



Winona City Council Agenda

Monday, December 16, 2024, 6:30 p.m.
City Council Chambers, 3rd Floor City Hall
207 Lafayette Street, Winona, MN

1. **Call to Order – Mayor & City Manager’s Comments**
2. **Required Public Hearings**
 - 2.1 **Public Hearing – Housing Trust Fund Ordinance**

Recommended Motion:
That the Council introduce the ordinance.
3. **Petitions, Requests, Communications**
 - 3.1 **Temporary On-Sale Intoxicating Liquor License – Winona Arts Center**

Recommended Motion:
That the Council approve the license.
 - 3.2 **Temporary On-Sale Intoxicating Liquor License – Minnesota Marine Art Museum**

Recommended Motion:
That the Council approve the license.
 - 3.3 **Easement Vacation Request to Accommodate Behrens Expansion**

Recommended Motion:
That the Council set the public hearing date for January 6, 2025.
 - 3.4 **West Lake Park Wetland Restoration Donation**

Recommended Motion:
That the Council approve the request.
 - 3.5 **Winona Area Mountain Bikers Agreement Report**

Recommended Motion:
That the Council receive and file the report.

3.6 Lease Agreement for Masonic Theater Management

Recommended Motion:

That the Council approve the agreement and authorize the Mayor and City Clerk execute the same.

4. Unfinished Business

4.1 Cannabis Ordinance Registration

Recommended Motion:

That the Council adopt the ordinance as amended and approve summary ordinance publication.

5. New Business

5.1 2025 Minnesota City Participation Program

Recommended Motion:

That the Council adopt the resolution.

5.2 Workforce Housing Development Loan Agreement

Recommended Motion:

That the Council approve the agreement and authorize the Mayor and City Clerk execute the same.

5.3 Winona Transit ADA Policies

Recommended Motion:

That the Council approve the policy.

5.4 Designation of Official Newspaper for 2025

Recommended Motion:

That the Council adopt the resolution.

5.5 Governmental Accounting Standards

Recommended Motion:

That the Council adopt the two resolutions.

5.6 American Rescue Plan Act Masonic Temple HVAC Reallocation

Recommended Motion:

That the Council approve the reallocation of funds.

5.7 Goodview Sanitary Sewer Agreement Renewal

Recommended Motion:

That the Council approve the agreement and authorize the Mayor and City Clerk execute the same.

5.8 King Jefferson Final Plat

Recommended Motion:

That the Council adopt the resolution.

5.9 MOU for Law Enforcement Labor Services, Local No. 75

Recommended Motion:

That the Council will adopt the resolution.

5.10 No Child Left Inside Grant

Recommended Motion:

That the Council approve the request and authorize staff to submit the grant application.

6. Reports of Committees

7. Council Concerns

8. Consent Agenda

Recommended Motion:

That the Council approve the consent agenda, including publication of the Summary Ordinances.

8.1 Approval of Minutes – December 2, 2024

8.2 Ordinance to amend Chapter 43 – Unified Development Code

8.3 Ordinance to Amend Chapter 55.12: Liquor – Consumption in Parks

8.4 Claim Against the City by David White

9. Adjournment

Recommended Motion:

The time being _____ and there being no further business to come before the Council this evening, I move to adjourn.



Agenda Report

Regular City Council – December 16, 2024

Item Number: 2.1

Title

Public Hearing – Housing Trust Fund Ordinance

Originating Department: Community Development
Presenter(s): Nick Larson, Development Coordinator

Action Requested

Introduce the attached ordinance to establish the City of Winona Housing Trust Fund.

Background

At the June 3, 2024, Pre-Council Meeting, Community Development staff presented to the Council information regarding Housing Trust Funds (HTF) and the City's allocation of Statewide Affordable Housing Aid (SAHA) from the Minnesota Department of Revenue. At that time Council directed staff to bring back further information at a future meeting.

A public hearing is being held to receive comment on adopting an ordinance to establish the City of Winona Housing Trust Fund.

Local Housing Trust Funds may be established by elected government bodies at the city, county and state level. Funds may be dedicated to this fund in a distinct fund to address housing needs.

The first step in the process is to hold a public hearing and to review a draft ordinance to establish a Local Housing Trust Fund. Future steps would include staff bringing forth for the Council's consideration authorization to transfer SAHA and potentially other revenues into the Housing Trust Fund Account at a future meeting. Additionally, the ordinance proposes the Community Development Department will oversee the administration of Housing Trust Fund, and the City Finance Department shall manage, account for, and maintain the Housing Trust Fund Account. Future allocations will be reviewed by Community Development and the Finance Department.

Community Development staff are drafting written guidelines for the City of Winona Housing Trust Fund, which would also be brought to a future meeting for the Council's consideration and adoption.

Goal 6.1.6 of the Homes & Neighborhoods section the 2045 Comprehensive Plan calls for the City to evaluate creating a Housing Trust Fund. Staff recommends the Council introduce the ordinance to establish the City of Winona Housing Trust Fund.

Budget Impact

There is no budget impact for this item.

Attachments

Draft Ordinance

Staff Contact: Nick Larson

ORDINANCE NO. _____

AN ORDINANCE AMENDING WINONA CITY CODE, CHAPTER 22 – CITY ADMINISTRATION, ESTABLISHING THE CITY OF WINONA HOUSING TRUST FUND

THE CITY OF WINONA DOES ORDAIN:

SECTION 1. That Winona City Code, Chapter 22 – City Administration, Section 22.34 – Winona Housing Trust Fund, be established and added to Winona City Code to read as follows:

22.34 WINONA HOUSING TRUST FUND

(a) General Provisions.

(1) Authority. This Ordinance is adopted pursuant to Minnesota Statutes, Section 462C.16, which authorizes the City of Winona to establish a local housing trust fund.

(2) Findings and Purpose. The City Council has determined that creating the Housing Trust Fund, which will encourage the creation of affordable housing and workforce housing for rental housing and owner-occupied housing, promote the preservation of existing affordable housing and naturally occurring affordable housing, and provide rental assistance and homeownership assistance to persons of Very Low-Income, Low-Income, and Moderate-Income, which will be used to further the City’s goal of promoting affordable housing opportunities.

(3) Establishment. Pursuant to Minnesota Statutes, Section 462C.16, there is hereby created and established for the City a Housing Trust Fund to be known as the “City of Winona Housing Trust Fund” and is hereinafter referred to in this Section for ease of reference as the “Housing Trust Fund.” The Housing Trust Fund shall be a dedicated source of funding and a renewable source of revenue to assist, in part, with housing needs for Very Low-, Low-, and Moderate-Income households within the City.

(b) Definitions.

(1) “Administrative fees” means staff time, legal fees, or other pre-development costs to administer creation of affordable housing units, up to ten (10%) percent of the Housing Trust Fund Account balance.

(2) “Affordable Housing Unit” means a housing unit meeting the definition of Affordable Housing Cost.

(3) “Affordable Housing Cost” means an amount satisfied by:

(i) For “owner-occupied housing”, a housing payment inclusive of loan principal, loan interest, property taxes, property and mortgage insurance, and homeowner association dues, which allows a Very Low-, Low-, and Moderate-

Income household to purchase a home while paying no more than thirty percent (30%) of their gross household income.

