-way, **Hawk Circle Drive**, to the Land Space; and together with any further rights of way (the "Further Rights of Way") over and through the Property between the Land Space and the Tower Space for the installation and maintenance of utility wires, poles, cables, conduits, and pipes. The Tower Space, Land Space, Right of Way and Further Rights of Way, if any, are collectively referred to hereinafter as the "Premises", are substantially described in Exhibit A, attached hereto and made a part hereof.

In the event any public utility is unable to use the Right of Way or Further Rights of Way, the LESSOR hereby agrees to grant at no cost to LESSOR a non-exclusive right-of-way(s) over property owned by LESSOR either to the LESSEE or to the public utility at no cost to the LESSEE. LESSOR shall have no obligation to acquire any right-of-way from the owner of any property not owned by LESSOR.

LESSOR hereby grants permission to LESSEE to install, maintain and operate the communications equipment, antennas and appurtenances described in Exhibit B attached hereto ("Communication Facilities"). LESSOR specifically reserves the right to allow the Tower and the Property to be used by other parties and to make additions, deletions, or modifications to its own facilities on the Tower and the Property.

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Attachment 1

Page 2 of 26

LESSEE reserves the right to replace the Communication Facilities with similar and comparable equipment provided said replacement does not increase tower loading of the Tower.

2. SURVEY. LESSEE shall at its cost and expense survey the Property and Premises, and upon the completion of the survey shall then become Exhibit C which shall be attached hereto and made a part hereof, and shall control in the event of boundary and access discrepancies between it and Exhibit A. Cost for such work shall be borne by the LESSEE.

3. TERM; RENTAL; ELECTRICAL.

3.1 This Agreement shall be effective as of the date of execution by both Parties, provided, however, the initial term shall be for five (5) years and shall commence on the Commencement Date (as hereinafter defined) at which time rental payments shall commence and be due at a total annual rental ("Base Rent") of Twenty-two Thousand Five Hundred and No/100 Dollars (\$22,500.00) to be paid in annual installments in advance beginning on the Commencement Date, and on each anniversary of the Commencement Date during the Term (as defined in **Paragraph 5** below), to LESSOR or to such other person, firm or place as LESSOR may, from time to time, designate in writing at least thirty (30) days in advance of any rental payment date by notice given in accordance with **Paragraph 21** below. The Agreement shall commence based upon the date LESSEE commences installation of the Communication Facilities on the Premises. In the event the date LESSEE commences installation of the Communication Facilities on the Premises falls between the 1st and 15th of the month, the Agreement shall commence on the 1st of that month and if the date installation commences falls between the 16th and 31st of the month, then the Agreement shall commence on the 1st day of the following month (either the "Commencement Date"). LESSOR and LESSEE agree that they shall acknowledge in writing the Commencement Date. LESSOR and LESSEE acknowledge and agree that the initial annual rental payment shall not actually be sent by LESSEE until thirty (30) days after a written acknowledgement confirming the Commencement Date. By way of illustration of the preceding sentence, if the Commencement Date is January 1, 2019 and the written acknowledgement confirming the Commencement Date is dated January 14, 2019, LESSEE shall send to the LESSOR the initial annual rental payment by February 13, 2019.

Upon agreement of the Parties, LESSEE may pay rent by electronic funds transfer and in such event, LESSOR agrees to provide to LESSEE bank routing information for such purpose upon request of LESSEE.

3.2 The amount of Base Rent payable hereunder shall be increased annually by two percent (2%) commencing with the first annual anniversary of the Commencement Date and thereafter on each annual anniversary of the Commencement Date during the Term.

3.3 LESSEE has satisfied itself prior to the execution of this Agreement that LESSOR has an interest in the Property and the right to receive payments under this Agreement.

3.4 LESSEE shall at all times during the Term be allowed to cause electrical service and telephone service to be provided to the Premises at LESSEE's sole cost and expense. The LESSEE shall pay the utility directly for its power consumption or telephone charges. LESSEE shall be permitted at any time during the Term, to install, maintain and/or provide access to and use of, as necessary (during any power interruption at the Premises), a temporary power source, and all related equipment and appurtenances within the Premises, or elsewhere on the Property in such locations as reasonably approved by LESSOR. Subject to LESSOR's prior approval of the design for such work, LESSEE shall have the right to install conduits connecting the temporary power source and related appurtenances to the Premises. LESSEE shall be solely responsible for and promptly pay all charges for gas, electricity, telephone service, or any other utility used or consumed by LESSEE on the Premises. LESSEE shall have an electrical current meter installed and shall be solely and exclusively responsible for installation, maintenance, and repair for all utility extensions and connections.

3.5 For any party to whom rental payments are to be made, LESSOR or any successor in interest of LESSOR hereby agrees to provide to LESSEE (i) a completed, current version of Internal Revenue Service Form W-9, or equivalent; (ii) complete and fully executed state and local withholding forms if required; and (iii) other documentation to verify LESSOR's or such other party's right to receive rental as is reasonably requested by LESSEE. Rental shall accrue in accordance with this Agreement, but LESSEE shall have no obligation to deliver rental payments until the requested documentation has been received by LESSEE. Upon receipt of the requested documentation, LESSEE shall deliver the accrued rental payments as directed by LESSOR.

3.6 As additional rent for LESSOR's covenants under this Agreement, LESSEE shall pay to LESSOR a signing bonus in the amount of \$4,500.00, which signing bonus shall be payable within 90 days after both LESSEE and LESSOR have executed and delivered this Agreement, and regardless of whether LESSEE exercises any right or option hereunder to terminate this Agreement, such signing bonus being deemed earned by LESSOR upon the execution and delivery of this Agreement by the Parties. The terms of this Paragraph shall survive any termination of this Agreement.

4. EXTENSIONS. This Agreement shall automatically be extended for four (4) additional five (5) year terms unless LESSEE terminates it at the end of the then current term by giving LESSOR written notice of the intent to terminate at least six (6) months prior to the end of the then current term.

5. ADDITIONAL EXTENSIONS. If at the end of the fourth (4th) five (5) year extension term this Agreement has not been terminated by either Party by giving to the other written notice of an intention to terminate it at least three (3) months prior to the end of such term, this Agreement shall continue in force upon the same covenants, terms and conditions for a further term of five (5) years and for five (5) year terms thereafter until terminated by either Party by giving to the other written notice of its intention to so terminate at least three (3) months prior to the end of such term. Annual rental for each such additional five (5) year term shall be equal to the

annual rental payable with respect to the immediately preceding five (5) year term. The initial term and all extensions shall be collectively referred to herein as the "Term". The provisions of **Paragraph 3.2** shall be applicable to any extensions under this **Paragraph 5**.

6. TAXES. LESSEE shall have the responsibility to pay any personal property, real estate taxes, assessments, or charges owed on the Property which LESSOR demonstrates is the result of LESSEE's use of the Premises and/or the installation, maintenance, and operation of the LESSEE's improvements, and any sales tax imposed on the rent (except to the extent that LESSEE is or may become exempt from the payment of sales tax in the jurisdiction in which the Property is located), including any increase in real estate taxes at the Property which LESSOR demonstrates arises from the LESSEE's improvements and/or LESSEE's use of the Premises. LESSEE shall also be responsible for the payment of any taxes, levies, assessments and other charges imposed including franchise and similar taxes imposed upon the business conducted by LESSEE at the Property. Notwithstanding the foregoing, LESSEE shall not have the obligation to pay any tax, assessment, or charge that LESSEE is disputing in good faith in appropriate proceedings prior to a final determination that such tax is properly assessed provided that no lien attaches to the Property.

LESSEE shall have the right, at its sole option and at its sole cost and expense, to appeal, challenge or seek modification of any tax assessment or billing for which LESSEE is wholly or partly responsible for payment. In the event that as a result of any appeal or challenge by LESSEE, there is a reduction, credit or repayment received by the LESSOR for any taxes previously paid by LESSEE, LESSOR agrees to promptly reimburse to LESSEE the amount of said reduction, credit or repayment.

7. USE; GOVERNMENTAL APPROVALS.

7.1 In general, LESSEE shall use the Premises for the purpose of constructing, maintaining, repairing and operating the Communication Facilities and uses incidental thereto. All improvements, equipment, antennas and conduits shall be at LESSEE's expense and their installation shall be at the discretion and option of LESSEE. Subject to the provisions of **Paragraph 7.3** hereof, LESSEE shall have the right to replace, repair, add or otherwise modify its utilities, equipment, antennas and/or conduits or any portion thereof and the frequencies over which the equipment operates, whether the equipment, antennas, conduits or frequencies are specified or not on any exhibit attached hereto, during the Term. It is understood and agreed that LESSEE's ability to use the Premises is contingent upon its obtaining after the execution date of this Agreement all of the certificates, permits and other approvals (collectively the "Governmental Approvals") that may be required by any Federal, State or Local authorities as well as satisfactory soil boring tests and structural analysis which will permit LESSEE use of the Premises as set forth above. In the event that (i) any of such applications for such Governmental Approvals should be finally rejected; (ii) any Governmental Approval issued to LESSEE is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; (iii) LESSEE determines that such Governmental Approvals may not be obtained in a timely manner; (iv) LESSEE determines that any soil boring tests or structural analysis is unsatisfactory; (v) LESSEE determines that the Premises is no longer technically or structurally compatible for its use, or (vi) LESSEE, in its sole discretion, determines that the use of the Premises is obsolete or unnecessary, LESSEE shall have the right to terminate this Agreement. Notice of

LESSEE's exercise of its right to terminate shall be given to LESSOR in writing by certified mail, return receipt requested, and shall be effective upon the mailing of such notice by LESSEE, or upon such later date as designated by LESSEE. All rentals paid to said termination date shall be retained by LESSOR. Upon such termination, this Agreement shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each Party to the other hereunder and the obligation of LESSEE to remove the Communication Facilities. Otherwise, the LESSEE shall have no further obligations for the payment of rent to LESSOR.