(ii) For “rental or cooperative housing”, a housing payment, inclusive of a reasonable allowance for heating, which allows a Very Low-, Low-, and Moderate-Income household to rent a unit while paying no more than thirty percent (30%) of their gross household income.

(4) “Affordability Term” means the amount of time a project must meet the Affordability Housing criteria.

(5) “Application Fees” means fees that may be charged to an applicant applying for funding from the Housing Trust Fund based on the size and scope of the project.

(6) "Area Median Income" means the income guidelines most recently established and published by the U.S. Department of Housing and Urban Development for the State of Minnesota and adjusted by household size.

(7) “City” means the City of Winona.

(8) “City Council” means the members of the City of Winona City Council.

(9) “Community Development Department” means the City Community Development Department designated in this Section as the Administrator of the Housing Trust Fund.

(10) “Dedicated Source of Funding” means once funds are allocated to the Housing Trust those funds can only be expended for purposes outlined in Section 22.34 (d).

(11) “Fiscal Agent” means the entity that establishes the Housing Trust Fund Account.

(12) “Housing Trust Fund Account” means the account into which funds received for the Housing Trust Fund are deposited and the account out of which Housing Trust Fund dollars are paid for eligible projects.

(13) “Housing Trust Fund Administrator” means the City Community Development Department.

(14) “Housing Trust Fund” means the City of Winona Housing Trust Fund.

(15) “Housing Trust Fund Manager” means the City of Winona Director of Community Development or the Director’s designee.

(16) “Low-Income” means the gross household income based on household size that is at or below eighty percent (80%) of Area Median Income, but more than fifty percent (50%) of Area Median Income as most recently established and published by the U.S. Department of Housing and Urban Development.

(17) “Mixed Income Housing” means a residential structure that is comprised of differing levels of affordability, having housing units at market rate without income limits and housing units affordable to Very Low-, Low-, and Moderate-Income households.

(18) "Moderate-Income" means the gross household income based on household size that is at or below 115 percent (115%) of Area Median Income, but more than eighty percent (80%) of Area Median Income as most recently established and published by the U.S. Department of Housing and Urban Development.

(19) “Port Authority” means the Port Authority of Winona.

(20) “Project” means an eligible single-family house (attached or detached) or multifamily property, either as owner-occupied property or rental property, meeting the definition of Affordable Housing Cost and serving a Very Low-, Low-, and/or Moderate-Income household.

(21) “Recipient” means any homeowner, for-profit, non-profit or local unit of government housing developer that receives funds in the form of a loan or a grant from the Housing Trust Fund Account for an eligible project. A Recipient may be an individual, partnership, local unit of government, joint venture limited liability company or partnership, association, or corporation.

(22) “Tax Increment Financing Equity Participation Payment” means an equity payment received by the County from a developer pursuant to a TIF Development Agreement in which the tax increment district has been dissolved.

(23) “Very Low-Income” means gross household income based on household size that is at or below fifty percent (50%) of Area Median Income as most recently established and published by the U.S. Department of Housing and Urban Development.

(24) “Workforce Housing” means owner-occupied or rental housing units that are provided to households with at least one member per unit who is gainfully employed at the time of entry into the unit.

(i) Workforce housing may be designed for households that make fifty percent (50%) to one hundred fifteen percent (115%) of Area Median Income, but shall be inclusive of all income levels households who meet the definition of gainful employment and can meet the Affordable Housing Cost as defined in Section 22.34 (b)(3).

(25) “Gainful Employment” means an employment situation where at least one member of the household receives consistent work and payment for such work from an employer working at least 30 hours or more per week.

(c) Housing Trust Fund Account; Sources of Trust Funds.

(1) The City of Winona Housing Trust Fund Account is to be managed, accounted for, and maintained by the City Finance Department. All funds received by the City for the Housing Trust Fund shall be deposited in the dedicated Housing Trust Fund Account. Principal and interest from loan repayments, and all other income from Housing Trust Fund activities, shall be deposited in the Housing Trust Fund Account. All interest earnings from the Housing Trust Fund Account shall be reinvested and dedicated to the Housing Trust Fund Account.

(2) The Housing Trust Fund may consist of any funds derived from, but not limited to the following sources:

- (i) Private cash donations from individuals, organizations, and businesses designated for the Housing Trust Fund.
- (ii) Payments in lieu of participation of future affordable housing programs designated for the Housing Trust Fund.
- (iii) Grants or loans from a federal, state or local government or private sources designated for the Housing Trust Fund.
- (iv) Loan repayments from previous housing loan programs administered by the City and authorized for transfer by the City Council to the Housing Trust Fund.
- (v) Principal and interest from Housing Trust Fund loan repayments and all other income from Housing Trust Fund activities, including but not limited to investment earnings.
- (vi) Any other appropriations as determined from time to time by the City Council in its sole judgment and discretion, unless expressly prohibited by state law.
- (vii) Employer based funds and matches designated for the Housing Trust Fund.
- (viii) Bond proceeds designated for the Housing Trust Fund.
- (ix) Application Fees - Projects applying for funds from the Housing Trust Fund that may be charged based on the size and scope of the project.
- (x) Matching funds from a Federal or State program designated for the

Housing Trust Fund.

- (xi) Funds received from the State of Minnesota dedicated to affordable housing and/or workforce housing.
- (xii) The sale of real and personal property as approved and designated by the City Council or the Port Authority designated for the Housing Trust Fund.
- (xiii) Local government appropriations from time to time by the City Council designated for the Housing Trust Fund.
- (xiv) Tax Increment Financing (“TIF”) Equity Participation Payments returned to the County after decertification of a TIF district, including TIF pooled funds as allowed by Minnesota State Statutes and designated by the City Council for the Housing Trust Fund.

(d) Use of Funds.

Pursuant to Minnesota Statutes, Section 462C.16, subd. 3 and 24 CFR Part 93, funds deposited for the Housing Trust Fund in the Housing Trust Fund Account may be used only for the following:

- (1) Making grants, loans, and loan guarantees for the acquisition, development, rehabilitation, or financing of Affordable Housing Units and Workforce Housing.
- (2) Making grants, loans, and loan guarantees for the preservation of existing Affordable Housing Units and Workforce Housing.
- (3) Matching other funds from federal, state, or private resources for Projects.
- (4) Providing down payment assistance, rental assistance and home buyer counseling services for Very Low-, Low-, and Moderate-Income households.
- (5) Payment of administrative expenses of the Housing Trust Fund in the maximum amount of ten (10%) percent of the balance of the Housing Trust Fund.
- (6) Financing the acquisition, demolition, and disposition of property for Projects.
- (7) Financing construction of public improvements and utilities to aid proposed Projects.
- (8) Interim financing of public costs for Projects in anticipation of a permanent financing source (i.e., construction financing, bond sale, etc.) for Affordable Housing Units serving Very Low-, Low- and Moderate-Income households.
- (9) Other uses as permitted by law and approved by the City Council.

(10) The Winona Housing Trust Fund shall provide loans and grants to property owners, homeowners, local units of government, for-profit housing developers, and non-profit housing developers for the following purposes:

- (i) Acquisition, capital and soft costs necessary for the creation of new Affordable and Workforce Housing (both rental and owner- occupied);
- (ii) Acquisition, rehabilitation, capital and soft costs necessary for the preservation of existing Affordable and Workforce Housing;
- (iii) Acquisition, capital and soft costs necessary for the creation of new Mixed Income Housing (both rental and owner- occupied);
- (iv) The rehabilitation of the existing housing stock;
- (v) Other housing expenditures that are consistent with Minnesota Statutes, Section 462C.16, Subd. (3);
- (vi) Increase housing stock in the City;
- (vii) Invest in the City making affordable housing units citywide;
- (viii) Remove blight, improve safety, and leverage existing City infrastructure;
and
- (ix) Promote density where appropriate. Projects funded by the Housing Trust Fund shall be disbursed throughout the City, so no single area experiences a disproportionate concentration of housing units for Very Low-, Low-, and Moderate-Income households. Preference shall also be given to those projects that ensure that the Assisted Units remain Affordable for the longest period possible.

(e) Administration of Local Housing Trust Fund.

- (1) The Housing Trust Fund shall be administered by the Community Development Department.
- (2) The Community Development Department will oversee the administration of Housing Trust Fund, except that the City Finance Department shall manage, account for, and maintain the Housing Trust Fund Account.
- (3) The Community Development Department will review Project application(s) and process the same in accordance with this Section prior to making any Project funding recommendations for the City Council's consideration.

(4) The Community Development Department will investigate and recommend to the City Council, as applicable, additional sources of revenue to be deposited into the Housing Trust Fund Account.

(5) The Community Development Department shall determine the terms and conditions of repayment of loans and grants from the Housing Trust Fund, including but not limited to, the appropriate security and interest, if any, should repayment be required. Interest on loans and grants shall be as established by the City Council from time to time or at the time of approval of a specific Project or Program.

(6) The Community Development Department will develop and promote programs to meet the City's housing goals and objectives.

(7) The Community Development Department will recommend policies, procedures, and goals for the City Council's consideration.

(f) Trust Fund Distributions.

(1) The Housing Trust Fund is to function as a resource to fund loans and grants in strict accordance with this Section.

(2) No disbursement shall be made from the Housing Trust Fund Account if the disbursed amount is greater than or equal to \$25,000 without the prior recommendation from the Community Development Department and approval of the City Council.

(3) Disbursements from the Housing Trust Fund Account shall be made as loans or grants to assist Recipients for eligible projects, and administrative fees are not to exceed ten (10%) percent.

(4) The Community Development Department shall submit City staff review comments and recommendations for funding from the Housing Trust Fund for requested disbursements of \$25,000 or more to be considered for City Council action.

(5) Subject to the requirements of this Section and Minnesota Statutes, Section 462C.16, subs. 2 and 3, the Community Development Department may utilize established programs of the City of Winona, SEMMCHRA, SEMCAC, Southeast Minnesota Community Action Council, Habitat of Winona serving Winona County, Winona County, Winona Volunteer Services, Hope for Homes, Hiawatha Valley Mental Health, and other like nonprofit organizations to administer Housing Trust Fund Account funds in a cost-effective manner to minimize administrative costs and to streamline access to Housing Trust Fund monies for the Recipient.

(6) Housing Trust Fund Account disbursements for rental property shall be available only to Projects whose household gross income, is at or below eighty percent (80%) of Area Median Income based on household size at the time of entry into the Affordable Housing Unit.

(7) Housing Trust Fund Account disbursements for owner-occupied property shall be available only to Projects whose household gross income based on household size is Very Low-, Low- or Moderate-Income at the time of entry into the Affordable Housing Unit.

(8) The Housing Trust Fund Account may not be used for operating expenses of any program(s) or supporting service such as childcare or any other social program. However, the Housing Trust Fund Account may be used to cover program related expenses such as legal and Community Development Department application review and processing subject to the limitations on administrative expenses contained in this Section.

(9) Affordable Housing Units shall be distributed throughout the building or development so as to avoid a disproportionate concentration in any one area.

(g) Term of Affordability.

(1) The City shall give preference to those Projects that ensure that the Affordable Housing Unit(s) meeting the definition of having an Affordable Housing Cost for the longest period possible, or to provide affordable housing to persons of Very Low-, or Low-Income. Projects may be prioritized that:

- (i) Reduce disparities in home ownership.
- (ii) Reduce housing cost burden, housing instability, or homelessness.
- (iii) Improve the habitability of homes.
- (iv) Create accessible housing.
- (v) Create more energy- or water-efficient homes.

(2) Affordability term requirements for Housing Trust Fund Projects and programs may be determined by a policy adopted by the City Council from time to time.

(3) Affordable Housing Units shall be deed-restricted to ensure long-term affordability.

(4) The City will enter into loan and grant agreements with the Recipient(s) of the Housing Trust Fund monies. Each agreement will clearly state the conditions and requirements for the Recipient's use of Housing Trust Fund monies, including the term of

compliance, transfer or sale requirements, and such other requirements as specified or required.

(5) In those cases where a Project or Affordable Housing Unit is sold, transferred, or is no longer an Affordable Housing Unit prior to the expiration of the agreed-upon term, or where an Assisted Unit is no longer Affordable, the initial Recipient of assistance from the Housing Trust Fund may be obligated and required to repay to the Housing Trust Fund the original amount or a pro-rated portion of the loan or grant.

(6) The City shall enforce all debt and lien instruments to the fullest extent of the law. The City may recommend debt settlement offers if it is determined to be in the best interest of the Housing Trust Fund.

(h) Annual Report.

(1) Community Development Department staff shall report annually to the City Council and post the report on the City's website following City Council review and approval thereof.

(2) Community Development Department staff shall prepare an annual report within thirty (30) days following the close of each fiscal year and submit an annual report to the City Council on the activities undertaken with funds from the Housing Trust Fund.

(3) The report shall minimally specify the number and amounts of loans and grants made, the number and types of projects assisted, and such other requirements in compliance with applicable law.

SECTION 2. This Ordinance shall take effect upon its passage and publication.

Passed by the City Council of the City of Winona, Minnesota, this day ____ of _____, 20____.

Mayor

Attested By:

City Clerk



Agenda Report

Regular City Council – December 16, 2024
Item Number: 3.1

Title

Temporary On-Sale Intoxicating Liquor License – Winona Arts Center

Originating Department: City Clerk
Presenter(s): Monica Hennessy Mohan, City Clerk

Action Requested

Approve the Temporary On-Sale Intoxicating Liquor License.

Background

The Winona Arts Center has applied for Temporary On-Sale Intoxicating Liquor license to be used for an event they are hosting at their facility at 228 East 5th Street on Saturday, January 25, 2025. The license would be in effect from 4:00 p.m. to 10:00 p.m. that night.

Budget Impact

Licensing activity is budget for under the City Clerk’s office budget, and license application fees cover a portion of the cost of administering the licensing process.