7.2 PLANS AND SPECIFICATIONS. LESSEE shall submit plans, specifications and drawings ("Plans and Specifications") for the construction of, or any modification to, the Communication Facilities to the LESSOR for its prior approval. The LESSEE shall submit the proposed Plans and Specifications to the City Administrator of LESSOR ("City Administrator") or his/her designee for review. If the Plans and Specifications conform to the requirements of this Agreement and all applicable laws, rules and regulations, the City Administrator or his/her designee shall approve the Plans and Specifications and notify the LESSEE in writing of their approval. The Plans and Specifications shall, in any event, be deemed approved by the City Administrator or his/her designee unless rejected, in whole or in part, by written notice by the City Administrator or his/her designee to the LESSEE, setting forth in detail the reasons therefore. Such rejection shall be made within thirty (30) days after receipt of the proposed Plans and Specifications. After approval, the Plans and Specifications shall be thereafter deemed to be the approved plans and specifications ("Approved Plans and Specifications") and a copy shall be marked "Official Copy" and placed on file with the City Clerk of LESSOR ("City Clerk"). If LESSEE desires to make any change in the Approved Plans and Specifications, the LESSEE shall submit the proposed changes to the City Administrator or his/her designee for review and approval. If the Approved Plans and Specifications, as modified by the proposed change, conform to the requirements of this Agreement and all other applicable laws, rules and regulations the City Administrator or his/her designee shall approve the proposed change and notify the LESSEE in writing of their approval. A requested change in the Approved Plans and Specifications shall, in any event, be deemed approved by the City Administrator or his/her designee unless rejected, in whole or in part by written notice by the City Administrator or his/her designee to the LESSEE, setting forth in detail the reasons therefore. Such rejection of a proposed change to the Approved Plans and Specifications shall be made within ten (10) days after receipt of a request for such change. Any changes to the Approved Plans and Specifications shall be included with the "Official Copy" and placed on file with the City Clerk. The term Approved Plans and Specifications shall mean the plans and specifications and all amendments thereto approved pursuant to this Paragraph and marked Official Copy and on file with the City Clerk. No approval by the LESSOR shall relieve the LESSEE of the obligation to comply with the terms of this Agreement and all other applicable laws, rules, and regulations. LESSOR shall be entitled to have the Plans and Specifications or any proposed amendments to the Approved Plans and Specifications reviewed by an engineer of its choice at the cost and expense of LESSEE.

7.3 CONSTRUCTION OF COMMUNICATION FACILITIES. The Communication Facilities shall be constructed in accordance with the Approved Plans and Specifications, and all applicable building code requirements and at all times be operated and maintained, preserved and kept with the appurtenances and every part and parcel thereof, in accordance with this Agreement and all applicable laws, rules, and regulations. Upon completion of the construction of the Communication Facilities or any modification to them, LESSEE shall provide LESSOR with a Certificate of Completion signed by an engineer licensed by the State of Minnesota that certifies that the construction or modification of the Communication Facilities, as the case may be, was completed strictly in accordance with the Approved Plans and Specifications. In addition, LESSEE shall provide LESSOR with three (3) sets of as-built drawings of the Communications Facilities on paper and electronic version in auto-cad format.

8. INDEMNIFICATION. LESSEE shall indemnify and hold the LESSOR harmless against any claim of liability or loss from personal injury or property damage resulting from or arising out of the negligence or willful misconduct of LESSEE, its employees, contractors or agents, except to the extent such claims or damages may be due to or caused by the negligence or willful misconduct of LESSOR, or its employees, contractors or agents.

9. INSURANCE.

9.1 LESSEE will maintain at its own cost;

9.1.1 Commercial General Liability insurance with limits of \$5,000,000 per occurrence for bodily injury including death and for damage or destruction to property.

9.1.2 Commercial Auto Liability insurance on all owned, non-owned and hired automobiles with a combined single limit of not less than \$5,000,000 per occurrence.

9.1.3 Workers Compensation insurance providing the statutory benefits and Employers Liability with a limit of \$1,000,000 each accident/\$1,000,000 disease-each employee/\$1,000,000 disease policy limit coverage.

LESSEE will include the LESSOR as an additional insured as their interest may appear under this Agreement insured on the Commercial General Liability and Auto Liability policies.

LESSEE agrees to furnish LESSOR with certificates certifying that LESSEE has obtained the coverage described prior to commencement of construction. In addition, LESSEE will provide an insurance certificate not less than once each year, and at other times as reasonably requested by LESSOR.

The liability limits for the insurance required to be maintained by LESSEE pursuant to this **Paragraph 9** may be increased by LESSOR if the municipal tort liability limits under Minnesota law are increased, provided that the LESSOR may increase the liability limits under this Lease only to revised Minnesota municipal tort liability limits.

LESSOR will maintain at its own cost commercial general liability insurance with limits not less than \$1,000,000 for injury to or death of one or more persons in any one occurrence and \$500,000 for damage or destruction to property in any one occurrence. LESSOR will include the LESSEE as an additional insured as their interest may appear under this Agreement.

10. LIMITATION OF LIABILITY. Except for indemnification pursuant to **Paragraphs 8 and 28**, neither Party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

11. ACCESS TO TOWER. LESSOR agrees the LESSEE shall have free access to the Tower at all times for the purpose of installing and maintaining the said equipment. LESSOR shall furnish LESSEE with necessary means of access for the purpose of ingress and egress to the Premises. It is agreed, however, that only authorized engineers, employees or properly authorized contractors of LESSEE or persons under their direct supervision will be permitted to enter said premises. LESSEE shall provide LESSOR with at least three (3) business days' notice before any work is done on the Premises.

12. CONSTRUCTION MATERIALS. No materials may be used in the installation of the antennas or transmission lines that will cause corrosion or rust or deterioration of the Tower structure or its appurtenances.

All antenna(s) on the Tower must be identified by a marking fastened securely to its bracket on the Tower and all transmission lines are to be tagged at the conduit opening where it enters any user's equipment space.

13. RELOCATION.

13.1 Upon request by LESSOR, LESSEE agrees to relocate its Communication Facilities on a temporary basis to another location on the Property, hereinafter referred to as the "Temporary Relocation," for the purpose of LESSOR performing maintenance, repair or similar work at the Property or on the Tower provided:

13.1.1 LESSOR gives LESSEE at least thirty (30) days written notice prior to requiring LESSEE to relocate;

13.1.2 In the event that the condition of the Tower, or repairs or maintenance to be performed by LESSOR, require the temporary removal of the LESSEE's Communications Facilities from the Premises, thereby causing a disruption in LESSEE's service from the Premises, LESSEE may bring a mobile facility ("COW") on the Property at a location approved by LESSOR so as not to interfere with any repairs or maintenance being performed to the Tower.

13.1.3 LESSEE's rent shall be abated for the amount of time it has neither the Communications Facilities nor a "COW" in place at the Property because of LESSOR's maintenance work.

13.2 Upon the completion of any maintenance, repair or similar work by LESSOR, LESSEE is permitted to return to its original location from the temporary location with all costs for the same being paid by LESSEE.

14. [Intentionally Omitted]

15. HOLDOVER. LESSEE has no right to retain possession of the Premises or any part thereof beyond the expiration of the removal period set forth in **Paragraph 36** herein, unless the Parties are negotiating a new lease or lease extension in good faith. In the event that the Parties are not in the process of negotiating a new lease or lease extension in good faith, LESSEE holds over in violation of **Paragraph 36** and this **Paragraph 15**, then the rent then in effect payable from and after the time of the expiration or earlier removal period set forth in **Paragraph 36** shall be increased to one-hundred-fifteen percent (115%) of the rent applicable during the year immediately preceding such expiration or earlier termination, pro-rated on a per diem basis.

16. RIGHTS UPON SALE. Should LESSOR, at any time during the Term decide (i) to sell or transfer all or any part of the Property or the Tower thereon to a purchaser other than LESSEE, or (ii) to grant to a third party by easement or other legal instrument an interest in and to that portion of the Tower and or Property occupied by LESSEE, or a larger portion thereof, for the purpose of operating and maintaining communications facilities or the management thereof, such sale or grant of an easement or interest therein shall be under and subject to this Agreement and any such purchaser or transferee shall recognize LESSEE's rights hereunder under the terms of this Agreement. To the extent that LESSOR grants to a third party by easement or other legal instrument an interest in and to that portion of the Tower and/or Property occupied by LESSEE for the purpose of operating and maintaining communications facilities or the management thereof and in conjunction therewith, assigns this Agreement to said third party, LESSOR shall not be released from its obligations to LESSEE under this Agreement, and LESSEE shall have the right to look to LESSOR and the third party for the full performance of this Agreement.

17. QUIET ENJOYMENT. LESSOR covenants that LESSEE, on paying the rent and performing the covenants herein, shall peaceably and quietly have, hold and enjoy the Premises.

18. INTEGRATION. It is agreed and understood that this Agreement contains all agreements, promises and understandings between LESSOR and LESSEE and that no verbal or oral agreements, promises or understandings shall be binding upon either LESSOR or LESSEE in any dispute, controversy or proceeding at law, and any addition, variation or modification to this Agreement shall be void and ineffective unless made in writing signed by the Parties or in a written acknowledgment in the case provided in **Paragraph 3**. In the event any provision of the Agreement is found to be invalid or unenforceable, such finding shall not affect the validity and enforceability of the remaining provisions of this Agreement. *The failure of either Party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights under the Agreement shall not waive such rights and such Party shall have the right to*

enforce such rights at any time and take such action as may be lawful and authorized under this Agreement, in law or in equity.

19. GOVERNING LAW. This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the Laws of the State in which the Property is located. Any litigation concerning this Agreement shall be conducted in either the St. Louis County District Court located in Duluth, Minnesota, or filed in the Federal District Court for the District of Minnesota located in Duluth, and the parties hereto consent to the jurisdiction of any such court.

20. ASSIGNMENT. This Agreement may be sold, assigned or transferred by the LESSEE without any approval or consent of the LESSOR to the LESSEE's principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of LESSEE's assets in the market defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition or other business reorganization. As to other parties, this Agreement may not be sold, assigned or transferred without the written consent of the LESSOR, which such consent will not be unreasonably withheld, delayed or conditioned. No change of stock ownership, partnership interest or control of LESSEE or transfer upon partnership or corporate dissolution of LESSEE shall constitute an assignment hereunder.

21. NOTICES. All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

LESSOR: City of Hermantown
5105 Maple Grove Road
Hermantown, Minnesota 55811

LESSEE: CommNet Cellular Inc.
d/b/a Verizon Wireless
180 Washington Valley Road
Bedminster, New Jersey 07921
Attention: Network Real Estate

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

22. SUCCESSORS. This Agreement shall extend to and bind the heirs, personal representative, successors and assigns of the Parties hereto.

23. RECORDING. This Agreement nor any evidence thereof may not be recorded.

24. TITLE. LESSOR represents and warrants to LESSEE as of the execution date of this Agreement, and covenants during the Term that LESSOR is seized of good and sufficient title and interest to the Property and has full authority to enter into and execute this Agreement.

LESSOR further covenants during the Term that there are no covenants, easements or restrictions which prevent or adversely affect the use or occupancy of the Premises by LESSEE as set forth in this Agreement.

25. DEFAULT. In the event there is a breach by LESSEE with respect to any of the provisions of this Agreement or its obligations under it, including the payment of rent, LESSOR shall give LESSEE written notice of such breach. After receipt of such written notice, LESSEE shall have fifteen (15) days in which to cure any monetary breach and thirty (30) days in which to cure any non-monetary breach, provided LESSEE shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and LESSEE commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. LESSOR may not maintain any action or effect any remedies for default against LESSEE unless and until LESSEE has failed to cure the breach within the time periods provided in this Paragraph.

26. REMEDIES. Upon a default by LESSEE, the LESSOR may at its option (but without obligation to do so), perform the LESSEE's duty or obligation on the LESSEE's behalf, including but not limited to the obtaining of reasonably required insurance policies. The costs and expenses of any such performance by the LESSOR shall be due and payable by the LESSEE upon invoice therefor. In the event of an uncured default by LESSEE, beyond the applicable cure period, with respect to a material provision of this Agreement, without limiting the LESSOR in the exercise of any right or remedy which the LESSOR may have by reason of such default, the LESSOR may terminate the Agreement and/or pursue any remedy now or hereafter available to the LESSOR under the Laws or judicial decisions of the state in which the Premises are located. If LESSOR so performs any of LESSEE's obligations hereunder, the full amount of the reasonable and actual cost and expense incurred by LESSOR shall immediately be owing by LESSEE to LESSOR, and LESSEE shall pay to LESSOR upon demand the full undisputed amount thereof with interest thereon from the date of payment at the greater of (i) ten percent (10%) per annum, or (ii) the highest rate permitted by applicable Laws.

27. LIENS. LESSEE shall require its contractor(s) to provide a payment and performance bond covering the work to be done on the Premises and the Tower and will have the City listed as an additional obligee on the bond. LESSEE shall not suffer nor permit any mechanic's, vendor's or any other lien to be filed against the Premises by reason of work, labor or materials supplied or claimed to have been supplied to the LESSEE. If any such lien at any time shall be filed against the Premises, the LESSEE shall proceed with due diligence to cause the same to be discharged of record by payment, deposit, bond, order of court or otherwise, subject, however to the right of the LESSEE to contest any such lien by legal proceedings diligently pursued.

28. GARBAGE AND HAZARDOUS SUBSTANCES AND MATERIALS. LESSEE, at its sole cost and expense, shall provide for proper removal of all garbage produced on the Premises by the LESSEE. LESSEE, in the conduct of its activities, shall comply with all statutes, rules and regulations of federal, state, or local governmental units governing the disposition of hazardous substances or materials whether now existing or hereinafter enacted. LESSEE, in the conduct of its activities, shall not cause or permit any hazardous substances or hazardous materials to be used, stored, generated, or disposed of on the Premises or the Property in violation of any statutes, rules or regulations of federal, state or local governmental units. LESSEE shall ensure

proper and legal disposal of such substances or materials. Notwithstanding the foregoing, LESSOR acknowledges and agrees that LESSEE may use such hazardous substances as are commonly used (in both quantity and type) for the uses contemplated herein, including without limitation, fuel-powered generators and batteries provided, however, that LESSEE's use and disposal of such items is done in accordance with applicable law and provided further that nothing in this sentence shall limit LESSEE's other obligations under this **Paragraph 28**. As used herein, the terms "hazardous substance" and "hazardous material", include hazardous or toxic substances so listed in Applicable Environmental Law, including without limitation environmental pollutants, petroleum, asbestos and nuclear waste. "Applicable Environmental Law" means federal, state or local laws and regulations pertaining to hazardous, toxic or polluting substances, including but not limited to CERCLA and RCRA.

LESSEE shall indemnify, defend and hold LESSOR harmless from and against any claim, damage or expense to the extent arising out of LESSEE's installation, use, generation, storage or disposal of any hazardous materials or hazardous substances on the Premises, regardless of whether LESSOR has approved the activity. However, LESSEE shall not be responsible for the violation of any Environmental Law, the management of hazardous substance (or material) or environmental conditions including the release of any hazardous substance (or material) to the extent that such exists on the effective date of this Agreement or otherwise to the extent that such do not result from the activities of LESSEE.

The representations, warranties, indemnifications and duties set forth in this Paragraph shall survive the termination or expiration of this Agreement.

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

30. CONDEMNATION. In the event of any condemnation of the Property, Premises or Tower, LESSEE, in LESSEE's sole discretion, is unable to use the Premises for the purposes intended hereunder, or if such condemnation may reasonably be expected to disrupt LESSEE's operations at the Premises for more than forty-five (45) days, LESSEE may, at LESSEE's option, to be exercised in writing within fifteen (15) days after LESSOR shall have given LESSEE written notice of such taking (or in the absence of such notice, within fifteen (15) days after the condemning authority shall have taken possession) terminate this Agreement as of the date the condemning authority takes such possession. LESSEE may on its own behalf make a claim in any

condemnation proceeding involving the Premises for losses related to the equipment, conduits, fixtures, its relocation costs and its damages and losses (but not for the loss of its leasehold interest). Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the Parties shall make an appropriate adjustment as of such termination date with respect to payments due to the other under this Agreement. If LESSEE does not terminate this Agreement in accordance with the foregoing, this Agreement shall remain in full force and effect as to the portion of the Premises remaining, except that the rent shall be reduced in the same proportion as the rentable area of the Premises taken bears to the total rentable area of the Premises. In the event that this Agreement is not terminated by reason of such condemnation, LESSOR shall promptly repair any damage to the Premises caused by such condemning authority.

31. SUBMISSION OF AGREEMENT / PARTIAL INVALIDITY/AUTHORITY. The submission of this Agreement for examination does not constitute an offer to lease the Premises and this Agreement becomes effective only upon the full execution of this Agreement by the Parties. If any provision herein is invalid, it shall be considered deleted from this Agreement and shall not invalidate the remaining provisions of this Agreement. Each of the Parties hereto warrants to the other that the person or persons executing this Agreement on behalf of such Party has the full right, power and authority to enter into and execute this Agreement on such Party's behalf and that no consent from any other person or entity is necessary as a condition precedent to the legal effect of this Agreement.

32. OTHER CONDITIONS AND PROVISIONS.

32.1 LESSEE shall acquire no interest in the Property or in the Tower or Premises by virtue of this Agreement other than as set forth in this Agreement.

32.2 LESSEE shall keep and maintain the Communication Facilities in good repair and condition and in accordance with all local, state, federal governmental rules and regulations. LESSEE understands and agrees that the Tower and the Premises may, from time to time, require repair and/or maintenance including, but not limited to, painting of the Tower. Upon reasonable notification by LESSOR, LESSEE agrees to protect its own property during the time of any such repairs and/or maintenance and further agrees that its use of the Premises, including the Tower, may be temporarily interfered with by reason of such activities. LESSEE agrees that LESSOR shall not be responsible to LESSEE for temporary cessation of use provided that rentals due hereunder shall be suspended during any necessary cessation of use.

32.3 LESSEE shall reimburse the LESSOR for the fees and expenses of any engineer employed by the LESSOR to review the Plans and Specifications, or amendments thereto, upon receipt of an invoice from LESSOR (with documentation sufficient to substantiate the amounts invoiced), up to an amount not to exceed \$11,000.00 in the aggregate, and all costs in connection with any enforcement of this Agreement, including reasonable attorneys' fees and costs.

33. TERMINATION.

33.1 LESSOR intends to continue to use the Premises as a Tower for an indefinite period of time. In the event that such use is discontinued at this location for any reason, as may be determined by LESSOR in its sole discretion, LESSOR shall have the right to terminate this Agreement by giving notice thereof to LESSEE in writing by certified mail, return receipt requested, and such notice shall be effective sixty (60) days after receipt of such notice by LESSEE as evidenced by the return receipt, and upon termination of this Agreement, LESSEE shall promptly remove the Communication Facilities from the Premises and LESSEE shall be reimbursed a pro-rata share of any rent for the year in which the termination occurs.