Attachments

None

Staff Contact: Monica Hennessy Mohan



Agenda Report

Regular City Council – December 16, 2024

Item Number: 3.2

Title

Temporary On-Sale Intoxicating Liquor License – Minnesota Marine Art Museum

Originating Department: City Clerk

Presenter(s): Monica Hennessy Mohan, City Clerk

Action Requested

Approve the Temporary On-Sale Intoxicating Liquor License.

Background

The Minnesota Marine Art Museum has applied for Temporary On-Sale Intoxicating Liquor license to be used for an event they are hosting at their facility at 800 Riverview Drive on Friday, January 24, 2025. The license would be in effect from 2:00 p.m. to 10:00 p.m. that night.

Budget Impact

Licensing activity is budget for under the City Clerk's office budget, and license application fees cover a portion of the cost of administering the licensing process.

Attachments

None

Staff Contact: Monica Hennessy Mohan



Agenda Report

Regular City Council – December 16, 2024

Item Number: 3.3

Title

Easement Vacation Request to Accommodate Behrens Expansion

Originating Department: Public Works

Presenter(s): Brian DeFrang, Public Works Director/City Engineer

Action Requested

Set the Public Hearing

Background

It is requested of the City of Winona to vacate the permanent utility easement located at the previous Bridge Street between East 8th and East 7th streets as described in the agreement dated August 19, 2013. A new 70' utility easement was created when Bridge Street was relocated. The project is planning to abandon the 6" water main within this easement to allow for more buildable space within the property. The area contains several watermain connections to provide continued connectivity within the system. There are no other utilities in this easement. Therefore, we are requesting the easement be vacated. Behrens will be responsible for the cost and construction of the abandoning of the existing 6" Watermain. The 6" watermain does not service any property and is not necessary for the City's water system according to the water model.

Section 25.26 of the City Code requires that a public hearing be held to give affected property owners a chance to be heard. Council is requested to set the public hearing for Tuesday, January 6th, at 6:30 pm in the Council Chambers.

Before the street right of way can be vacated, Section 25.26(c) of the City Code requires that administration do an investigation, and this report will be provided prior to the public hearing on January 6, 2025.

Budget Impact

None

Attachments

Existing Easement

Staff Contact: Brian DeFrang, Public Works Director/City Engineer

disturbed areas within the Permanent Easement area back to as close to original condition as is reasonably practicable given the rights granted hereunder, except that restoration and the costs thereof of any paved areas shall be the sole responsibility of Grantor.

5. The Grantee shall have the right of ingress and egress to and from the Permanent Utility Easement area by such route as shall occasion the least practical damage and inconvenience to the Grantor.
6. The Grantee shall have the right to trim and remove all trees and bushes, which may interfere with the exercise of the Grantee's rights pursuant to this Agreement.
7. The Grantor shall not erect, construct or locate in the Permanent Utility Easement area any new structure or object or allow, take or authorize any other action that would in any way interfere with the Grantee's rights as identified herein, prevent the Grantee's reasonable access to the Permanent Utility Easement area, or prevent the public's full enjoyment of the rights granted hereunder, without the written consent of the Grantee.
8. The Grantor acknowledges that Grantor knows, agrees and understands that in addition to the utility owned by the Grantee, other private utilities are also presently located within the Permanent Utility Easement area described in this Agreement.
9. The provisions hereof shall inure to the benefit of and bind the successors and assigns of the respective parties hereto, and all covenants shall apply to and run with the land.
10. This Agreement shall be recorded at the time of its execution with the understanding that the Grantee has complete and absolute sole ownership, use and control of the public utility facilities constructed in the Permanent Utility Easement area in accordance with the grant of rights conveyed herein.

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

GRANTOR:

MIKRUT PROPERTIES LLLP

By: _____

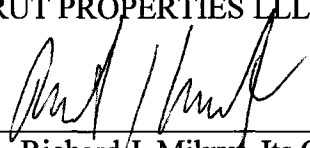

Richard J. Mikrut, Its General Partner

EXHIBIT A

LEGAL DESCRIPTION OF PERMANENT UTILITY EASEMENT

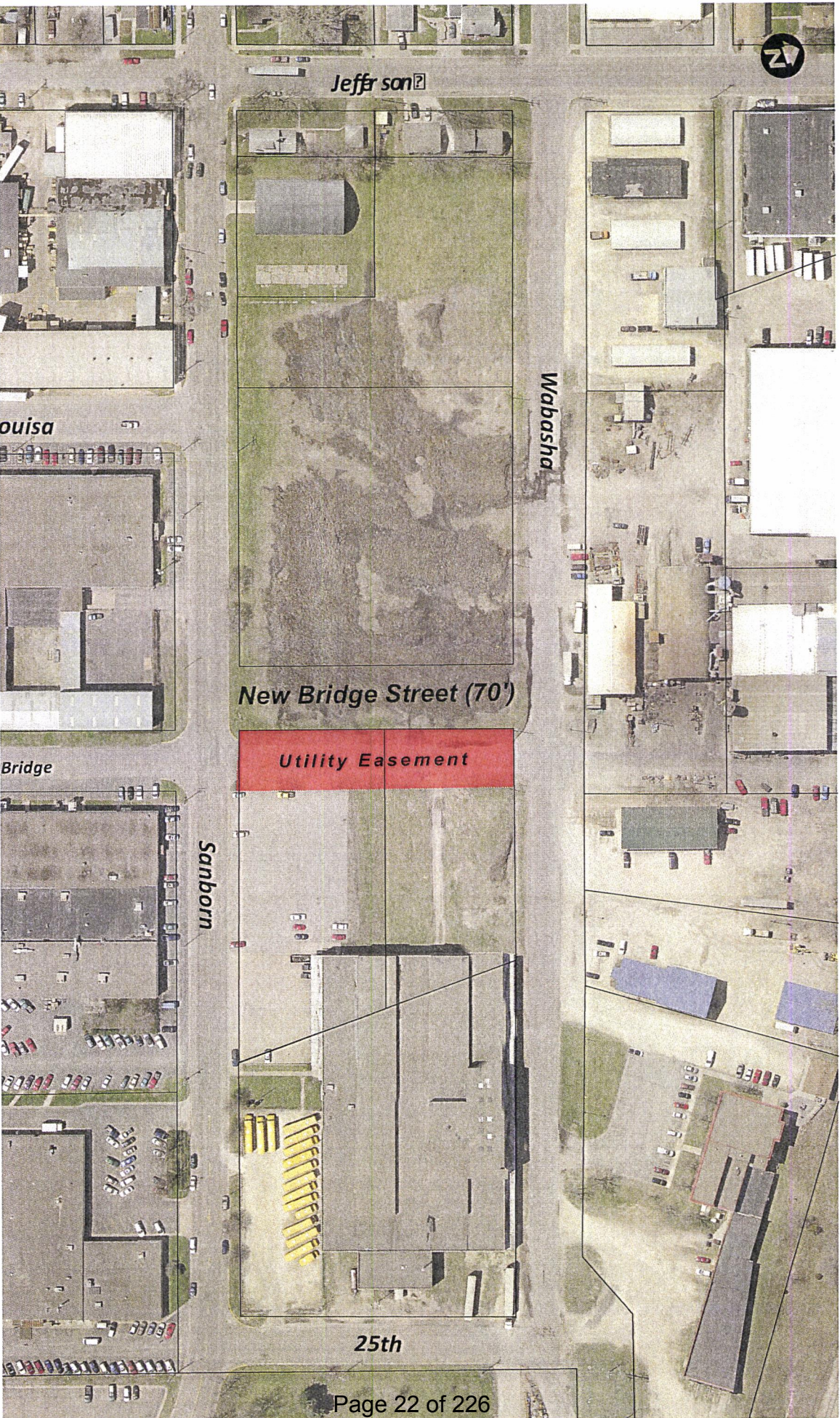
Commencing at the Northeasterly corner of Block 19 of Bauder's Addition to Winona; thence Southerly along the Easterly line of Block 19 of Bauder's Addition to Winona to the Southeasterly corner of said Block 19; thence Easterly to the Southwesterly corner of Lot 7, Block 20 of Bauder's Addition to Winona; thence Northerly along the Westerly line of Lot 7, Block 20 of Bauder's Addition to Winona and the Westerly line of Block 3 of Athletic Board Addition to the Northwesterly corner of said Block 3, thence Westerly to the point of beginning.