33.2 LESSEE has the right to terminate this Agreement at any time upon any of the following events:

33.2.1 Upon providing LESSOR six (6) months written notice; or,

33.2.2 If upon inspection of the Premises, LESSEE identifies any environmental contamination or other geotechnical condition unacceptable in LESSEE's sole discretion; or,

33.2.3 If the Premises are damaged to an extent that renders the Premises unusable for LESSEE's use, and LESSOR fails to repair the Premises within 30 days of said damage; or

33.2.4 If LESSOR shall be in default of any covenant, condition or term of this Agreement, which default is not cured within thirty (30) days of LESSOR's receipt of written notice of default; or,

33.2.5 If LESSEE is required to cease the use of the Communication Facilities as a result of the term contained herein.

33.3 LESSEE will give LESSOR thirty (30) days written notice of termination of this Agreement. LESSEE may terminate immediately upon written notice under the terms of **Paragraphs 33.2.2, 33.2.3, and 33.2.5**. Upon termination, neither party will owe any further obligation under this Agreement and except for the indemnities and hold harmless provisions in this Agreement, the prompt reimbursement of pro-rata prepaid rent, and LESSEE's responsibility of removing the Communication Facilities from the Premises and restoring the Premises to its condition as of the Commencement Date, as near as practicable.

34. USER PRIORITY. LESSEE agrees that the following priorities of use, in descending order, shall apply in the event of communication interference (as described in **Paragraph 37.4** of this Agreement) or other conflict while this Agreement is in effect, and LESSEE's use shall be subordinate accordingly:

34.1 LESSOR;

34.2 Public safety agencies, including law enforcement, fire and ambulance services, that are not part of the LESSOR; and

34.3 Other governmental agencies where the use is not related to public safety; and

34.4 Government related entities whose antennas offer a service to the general public for a fee, in a manner similar to a public utility, such as long distance and cellular telephone, not including radio or television broadcasters.

LESSEE's use of the Premises shall be non-exclusive, and subject to the terms and conditions of the this Agreement, including **Paragraph 37** of this Agreement, LESSOR specifically reserves the right to allow the Premises to be used by other parties and to make additions, deletions, or modifications to its own facilities on the Premises.

35. ADDITIONAL BUILDINGS. Subject to the terms and conditions of this Agreement, including **Paragraph 37** below, LESSEE acknowledges that LESSOR may permit additional buildings to be constructed on the Premises. At such time as this may occur, LESSEE will permit said buildings to be placed immediately adjacent to LESSEE's equipment building and will allow "attachments" to its equipment building so as to give the appearance that all buildings are a connected facility. Said attachments will be made at no cost to LESSEE and will not compromise the structural integrity of LESSEE's building.

36. SITE RESTORATION. In the event that this Agreement is terminated or not renewed, LESSEE shall have sixty (60) days from the termination or expiration date to remove the Communication Facility, and related equipment from the Premises, repair the site and restore the surface of the land to the condition it was in prior to LESSEE's use and occupancy of the Premises. Upon the timely removal of the Communication Facilities, and related equipment, the repair of the site and the restoration of the Tower surface to the reasonable satisfaction of the LESSOR the security provided by LESSEE to LESSOR under **Paragraph 36.1** hereof shall be returned to LESSEE. In the event that LESSEE's Communication Facilities, and related equipment, are not removed to the reasonable satisfaction of the LESSOR within ninety (90) days following the termination of the Agreement, they shall be deemed abandoned if not then removed within 30 days of LESSOR's written notice of such non-removal, the Communication Facilities shall be deemed abandoned and become the property of the LESSOR and LESSEE shall have no further rights thereto.

36.1 SECURITY. LESSEE will provide LESSOR with a performance bond, in substantially the same form as attached hereto as Exhibit D, in the amount of \$15,000.00 in order to secure Lessee's performance of its obligations under Paragraph 36 of this Agreement. LESSEE will provide the performance bond to the LESSOR within sixty (60) days of completion of the installation of its Communications Facilities on the Water Tower.

37. INTERFERENCE.

37.1 WITH THE WATER TOWER OR THE PROPERTY. LESSEE shall not interfere with LESSOR's use of the Water Tower or the Property and agrees to cease all such actions which interfere with LESSOR's use thereof no later than three (3) business days after receipt of written notice of the interference from LESSOR, which actions may include, at LESSEE's option, powering down the equipment causing the interference and later powering up such equipment for intermittent testing. In the event that LESSEE's cessation of action is material to LESSEE's use of the Premises and such cessation of action is material to LESSEE's use of the Premises and such cessation frustrates LESSEE's use of the Premises, within LESSEE's sole discretion, LESSEE shall have the immediate right to terminate this Lease

37.2 WITH HIGHER PRIORITY USERS. If LESSEE's Communication Facilities causes impermissible interference with higher priority users as set forth in under **Paragraph 34** above, or with the then existing equipment of pre-existing tenants, LESSEE shall take all commercially reasonable steps necessary to correct and eliminate the interference, including but not limited to, at LESSEE's option, powering down the equipment causing such interference and later powering up such equipment only for intermittent testing, until the interference has been eliminated.

37.3 INTERFERENCE STUDY – NEW OCCUPANTS. Upon written notice by LESSOR that it has a bona fide request from any other party to lease an area in close proximity to the Premises, LESSEE agrees to provide LESSOR, within 60 days, the radio frequencies currently in operation or to be operated in the future of each LESSEE transmitter and receiver installed and operational on the Premises at the time of such request. LESSOR may then have an independent, registered professional engineer of LESSOR's choosing perform the necessary interference studies to determine if the new applicant's frequencies will cause harmful radio interference to LESSEE. LESSOR shall require the new applicant to pay for such interference studies.

37.4 GENERAL. LESSEE agrees to install equipment of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to any equipment of LESSOR or other lessees of the Property which existed on the Property prior to the date this Agreement is executed by the Parties. In the event any after-installed LESSEE's equipment causes such interference, and after LESSOR has notified LESSEE in writing of such interference, LESSEE will take all commercially reasonable steps necessary to correct and eliminate the interference, including but not limited to, at LESSEE's option, powering down such equipment and later powering up such equipment for intermittent testing. In no event will LESSOR be entitled to terminate this Agreement or relocate the equipment as long as LESSEE is making a good faith effort to remedy the interference issue.

38. ESTOPPEL LETTER. LESSOR agrees that, within thirty (30) days of LESSEE's written request, LESSOR will provide to LESSEE, at no cost to LESSEE, an Estoppel letter certifying to the best of LESSOR's knowledge, whether this Agreement is in full force and effect, whether this Agreement has been amended or modified, the amount of annual rent paid by LESSEE and the date to which rents have been paid.

39. LIMITATION ON CITY LIABILITY. No agreements or provisions contained in this Agreement nor any agreement covenant or undertaking by the LESSOR contained in any document executed by the LESSOR in connection with this Agreement and the transactions contemplated herein or therein, shall give rise to any pecuniary liability of the LESSOR or a charge against its general credit or taxing powers, or shall obligate the LESSOR financially in any way. No failure of the LESSOR to comply with any term, condition, covenant or agreement herein or under this Agreement shall subject the LESSOR to liability or claims for damages, costs or other financial or pecuniary charge; and no execution on any claims, demand, cause of action or judgment shall be levied upon or collected from the general credit, general fund or taxing powers of the LESSOR. Nothing in this paragraph shall prevent LESSEE from seeking to enforce the specific performance of this Agreement by the LESSOR, however.

40. APPLICABLE LAWS. During the Term, LESSOR shall maintain the Property and all structural elements of the Premises in compliance with all applicable laws, rules, regulations, ordinances, directives, covenants, easements, zoning and land use regulations, and restrictions of record, permits, building codes, and the requirements of any applicable fire insurance underwriter or rating bureau, now in effect or which may hereafter come into effect (including, without limitation, the Americans with Disabilities Act and laws regulating hazardous substances) (collectively "Laws"). LESSEE shall, in respect to the condition of the Premises and at LESSEE's sole cost and expense, comply with (a) all Laws relating solely to LESSEE's specific and unique nature of use of the Premises (other than general office use); and (b) all building codes requiring modifications to the Premises due to the improvements being made by LESSEE in the Premises.

41. SURVIVAL. The provisions of the Agreement relating to indemnification from one Party to the other Party shall survive any termination or expiration of this Agreement. Additionally, any provisions of this Agreement which require performance subsequent to the termination or expiration of this Agreement shall also survive such termination or expiration.

42. CAPTIONS. The captions contained in this Agreement are inserted for convenience only and are not intended to be part of the Agreement. They shall not affect or be utilized in the construction or interpretation of the Agreement.

Signatures on following page

Remainder of page intentionally left blank

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year written below.

LESSOR:

City of Hermantown

By: Wayne Boucher
Printed Name: Wayne Boucher
Title: Mayor
Date: 11/29/2018

LESSEE:

CommNet Cellular Inc.
d/b/a Verizon Wireless

By: [Signature]
Printed Name: Rommel Angeles
Title: Director-Network Field Engineering
Date: 11/19/2018

Remainder of page intentionally left blank

Exhibit A

(Legal Description of Property)

Page 1 of 1

ALL THAT PARCEL OF LAND IN SAINT LOUIS COUNTY, STATE OF MINNESOTA, AS MORE FULLY DESCRIBED IN DEED DOC #264226, ID# 395-0070-00031, BEING KNOWN AND DESIGNATED AS FOLLOWS:

THAT PART OF OUTLOT A IN BLOCK NINE (9), DULUTH HOMESTEADS, LOCATED IN THE SOUTHEAST QUARTER, (SE1/4), SECTION NINE (9), TOWNSHIP FIFTY (50), RANGE FIFTEEN (15), DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT LOCATED SOUTH 0 DEGREES 45' WEST 33 FEET AND NORTH 89 DEGREES 33' WEST 33 FEET FROM THE NORTHEAST CORNER (NE) OF THE SOUTHEAST QUARTER (SE1/4), SECTION NINE (9), TOWNSHIP FIFTY (50), RANGE FIFTEEN (15), THENCE SOUTH 0 DEGREES 45' WEST 1,939.47 FEET ALONG THE WEST SIDE OF UGSTAD ROAD; THENCE NORTH 89 DEGREES 37' WEST 621.85 FEET; THENCE SOUTH 0 DEGREES 51' WEST 624.74 FEET TO A POINT ON THE NORTH SIDE OF ARROWHEAD ROAD (FORMERLY SIMAR ROAD); THENCE NORTH 89 DEGREES 38' WEST 656.15 FEET ALONG THE NORTH SIDE OF ARROW HEAD ROAD (FORMERLY SIMAR ROAD); THENCE NORTH 1 DEGREE 08' EAST ALONG THE NORTH-SOUTH SIXTEENTH LINE OF THE SOUTHEAST QUARTER (SE 1/4) 267 FEET TO THE POINT OF BEGINNING; THENCE NORTH 1 DEGREE 08' EAST ALONG THE NORTH-SOUTH SIXTEENTH LINE OF THE SOUTHEAST QUARTER (SE 1/4) 150 FEET; THENCE EASTERLY ALONG A LINE PARALLEL WITH THE NORTH LINE OF ARROWHEAD ROAD (FORMERLY SIMAR ROAD), 150 FEET; THENCE SOUTHERLY ALONG A LINE PARALLEL WITH THE NORTH-SOUTH SIXTEENTH LINE OF THE SOUTHEAST QUARTER (SE 1/4) 150 FEET; THENCE 89 DEGREES 38' WEST 150 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH AN EASEMENT FOR THE CONSTRUCTION, MAINTENANCE AND REPAIR OF A WATER LINE AND FOR PURPOSES OF ACCESS TO THE PARCEL ABOVE DESCRIBED, AN EASEMENT OVER, ACROSS, ALONG AND THROUGH THE FOLLOWING DESCRIBED PARCEL:

COMMENCING AT THE POINT OF COMMENCEMENT AS LOCATED IN THE DESCRIPTION ABOVE; THENCE SOUTH 89 DEGREES 38' EAST 30 FEET; THENCE SOUTHERLY ALONG A LINE PARALLEL WITH THE NORTH-SOUTH SIXTEENTH LINE OF THE SOUTHEAST QUARTER (SE 1/4) 267 FEET TO THE NORTH-SOUTH SIXTEENTH LINE OF THE SOUTHEAST QUARTER (SE 1/4) 267 FEET TO THE NORTH LINE OF ARROWHEAD ROAD (FORMERLY SIMAR ROAD); THENCE NORTH 89 DEGREES 38' WEST ALONG THE NORTH SIDE OF ARROWHEAD ROAD (FORMERLY SIMAR ROAD) 30 FEET; THENCE NORTHERLY ALONG THE NORTH-SOUTH SIXTEENTH LINE OF THE SOUTHEAST QUARTER (SE 1/4) 267 FEET MORE OR LESS, TO THE POINT OF BEGINNING AND THERE ENDING.

DUL Hawks
Water Tower Lease Agreement
CORE/0762186.2686/113094127.7

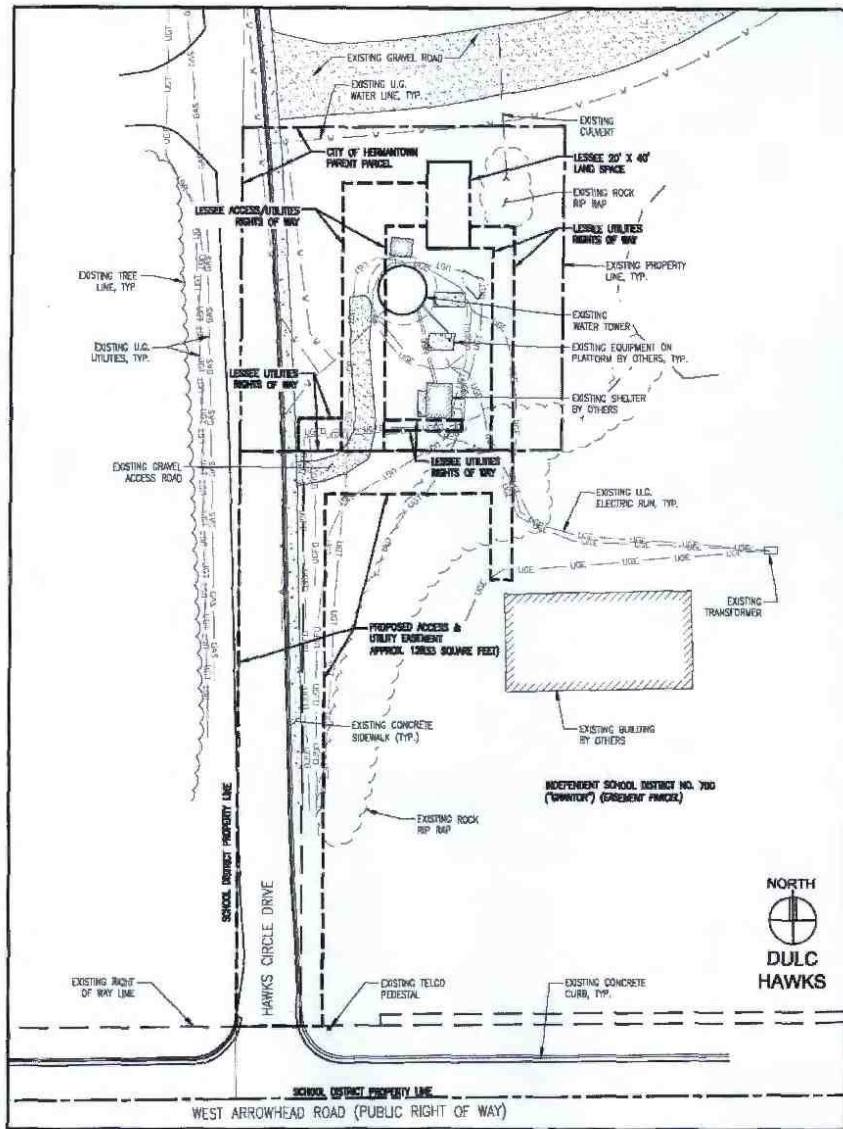
Attachment 1

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Exhibit A

(Sketch of Land Space within Property)

Page 1 of 2



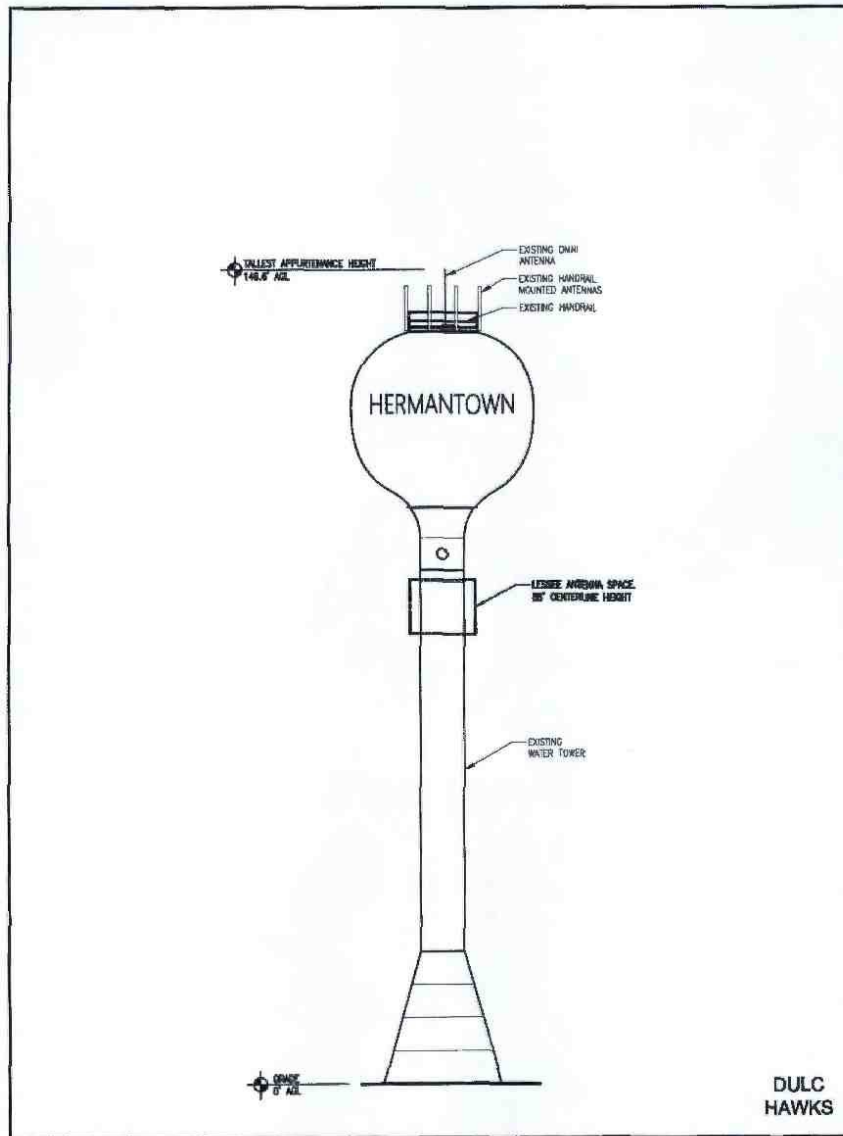
DUL Hawks
Water Tower Lease Agreement
CORE/0762186.2686/113094127.7

Attachment 1
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Exhibit A

(Sketch of Tower Space)

Page 2 of 2



DUL Hawks
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Attachment 1
Page 21 of 26

Exhibit B

(Radio Communications Equipment,
Antennas and Appurtenances)

Page 1 of 1

Six (6) antennas at the 88-foot centerline above ground level, three (3) hybrid cable lines from equipment to antennas, equipment platform with outdoor cabinets and communications/power supply equipment, telephone and electrical facilities, and all associated equipment and appurtenances related to the aforementioned antennas, lines, equipment and facilities.