EXHIBIT B

DEPICTION OF PERMANENT UTILITY EASEMENT

Utility Easement Exhibit B

 Easement Area



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



January 2013



Agenda Report

Regular City Council – December 16, 2024

Item Number: 3.4

Title

West Lake Park Wetland Restoration Donation

Originating Department: Engineering and Parks & Recreation Departments

Presenter(s): John Howard, Natural Resources Sustainability Coordinator

Action Requested

Approve the request to allow the Healthy Lake Winona group to restore the wetland area in West Lake Park with City supervision.

Background

The Healthy Lake Winona group would like to donate their time and native wetland seeds to restore a 0.89 acre wetland area in the northwest corner of West Lake Park between the high school and Sioux St. parking area (See attached map). This area is regularly soggy over the spring and summer and is therefore unsuitable for most park activities. The area also has a formal wetland designation by regulatory agencies so any efforts to dry out the area would require a wetland delineation and very likely purchasing wetland credits. Therefore, embracing the existing conditions and adding in ecologically beneficial wetland vegetation is the suggested strategy. City staff will coordinate with Healthy Lake Winona on the seed species selection and maintenance activities.

A very similar proposal in the form of a BWSR grant was approved by Council in Feb. 2023. Although the grant funding was awarded, the terms of the grant and timeline led the Park & Rec. department to turn down that option.

Budget Impact

Minimal, should save some staff mowing time in future years.

Attachments

Map of area

Seeding list

Staff Contact: Patrick Menton, Director of Parks & Facilities



December 6, 2024

Wetlands

- Estuarine and Marine Deepwater
- Freshwater Emergent Wetland
- Freshwater Forested/Shrub Wetland
- Lake
- Estuarine and Marine Wetland
- Freshwater Pond
- Other
- Riverine

This map is for general reference only. The US Fish and Wildlife Service is not responsible for the accuracy or currentness of the base data shown on this map. All wetlands related data should be used in accordance with the layer metadata found on the Wetlands Mapper web site.

Proposed Seed Mixes (list species and quantities per unit area, provide link/s, or paste at end of document):

West Lake Winona Wetland (0.89ac):

Field Area (acres): 0.89					
Seeding Mix Summary					
657 WET/SEDGE MEADOW					
Grasses/ Sedges	Common Name	Scientific Name	PLS Lbs/Acre	PLS Lbs	
1	Big Bluestem	Andropogon gerardi	1.5	1.34	
2	Fringed Brome	Bromus ciliata	1.65	1.47	
3	Canada Bluejoint	Calamagrostis canadensis	0.19	0.17	
4	Fowl Manna Grass	Glyceria striata	0.15	0.13	
5	Switchgrass	Panicum virgatum	0.125	0.11	
6	Fowl Bluegrass	Poa palustris	0.5	0.45	
7	Indiangrass	Sorghastrum nutans	1.35	1.20	
8	Wooly Sedge	Carex pellita	0.25	0.22	
9	Awl-fruited Sedge	Carex stipata	0.45	0.40	
10	Tussock Sedge	Carex stricta	0.125	0.11	
11	Spike-rush	Eleocharis acicularis	0.19	0.17	
12	Dark Green Bulrush	Scirpus atrovirens	0.125	0.11	
			6.61	5.88	
Forbs/ Legumes	Common Name	Scientific Name	PLS OZ/Acre	Total PLS/OZ	Total PLS Lbs
1	Blue Giant Hyssop	Agastache foeniculum	1.35	1.20	0.08
2	Swamp Milkweed	Asclepias incarnata	11.25	10.01	0.63
3	Flat-topped/White Aster	Doellingeria umbellata	1.5	1.34	0.08
4	Joe-pye Weed	Eutrochium maculatum	2.25	2.00	0.13
5	Boneset	Eupatorium perfoliatum	1	0.89	0.06
6	Sawtooth Sunflower	Helianthus grosseserratus	1.5	1.34	0.08
7	Meadow Blazingstar	Liatris lingulistylis	9	8.01	0.50
8	Tall Blazingstar	Liatris pycnostachya	9	8.01	0.50
9	Mountain Mint	Pycnanthemum virginianum	0.75	0.67	0.04
10	Giant Goldenrod	Solidago gigantea	0.75	0.67	0.04
11	Panicled Aster	Symphotrichum lanceolatum	0.75	0.67	0.04
12	New England Aster	Symphotrichum novae-angliae	3	2.67	0.17
13	Red-stemmed/Swamp Aster	Symphotrichum puniceum	2.25	2.00	0.13
14	Tall Meadow Rue	Thalictrum dasycarpum	2	1.78	0.11
15	Blue Vervain	Verbena hastata	2	1.78	0.11
16	Ironweed	Verona fasticulata	3	2.67	0.17
17	Culvers Root	Veronicastrum virginicum	0.54	0.48	0.03
18	White Turtlehead	Chelone glabra	1.5	1.34	0.08
SUBTOTAL FORBS/Legumes			53.39	47.52	2.97
DRILLED RATE ¹					

^{1/} Broadcast seeding rate is 1.5 times the drilled rate.



Agenda Report

Regular City Council – December 16, 2024
Item Number: 3.5

Title

Winona Area Mountain Bikers Agreement Report

Originating Department: Parks & Recreation

Presenter(s): Patrick Menton, Director of Parks and Facilities, Sam Shortridge WAMB Board Member

Action Requested

Receive and file report.

Background

The Winona Area Mountain Bikers (WAMB) and the City of Winona entered into a service agreement dated August 1, 2022, through December 31, 2025, for the development, construction, operation, and maintenance of hiking and mountain bike trails within Bluffside Park. The agreement identifies specific activities and services in the park including the design and construction of bike park features, bike park trails, bike park and hiking trail maintenance, and special events, in accordance with the International Mountain Bike Association (IMBA) guidelines.