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Attachment 1
Page 22 of 26

DUL Hawks – First Amendment (GL# 317006) (MGD # 5000056318)
CORE/0762186.2686/181349905.1

SITE SURVEY

DESIGN

WIDSWETH SMITH NOITING
Engineering / Construction / Landmark / Documentation

SHEET 1 OF 2 SHEETS

SITE NAME: DULC-HAWKS
81 East Dublin, VA

DATE: 07/27/2011

PROJECT: THE DULC-HAWKS WATER TOWER

SCALE: AS SHOWN

DATE: 07/27/2011

BY: [Signature]

CHECKED: [Signature]

APPROVED: [Signature]

1-12-2011

1-13-2011

1-14-2011

1-15-2011

1-16-2011

1-17-2011

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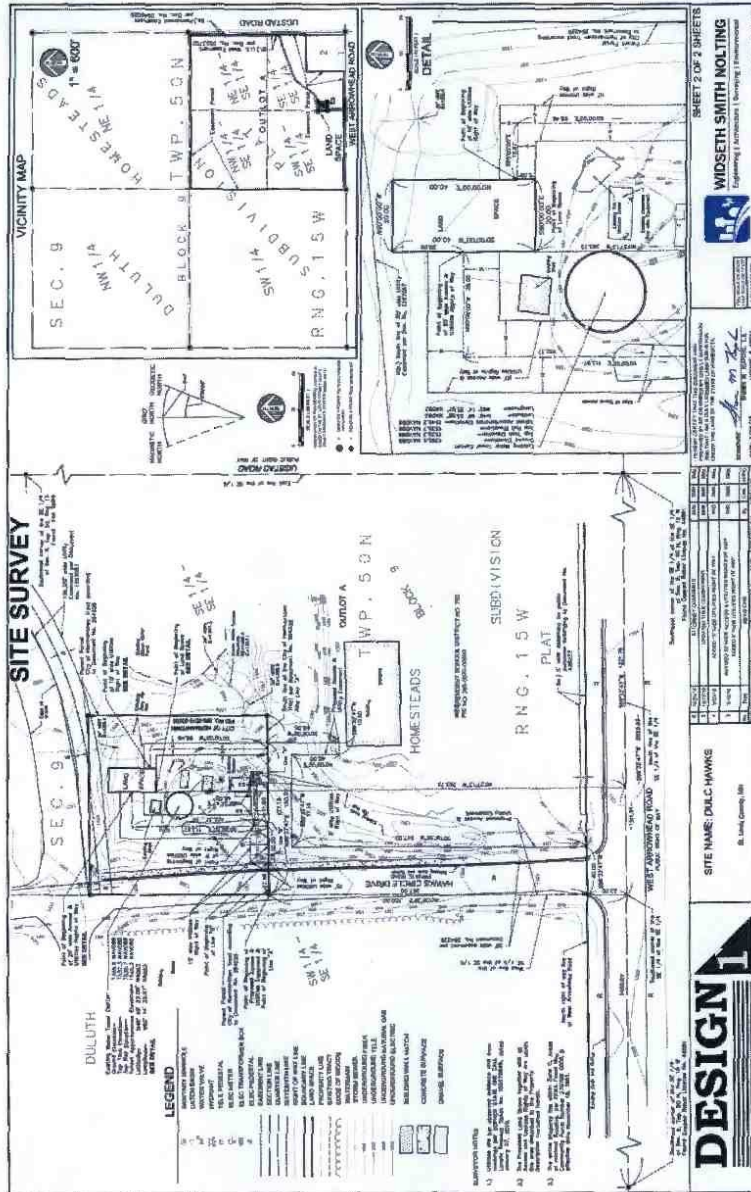
12-31-2011

DUL Hawks
Water Tower Lease Agreement
CORE/0762186.2686/113094127.7

Exhibit C

(Survey)

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DUL Hawks
Water Tower Lease Agreement
CORE/0762186.2686/113094127.7

Attachment 1

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Exhibit D

(Form Performance Bond)

Page 1 of 2

Bond No.

Tower Removal Bond

KNOW ALL MEN BY THESE PRESENTS: That
(hereinafter called the Principal), and
(hereinafter called the Surety), a corporation duly organized under the laws of the State of
are held and firmly bound unto
(hereinafter called the Oblige), in the full
and just sum of
, the
payment of which sum, well and truly to be made, the said Principal and Surety bind
themselves, and each of their heirs, administrators, executors, and assigns, jointly and
severally, firmly by these presents.

WHEREAS, the Principal has entered into or is about to enter into an agreement with the
Obligee relating to Telecommunications Facility and as a requirement of such agreement the
Principal is obligated with maintenance, removal of all Antenna Facilities and site
restoration from property identified as
upon
discontinuance of service.

WHEREAS, the Oblige has agreed to accept this bond as security for performance of
Principal's obligations under said agreement or permit during the time period this bond
remains in effect.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that if the
Principal shall perform its obligations under said agreement or permit as stipulated above,
then this obligation shall be void, otherwise to remain in full force and effect, unless
otherwise cancelled as hereinafter provided.

PROVIDED HOWEVER, that this bond is executed subject to the following express
provisions and conditions:

1. In the event of default by the Principal, Oblige shall deliver to Surety a written
statement of the details of such default within 30 days after the Oblige shall learn of the
same, such notice to be delivered by certified mail to address of said Surety as stated
herein.
2. This bond may be terminated or canceled by surety by giving not less than sixty (60) days
written notice to the Oblige, stating therein the effective date of such termination or
cancellation. Such notice shall not limit or terminate any obligations resulting from
default by the Principal that may have accrued under this bond as a result of default by
Principal prior to the effective date of such termination.
3. Neither cancellation nor termination of this bond by Surety, nor inability of Principal to
file a replacement bond or replacement security for its obligations, shall constitute a loss
to the Oblige recoverable under this bond.

DUL Hawks
Water Tower Lease Agreement
CORE/0762186.2686/113094127.7

Attachment 1

Page 25 of 26

Exhibit D

(Performance Bond)

Page 2 of 2

Bond No.

4. No claim, action, suit or proceeding shall be instituted against this bond unless same be brought or instituted and process served within one year after termination or cancellation of this bond.
5. No right of action shall accrue on this bond for the use of any person, corporation or entity other than the Obligee named herein or the heirs, executors, administrators or successors of the Obligee.
6. The aggregate liability of the surety is limited to the penal sum stated herein regardless of the number of years this bond remains in force or the amount or number of claims brought against this bond.
7. If any conflict or inconsistency exists between the Surety's obligations as described in this bond and as may be described in any underlying agreement, permit, document or contract to which this bond is related, then the terms of this bond shall prevail in all respects.
8. It is expressly understood and agreed that this bond does not cover or guarantee rent or lease payments of any kind.
9. This bond shall not bind the Surety unless the bond is accepted by the Obligee. If the Obligee objects to any language contained herein, within 30 days of the date this bond is signed and sealed by the Surety, Obligee shall return this bond, certified mail or express courier, to the Surety at its address at:

Failure to return the bond as described above shall constitute Obligee's acceptance of the terms and conditions herein.

IN WITNESS WHEREOF, the above bounded Principal and Surety have hereunto signed and sealed this bond effective this day of

DUL Hawks
Water Tower Lease Agreement
CORE/0762186.2686/113094127.7

Attachment 1
Page 26 of 26



CITY COUNCIL MEETING DATE: May 15, 2023

TO: Mayor & City Council

FROM: Paul Senst, Public Works Director

SUBJECT: Water Valve Replacement Haines/Arrowhead Road

RESOLUTION: 2023-65 **ORDINANCE:** 2023-xx **OTHER:** Add Name

REQUESTED ACTION

Approve Quote for a Valve Replacement @ Haines/Arrowhead Road Intersection

BACKGROUND

As part of our information from the 2021 Water System audit we identified that the City of Hermantown has a valve that needs replacement. Haines Road will be reconstructed in the 2023 Construction Season. Because of this construction work taking place in 2023, the City of Hermantown is best to get the replacement done during Haines Road project timing in 2023.

We solicited quotes from 2 Contractors.

We recommend that Northland Constructors be awarded the Valve Replacement @ Haines/Arrowhead Road Intersection for the Lump Sum Cost of \$18,567.23

SOURCE OF FUNDS (if applicable)

601-494300-471

ATTACHMENTS

Quotes

Resolution No. 2023-65

**RESOLUTION AWARDING CONTRACT TO NORTHLAND CONSTRUCTORS FOR A
WATER VALVE REPLACEMENT AT THE CORNER OF HAINES ROAD AND
ARROWHEAD ROAD FOR \$18,567.23**

WHEREAS, the City of Hermantown needs to replace a water valve in the intersection Haines Road and Arrowhead Road; and

WHEREAS, after fully considering this matter, the City Council of the City of Hermantown believes that it is in the best interest of the City of Hermantown to award the contract for the water valve replacement to Northland Constructors; and

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

1. Northland Constructors provided the low quote and is a responsible bidder.
2. The price of \$18,567.23 is hereby accepted.
3. The funds for the work will be paid from the Water Fund No. 601 and expensed to 601-494300-471.

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:

aye.

and the following voted in opposition thereto:

WHEREUPON, such resolution was declared duly passed and adopted May 15, 2023.



POWERED BY **API Group**

Date: April 28, 2023

Quote ID: JC-23-197-01

Proposal to: City of Hermantown attn: Paul Senst

Re: Haines Road and Arrowhead Road – Water Valve Replacement – Hermantown, MN

Northland Constructors of Duluth, Inc. proposes to furnish all materials and perform all labor necessary to complete the following per the exclusion & inclusion list. All work is to be completed in high quality material and workmanlike manner for the pricing on the following breakdown.

Scope of work: (Inclusion)

Item Description	Quantity	Unit Price	Extended
Water Valve Replacement*	1 LS	NA	\$ 18,567.23

*see attached negotiated Sourcewell contract rates for scope of work price basis

Included Scope:

- Provide traffic control, sawcut bituminous pavement and excavate approximately 16 SY area to expose the existing water valve. Haul away and dispose of excavated materials. Using a trench box to safely enter the excavation, replace the old valve with a new valve (new valve and misc parts provided by the City of Hermantown, but installed by Northland Constructors). Backfill the excavation with imported aggregate materials, grade and pave bituminous patch.