Sam Shortridge, WAMB Board Member, will present the report to the City Council pertaining to the activities outlined within the service agreement.

Budget Impact

The City will compensate WAMB for the performance of all services under the agreement in the amount of \$2,000 per year. Installment payments of \$1,000 are paid on or before January 31 and July 1 annually from account 101-45210-5909 during the term of the agreement.

Attachments

WAMB Annual Report

Staff Contact: Alicia Lano, Patrick Menton



WU AMB

BLUFFSIDE
PARK

TH P HOLDINGER
LODGE

WILDWOOD
WEST

SALAD BARS

WILDWOOD
NORTH

WILDWOOD
EAST

Bluffside Park

HIGHROLLERS

LOWROLLERS

Trail Maintenance Agreement

2024 Annual Report



Overview

- Introduction, Mission and Partnership History
- 2024 Trail Work Analysis
- Maintenance Report
- Budget Overview
- Looking Forward



WAMB's Mission & History with City of Winona

Winona Area Mountain Bikers aim to educate, promote, and grow the sport of mountain biking through advocacy, youth and community involvement, and environmentally conscious decisions. We encourage cooperation between all silent outdoor recreation user groups to ultimately influence mental, physical, and economic well being in Winona and the surrounding communities through an active lifestyle.

WAMB entered into a service agreement with the City of Winona in 2022 for the stewardship of Bluffside Park's soft surface trails.

2024 Trail Maintenance by the Numbers

7

*WAMB Board
Members*

70

*Youth MTB
Team Members*

27+

*Fallen Trees
Removed*

303.5

*Hours of trail
work*

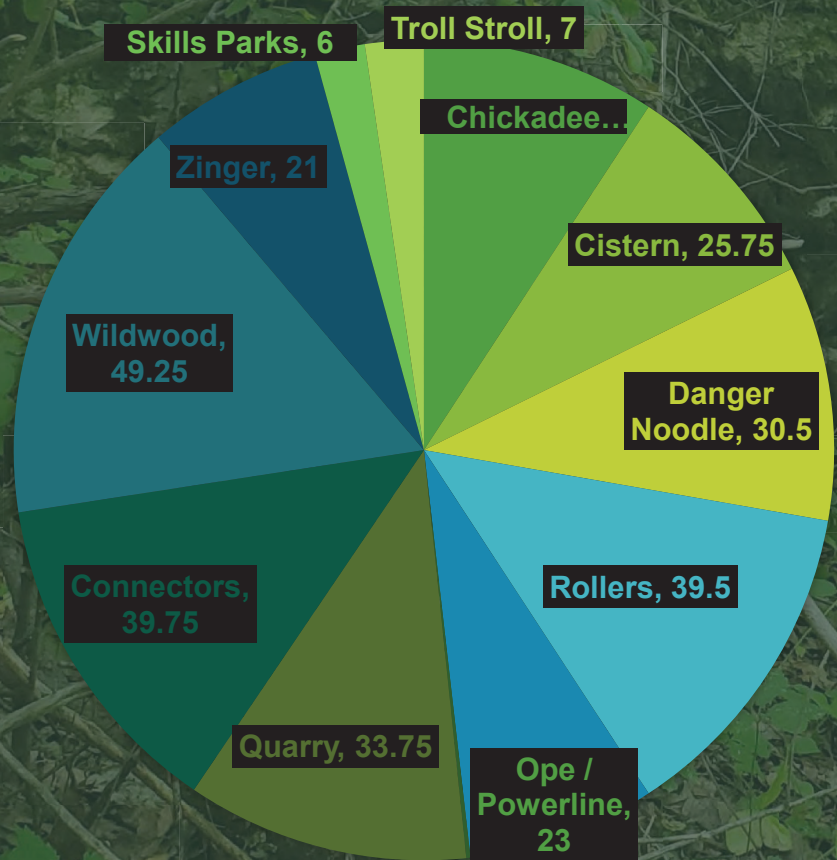
385

*Hours of trail
surveying*

663.5 Total Hours of Trail Maintenance
77 Involved Community Members

2024 Trail Maintenance by Trail

TRAIL WORK BY TRAIL
(HOURS)



Trail	Hours
Wildwood	49.25
Upper & Lower Connectors	39.75
Low & High Rollers	39.5
Quarry	33.75
Danger Noodle	30.5
Chickadee	28
Cistern	25.75
OPE / Powerline	23
Zinger	21
Troll Stroll	7
Skills Park	6
Grand Total	303.5

Trail Maintenance by Trail - Year by Year

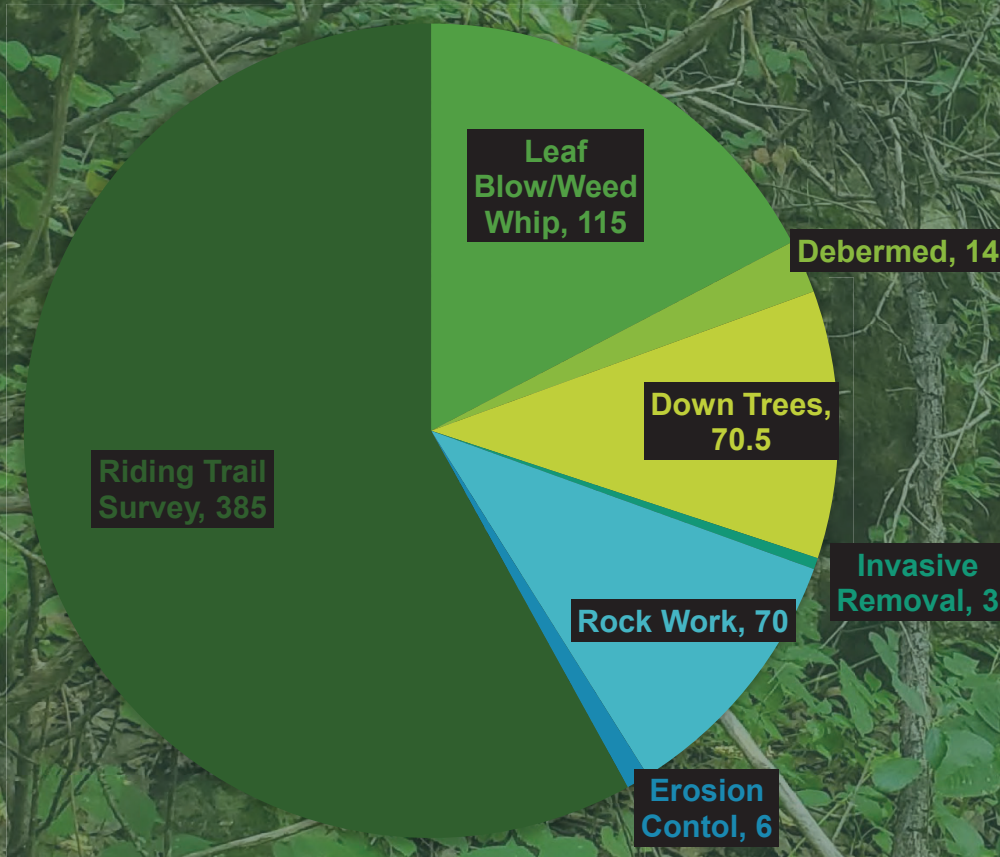
Work by Trail	2024	2023	Change
Wildwood	49.25	61	-11.75
Upper & Lower Connectors	39.75	152.4	-112.65
Low & High Rollers	39.5	41.4	-1.9
Quarry	33.75	36.7	-2.95
Danger Noodle	30.5	28	-2.5
Chickadee	28	0	+28
Cistern	25.75	23.6	+2.15
OPE / Powerline	23	1.4	+21.6
Zinger	21	0	+21
Troll Stroll	7	0	+7
Skills Parks	6	0	+6
Totals	303.5	344.5	-41

Notes:

- Trail survey hours are not included in this report as trail survey hours take the whole system into account and do not appropriately break down into a trail by trail analysis.
- In 2023, WAMB build 3 bridges on the Connectors and Quarry trails, no new bridges were needed in 2024.
- Chickadee, Zinger, Troll Stroll and the skills parks did not have maintenance needs in 2023 due to the age of the trails.