Exclusions:

- Bond, if needed add 1%. Permits, Testing, Surveying, Concrete Work (Mr. Manhole), Striping.

Terms:

- Work to be coordinated with the SLC Haines Road project work.
- Any alterations or additions to the above proposal involving extra cost for materials or labor will only be executed upon written request for same, and will be an extra cost over the sum quoted in this proposal.
- Northland Constructors will be paid within 30 days of completion of our scope of work.

This pricing is good for work completed during the 2023 bituminous paving season.

We appreciate the opportunity to propose on this work for you. Please call with any questions.

Sincerely,

Jeremy Carlson
Project Manager
Northland Constructors of Duluth, Inc.

To accept this proposal, please complete the following and return to us via email:

Accepted:
The above prices, specifications and conditions are satisfactory and are hereby accepted. I grant Northland Constructors the authorization to move forward with the base bid work and also Alternates _____ (fill in any accepted Alternate #'s).

Buyer: _____

Signature: _____

Date: _____

Work Order Signature Document

Sourcewell EZIQC Contract No.: MN-R2-PAV-040622-NCD

New Work Order

Modify an Existing Work Order

Work Order Number: 116450.00

Work Order Date: 04/28/2023

Owner PO No:

Work Order Title: City of Hermantown Water Valve Replacement 2023

Owner Name: City of Hermantown

Contractor Name: Northland Constructors of Duluth, Inc.

Contact: Paul Senst

Contact: Jeremy Carlson

Phone: (218) 729-3640

Phone: 218.625.2284

Work to be Performed

Work to be performed as per the Final Detailed Scope of Work Attached and as per the terms and conditions of Sourcewell EZIQC Contract No MN-R2-PAV-040622-NCD.

Brief Work Order Description:

Time of Performance

See Schedule Section of the Detailed Scope of Work

Duration

Liquidated Damages

Will apply:

Will not apply:

Work Order Firm Fixed Price: \$18,567.23

Owner Purchase Order Number:

Approvals

Owner

Date

Contractor

Date

Detailed Scope of Work

To: Jeremy Carlson
Northland Constructors of Duluth, Inc.
No Data Input
No Data Input,
218.625.2284

From: Paul Sens
City of Hermantown
5105 Maple Grove Road
Hermantown, MN 55811
(218) 729-3640

Date Printed: April 28, 2023

Work Order Number: 116450.00

Owner PO No:

Work Order Title: City of Hermantown Water Valve Replacement 2023

Brief Scope:

Preliminary

Revised

Final

The following items detail the scope of work as discussed at the site. All requirements necessary to accomplish the items set forth below shall be considered part of this scope of work.

Project title: Water Valve Replacement Project location: Haines Road and Arrowhead Road Intersection Project Owner: City of Hermantown, MN Owner Contact: Paul Sens Project Scope: Provide traffic control, sawcut bituminous pavement and excavate approximately 16 SY area to expose the existing water valve. Haul away and dispose of excavated materials. Using a trench box to safely enter the excavation, replace the old valve with a new valve (new valve and misc parts provided by the City of Hermantown, but installed by Northland Constructors). Backfill the excavation with imported aggregate materials, grade and pave bituminous patch.

Contractor

Date

Owner

Date

Contractor's Price Proposal - Summary

Date: April 28, 2023

Re: IQC Master Contract #: MN-R2-PAV-040622-NCD
Work Order #: 116450.00
Owner PO #:
Title: City of Hermantown Water Valve Replacement 2023
Contractor: Northland Constructors of Duluth, Inc.
Proposal Value: \$18,567.23

No Category Input

\$18,567.23

Proposal Total

\$18,567.23

Contractor's Price Proposal - Detail

Date: April 28, 2023

Re: IQC Master Contract #: MN-R2-PAV-040622-NCD
 Work Order #: 116450.00
 Owner PO #:
 Title: City of Hermantown Water Valve Replacement 2023
 Contractor: Northland Constructors of Duluth, Inc.
 Proposal Value: \$18,567.23

Sect.	Item	Modifier	UOM	Description	Line Total
Labor	Equip.	Material	(Excluded if marked with an X)		

No Category Input

1	01 22 23 00 0883		DAY	500 Gallon High Volume Vacuum With Full-Time Operator	\$704.73			
				Quantity	Unit Price	Factor	=	Total
			Installation	0.50	1,101.14	1.2800	x	704.73
2	01 55 26 00 0035		WK	Channelizer Drum	\$1,357.06			
				Quantity	Unit Price	Factor	=	Total
			Installation	155.00	6.84	1.2800	x	1,357.06
3	01 55 26 00 0050		WK	Type III Barricade, >5' To 10' Wide With Three Reflective Rails	\$265.09			
				Quantity	Unit Price	Factor	=	Total
			Installation	10.00	20.71	1.2800	x	265.09
4	01 55 26 00 0092		WK	Aluminum Sign And A Frame Stand	\$175.56			
				Quantity	Unit Price	Factor	=	Total
			Installation	9.00	15.24	1.2800	x	175.56
5	01 55 26 00 0106		EA	Placement And Removal Of Up To 250 Panels/Channelizers Using Truck	\$890.82			
				Quantity	Unit Price	Factor	=	Total
			Installation	155.00	4.49	1.2800	x	890.82
6	01 55 26 00 0108		EA	Placement And Removal Of Up To 250 Barricades Using Truck	\$86.91			
				Quantity	Unit Price	Factor	=	Total
			Installation	10.00	6.79	1.2800	x	86.91
7	01 55 26 00 0111		EA	Placement And Removal Of Portable Sign And Stand Using Truck	\$46.89			
				Quantity	Unit Price	Factor	=	Total
			Installation	9.00	4.07	1.2800	x	46.89
8	01 71 13 00 0002		EA	Equipment Delivery, Pickup, Mobilization And Demobilization Using A Rollback Flatbed TruckIncludes loading, tie-down of equipment, delivery of equipment, off loading on site, rigging, dismantling, loading for return and transporting away. For equipment such as trenchers, skid-steer loaders (bobcats), industrial warehouse forklifts, sweepers, scissor platform lifts, telescoping and articulating boom man lifts with up to 40' boom lengths, etc.	\$299.03			
				Quantity	Unit Price	Factor	=	Total
			Installation	1.00	233.62	1.2800	x	299.03
9	01 71 13 00 0003		EA	Equipment Delivery, Pickup, Mobilization And Demobilization Using A Tractor Trailer With Up To 53' BedIncludes loading, tie-down of equipment, delivery of equipment, off loading on site, rigging, dismantling, loading for return and transporting away. For equipment such as bulldozers, motor scrapers, hydraulic excavators, gradalls, road graders, loader-backhoes, heavy duty construction loaders, tractors, pavers, rollers, bridge finishers, straight mast construction forklifts, telescoping boom rough terrain construction forklifts, telescoping and articulating boom man lifts with >40' boom lengths, etc.	\$1,102.50			
				Quantity	Unit Price	Factor	=	Total
			Installation	1.00	861.33	1.2800	x	1,102.50
10	01 74 19 00 0037		CYM	Hauling On Paved Roads, First 15 Miles	\$108.54			
				Quantity	Unit Price	Factor	=	Total
			Installation	106.00	0.80	1.2800	x	108.54

Contractor's Price Proposal - Detail Continues..

Work Order Number: 116450.00
Work Order Title: City of Hermantown Water Valve Replacement 2023

Sect.	Item	Modifier	UOM	Description	Line Total
Labor	Equip.	Material	(Excluded if marked with an X)		
No Category Input					
11	01 74 19 00 0038		CYM	Hauling On Paved Roads, Miles Over Initial 15 Miles	\$942.30
			Installation	Quantity Unit Price Factor = Total	
				1,389.00 x 0.53 x 1.2800 = 942.30	
12	02 41 13 13 0021		SY	>6" To 9" By Machine, Break-up And Remove Bituminous Paving	\$489.68
			Installation	Quantity Unit Price Factor = Total	
				16.00 x 23.91 x 1.2800 = 489.68	
13	02 41 19 13 0015		EA	Saw Cut Minimum ChargeFor projects where the total saw cutting charge is less than the minimum charge, use this task exclusively. This task should not be used in conjunction with any other tasks in this section.	\$1,068.77
			Installation	Quantity Unit Price Factor = Total	
				1.00 x 834.98 x 1.2800 = 1,068.77	
14	31 05 16 00 0017		CY	Screenings Stone Aggregate Fill (3/16" Max)	\$2,729.20
			Installation	Quantity Unit Price Factor = Total	
				53.00 x 40.23 x 1.2800 = 2,729.20	
15	31 05 16 00 0024		CY	Crusher Run Aggregate Fill (3/4" Minus)	\$260.11
			Installation	Quantity Unit Price Factor = Total	
				7.00 x 29.03 x 1.2800 = 260.11	
16	31 05 16 00 0024 0053		MOD	For Up To 8, Add	\$37.18
			Installation	Quantity Unit Price Factor = Total	
				5.00 x 5.81 x 1.2800 = 37.18	
17	31 23 16 36 0007		CY	Excavation For Building Foundations And Other Structures By Hydraulic Excavator, Backhoe, Loader in Loose RockIncludes compacted aggregate	\$495.31
			Installation	Quantity Unit Price Factor = Total	
				56.00 x 6.91 x 1.2800 = 495.31	
18	31 23 16 36 0007 0015		MOD	For >20 To 50, Add	\$291.74
			Installation	Quantity Unit Price Factor = Total	
				44.00 x 5.18 x 1.2800 = 291.74	
19	31 23 16 36 0010		CY	Excavation For Building Foundations And Other Structures By Hand in Loose RockIncludes compacted aggregate	\$615.21
			Installation	Quantity Unit Price Factor = Total	
				3.00 x 160.21 x 1.2800 = 615.21	
20	31 23 16 36 0018		CY	Backfilling Around Building Foundations And Other Structures By Hydraulic Excavator, Backhoe, Loader	\$321.84
			Installation	Quantity Unit Price Factor = Total	
				56.00 x 4.49 x 1.2800 = 321.84	
21	31 23 16 36 0018 0020		MOD	For >50 To 250, Add	\$124.88
			Installation	Quantity Unit Price Factor = Total	
				54.20 x 1.80 x 1.2800 = 124.88	
22	31 23 16 36 0019		CY	Backfilling Around Building Foundations And Other Structures By Hand	\$170.80
			Installation	Quantity Unit Price Factor = Total	
				3.00 x 44.48 x 1.2800 = 170.80	
23	31 23 16 36 0021		CY	Compaction Of Fill Or Subbase For Building Foundations and Other Structures by Vibratory Plate, Air Tamper, Etcetera	\$652.49
			Installation	Quantity Unit Price Factor = Total	
				59.00 x 8.64 x 1.2800 = 652.49	

Contractor's Price Proposal - Detail Continues..