2024 Trail Maintenance by Work Type

**TRAIL WORK BY WORK TYPE
(HOURS)**



Work Done	Hours
Riding Trail Survey	385
Weed Whip & Leaf Blow	115
Down Tree Removal	70.5
Rock Work	70
Deberming	14
Erosion Control	6
Invasive Removal	3
Grand Total	663.5


Trail Maintenance Year by Year

Work by Work Type	2024	2023	Change
Riding Trail Survey	385	143	+242
Leaf Blow / Weed Whip	115	45	+70
Downed Tree Removal	70.5	54	+16.5
Rock Work	70	6	+64
Deberming	14	18	-4
Erosion Control	6	21	-15
Invasive Removal	3	6	-3
Bridge Work	0	180	-180
Totals	663.5	473	+201

Notes:

- As shown by the reduction in hours, deberming, erosion control, and invasive removal shows a multi year benefit.
- Rock work, specifically Tom’s Terrific, needs long term strategy.
- Increase in weed whipping and leaf blowing is consistent with additional mileage of trail, and abundant foliage due to wet spring.
- Significantly more downed trees in 2024, potentially due to wet and windy spring conditions.

Bluffside Park made news this season

 **LEARN** **GET INVOLVED** **ABOUT US**
INTERNATIONAL MOUNTAIN BICYCLING ASSOCIATION

Home • Event

Foundations May 2025 - Winona

IMBA's two day model trail community workshop, May 7-8, in Winona, Minnesota.



Oberton Skills Park Grand Opening

New Winona bike skills park offers challenges for wide range of abilities

Rachel Mergen Sep 13, 2024 0



First Zinger MTB Race

Mtn. bike race highlights new trails

Jul 31, 2024



Photo by Alexandra Retter



Troll Stroll Grand Opening



CoW Intern Planned Trail Work Day

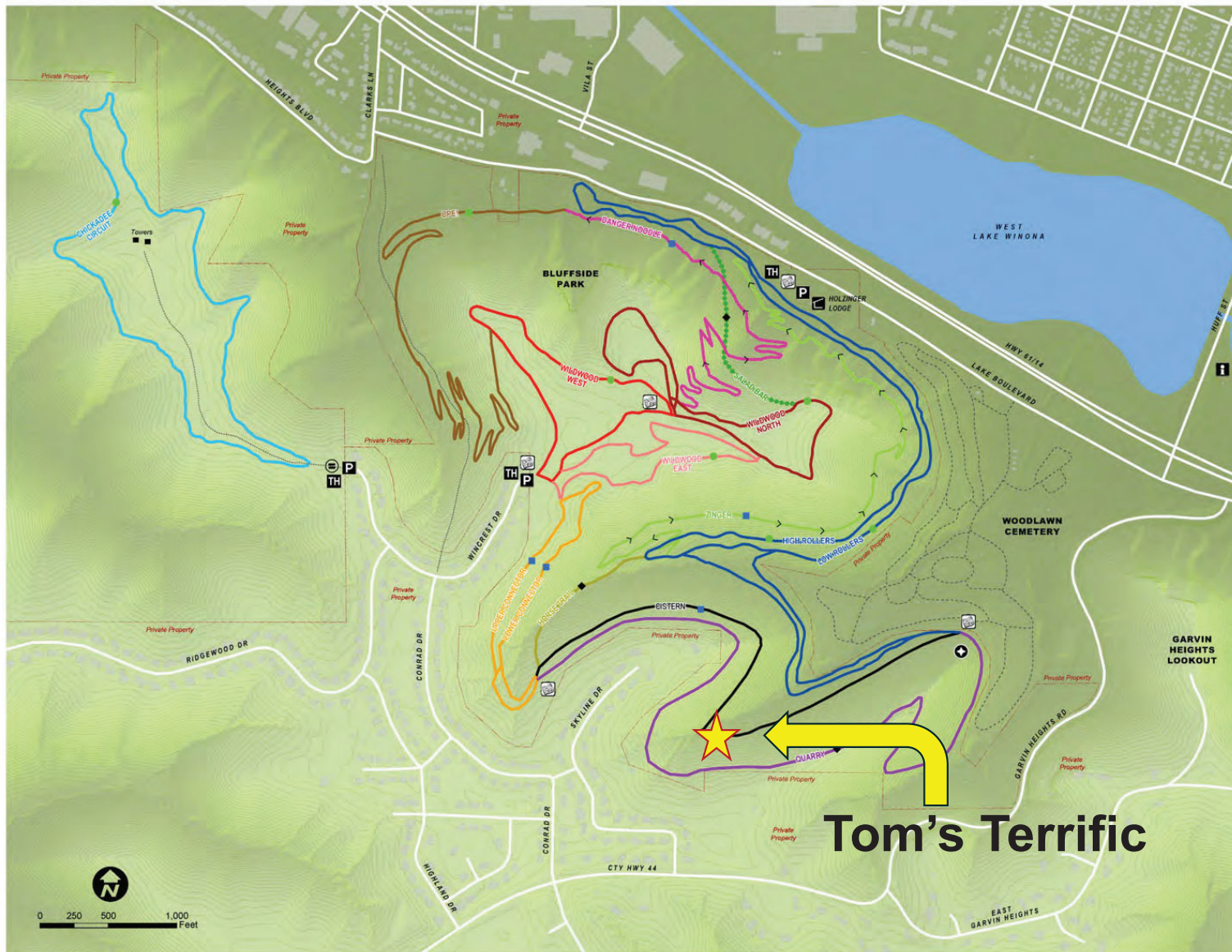


Winona Youth MTB Team Tackles Tom's Terrific



Winona Youth MTB Team Tackles Tom's Terrific

BLUFFSIDE PARK



LEGEND

- VISITOR CENTER
- TRAILHEAD
- GATE
- PARK SHELTER
- PARKING
- CISTERNS
- MAP
- CEMETERY ROAD
- UTILITY ACCESS ROAD
- 10' CONTOURS

BLUFFSIDE TRAILS

OPE! (1.53 mi)	
DANGER NOODLE (1.00 mi) Mountain Bike Only - ONE WAY	
ZINGER (1.27 mi) Mountain Bike Only - ONE WAY	
CHICKADEE CIRCUIT (1.58 mi)	
CISTERNS (.91 mi)	
HORSE TRAIL (.24 mi)	
HIGH ROLLERS (1.17 mi) LOW ROLLERS (1.36 mi)	
QUARRY (1.35 mi)	
SALAD BAR (.28 mi) Hiking Only	
UPPER CONNECTOR (.39 mi) LOWER CONNECTOR (.47 mi)	
WILDWOOD EAST (.72 mi)	
WILDWOOD WEST (.86 mi)	
WILDWOOD NORTH (.96 mi)	

TRAIL LEVEL

Easy More Difficult Very Difficult

All trails are multi-use unless otherwise noted.