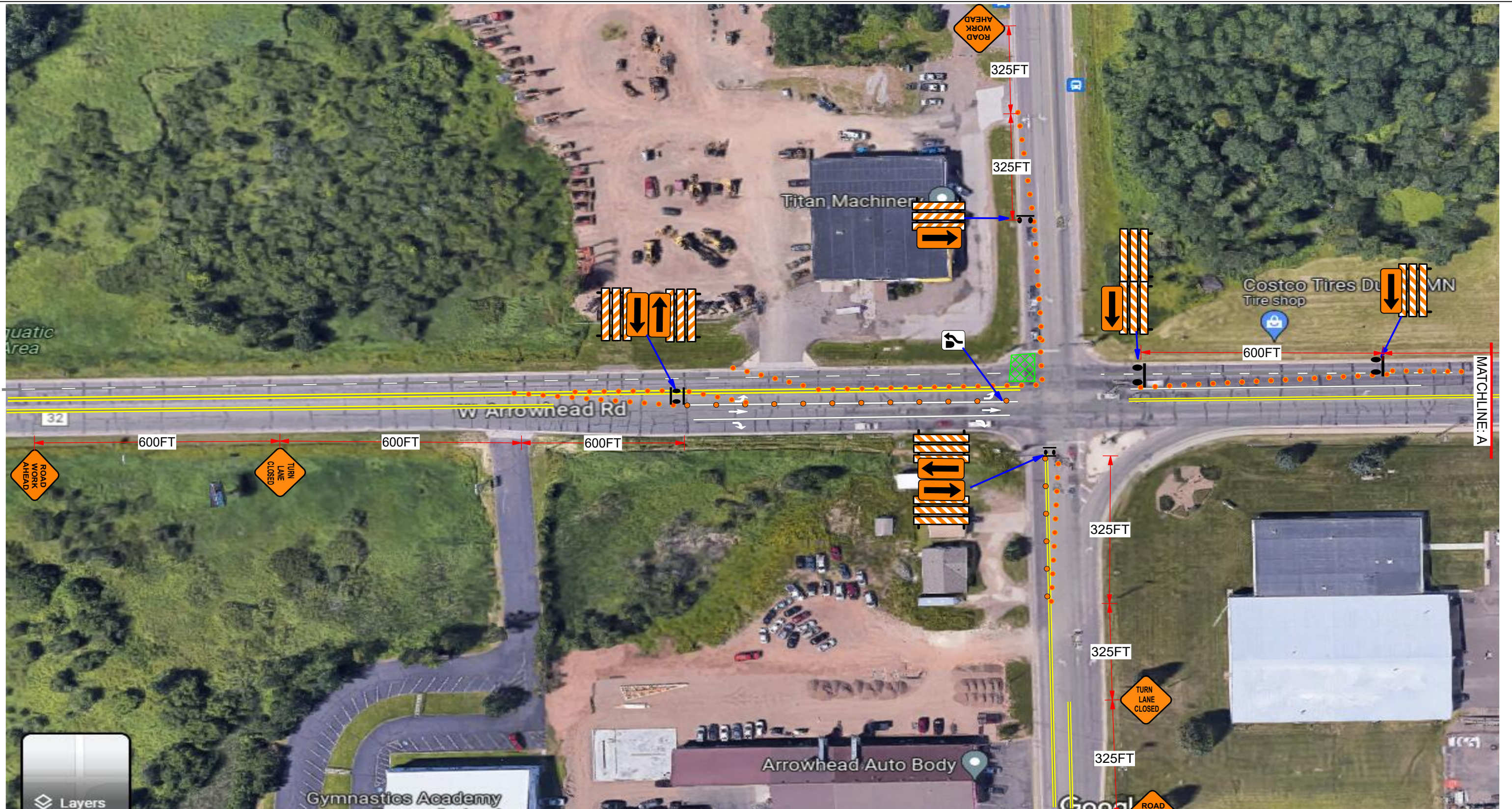
Work Order Number: 116450.00
Work Order Title: City of Hermantown Water Valve Replacement 2023

Sect.	Item	Modifier	UOM	Description	Line Total
Labor	Equip.	Material	(Excluded if marked with an X)		
No Category Input					
24	31 23 16 36 0021	0024	MOD	For >50 To 250, Add	\$240.04
			Installation	Quantity 54.20 x Unit Price 3.46 x Factor 1.2800 = Total 240.04	
25	31 23 16 36 0026		SY	Finish Grading For Building Foundations And Other Structures by Hand	\$177.15
			Installation	Quantity 16.00 x Unit Price 8.65 x Factor 1.2800 = Total 177.15	
26	32 01 17 63 0023		TON	Asphalt Placement For Small Repair Areas, Hot Mix ModifiedFor each ton over 3 to 100 tons. For small areas of existing asphalt is removed to allow work such as trenching across or in a road, excavating a drainage structure, uncovering a utility line, etc.	\$1,799.42
			Installation	Quantity 7.50 x Unit Price 187.44 x Factor 1.2800 = Total 1,799.42	
27	33 01 30 23 0076		EA	Re-Connection Of Non-Renewed Lateral, 8" Main With 6" Inserta-Tee	\$2,552.47
			Installation	Quantity 2.00 x Unit Price 997.06 x Factor 1.2800 = Total 2,552.47	
28	33 14 19 00 0161		EA	8" Gate Valve, Flanged	\$561.51
		X	Installation	Quantity 1.00 x Unit Price 438.68 x Factor 1.2800 = Total 561.51	

Subtotal for No Category Input \$18,567.23

Proposal Total \$18,567.23

This total represents the correct total for the proposal. Any discrepancy between line totals, sub-totals and the proposal total is due to rounding.



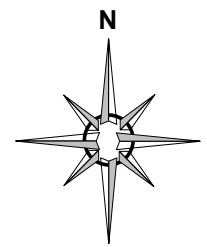
NOTE: ANY SCHEDULING OF EQUIPMENT MUST BE DONE THROUGH WARNING LITES OF MN, INC- FRONT OFFICE 612-521-4200

NORTHLAND
 CONTACT: LANCE
 PHONE:
 PROJECT: W ARROWHEAD RD
 JOB#
 PO#
 HOURS OF OPERATION: 24 HR SETUP

AUTHOR: JOHN GUZMAN
 MN TCS CERT #2906
 CITY: DULUTH
 DATE: 4/26/23
 PAGE: 1 OF 1
 SCALE: NONE
 GOV. AGENCY:

WARNING LITES
 4700 LYNDAL AVE N
 MINNEAPOLIS, MN 55430
 TEL: 612-277-4706 128
 FAX: 612-521-0646
 jguzman@warninglitesmn.com

Legend	
	Barrel
	DELINEATORS
	Work Area





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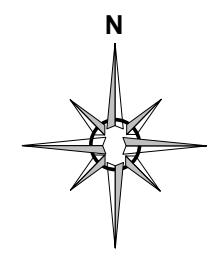
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 FAX: 612-521-0646
 jguzman@warninglitesmn.com

Legend
 Barrel



Quote



PO Box 340 • Cloquet, MN 55720
Cloquet Phone (218) 384-4266 • Fax (218) 384-4110

DATE 8-May-2023

SUBMITTED TO:	City of Hermantown	PROJECT NAME:	Arrowhead Road valve replacement
	Paul Senst	PROJECT LOCATION:	Hermantown, MN
UBI Contact:	Ryan Swanson	(O) 218-384-5007	rswanson@ulland.com

Bid Item	Description	Bid Quantity	Units	Loaded unit price
10	Replace existing 8" water valve in street	1	LS	\$34,970.00

Notes:

- 1) Quote is good for 30 days.
- 2) All water replacement parts supplied by City of Hermantown.
- 3) Bedding supplied by the City of Hermantown.
- 4) Payment terms as below.
- 5) Temp. millings provided for temporary surface. City of Hermantown to maintain surface.
- 6) No dewatering in this quote.
- 7) No retainage to be withheld.
- 8) Rock removal excluded.

THANK YOU FOR THE OPPORTUNITY TO QUOTE, IF YOU HAVE ANY QUESTIONS PLEASE CALL.

TERMS

- PAYABLE UPON COMPLETION OF WORK - NO RETAINAGE WITHHELD
- OTHER: This quote is valid for 30 days.
Payment terms: Net 30 days after receiving pay request.

Please take notice:

Persons or companies furnishing labor or materials for the improvement of real property may enforce a lien upon the improved land if they are not paid for their contributions, even if such parties have no direct contractual relationship with the owner.

Minnesota law permits the owner to withhold from his contractor so much of the contract price as may be necessary to meet the demands of all other lien claimants, pay directly such liens and deduct the cost thereof from the contract price, or withhold amounts from his contractor until the expiration of 90 days from the completion of such improvements unless the contractor furnishes to the owner waivers of claims for mechanic's liens signed by persons who furnished any labor or material for the improvement and who provided the owner with timely notice.

ACCEPTANCE OF BID

Ulland Brothers, Inc.

The above specifications and contracts are satisfactory, and
(I) (we) hereby authorize the performance of this work.