Trails maintained by:





**THANK YOU,
Winona Youth
MTB Team!!**

Budget

Income		Expenses
<p><i>\$2,000</i> <i>City of Winona Funding</i></p>	<p><i>\$650</i></p>	<p>General Operating Expenses (IMBA chapter requirements, web hosting, trail maintenance best practices access, and educational trail maintenance resources)</p>
	<p><i>\$1,125</i></p>	<p>Website Upgrade (Website redesign, trail map hosting, increased volunteer management/communication, SEO, Mailchimp integration, and training)</p>
	<p><i>\$600</i></p>	<p>Trail Maintenance Annual Costs (fuel, bar oil, replacement chains for chainsaws, chain sharpening, two stroke oil, trimmer string, PPE, misc. hand tools)</p>
	<p><i>\$175</i></p>	<p>MTB Trail Brochures</p>
	<p><i>\$500</i></p>	<p>Hand Tools (McCleods, hand pruners, and folding saws)</p>
	<p><i>\$3,000</i></p>	<p><i>Total 2024 Spend</i></p>
<p><i>Proposed Future Expenses</i></p>	<p><i>\$8,000</i></p>	<p><i>Weed Whips (2) - \$500 each</i> <i>Leaf Blower (2) - \$500 each</i> <i>Winter Grooming Equipment - \$3,500</i> <i>JobBox/shed for tool storage - \$2,500</i></p>

Budget

City of Winona funds \$2,000 annually to WAMB for trail maintenance.

- WAMB tracked 663.5 hours of trail work
- MN Large Employer Minimum Wage is \$10.85
- MN Department of Employment and Economic Development Median Ground Maintenance Worker Median Wage is \$29.37

$$663.5 \times \$10.85 = \$7,198.98$$

$$663.5 \times \$29.37 = \$19,487.00$$

2023 Stated Goals for 2024

- ~~Oberton skills park~~
 - Opened September of 2024
- ~~Bluffs Traverse Phase 2~~
 - Troll Stroll opened in August 2024
- ~~Trail ambassadors & park wayfinding~~
 - Wayfinding signage to be installed in early 2025
- ~~Broaden volunteer opportunities~~
 - New website integrations allow the public to be better informed of volunteering opportunities
- Analyze heritage trails, develop hierarchy of needed work
 - With the establishment of new trails, analysis of heritage trails has been pushed to 2025 to better understand the new system as a whole
- ~~Identify alternate funding sources~~
 - Grant opportunities have been identified
- Codify Bluffside Park maintenance procedure for expanded use
 - Maintenance procedure has been delayed in order to best understand wear patterns on newly established trails.





WINONA AREA MOUNTAIN BIKERS
WINONA, MINNESOTA U.S.A.



Thank You



Agenda Report

Regular City Council – December 16, 2024

Item Number: 3.6

Title

Lease Agreement for Masonic Theater Management

Originating Department: Parks & Recreation

Presenter(s): Patrick Menton, Director of Parks & Facilities

Action Requested

Approve the Lease Agreement and direct the Mayor and City Clerk to execute same.

Background

The City of Winona proposes to enter into a lease agreement with the Great River Shakespeare Festival (GRSF) for the management and use of certain portions of the Masonic Temple located at 251 Main Street, Winona, MN. Under the terms of this agreement, GRSF will lease the property to operate a performing arts theater and to sublet space to other performing arts organizations.

The lease term is set for a period of five (5) years, commencing on May 1, 2025, and concluding on April 30, 2030. GRSF shall pay a monthly rent of one thousand five hundred dollars (\$1,500) for the exclusive use of the areas specified within the agreement.

The attached lease agreement has been reviewed by City staff and is recommended for approval.

Budget Impact

None.

Attachments

Lease Agreement

Staff Contact: Patrick Menton

**LEASE AGREEMENT
MASONIC THEATER**

THIS LEASE AGREEMENT (the “Lease” or “Agreement”) is dated this ___ day of _____, 20___, by and between the **CITY OF WINONA**, a municipal corporation under the laws of the State of Minnesota (the “City” or the “Lessor”), and **GREAT RIVER SHAKESPEARE FESTIVAL**, a nonprofit corporation under the laws of the State of Minnesota with registered office located at 163 E. Second Street, Winona, MN 55987–5513 (the “Lessee”); (collectively the “Parties”).

WHEREAS, the City is the owner of certain real property containing a building and the walkways surrounding the building situated at 251 Main Street in the City of Winona, Minnesota commonly known as the Masonic Temple (the “Property”); and

WHEREAS, Lessee wishes to lease certain portions of the Property as designated herein for purposes of operating a performing arts theater and subletting space therein to other performing arts organizations; and

WHEREAS, the Lessor is willing to lease certain portions of the Property as designated herein for the purposes stated herein subject to the terms, covenants, and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the terms and conditions of this Lease, Lessor and Lessee agree as follows:

**ARTICLE ONE
Definitions and Terms**

As used in this Lease, the following terms shall have the specific meanings set forth below:

1.1 “Commencement Date” means May 1, 2025.

1.2 “Event” or “events” collectively means any activities where members of the general public, including private events, based upon ticketed sales or otherwise, are present on the Premises and Property, during a designated time period, in the capacity of an audience or otherwise, for purposes of attending a publicly noticed, solicited, advertised, or published event, festival, play, concert, dance, show, showing, production, presentation, performance, or other similar activities.

1.3 “Expiration Date” means April 30, 2030, except as otherwise provided in this Agreement.

1.4 “Premises” means the second and third floors, and the following basement storage rooms: B09-crawl space, B10, B11, and B12, storage rooms, of the above-referenced building located on the Property located at 251 Main Street in the City of Winona, Winona County, Minnesota, as depicted in the attached Exhibit A, which is attached hereto and incorporated herein by reference.

1.5 “Lessor” means the City of Winona, having as its address for notice purposes: 207 Lafayette Street, Winona, MN 55987; Attention: City Manager.

1.6 “Lessee” means Great River Shakespeare Festival, having as its address for notice purposes: 251 Main Street., Winona, MN 55987; Attention: Aaron Young.

ARTICLE TWO
Demising Clause and Permitted Use

2.1 Demise. Lessor leases to Lessee and Lessee leases from Lessor the Premises on the terms and conditions contained in this Lease.

2.2 Permitted Use.

- a. Lessee shall have the right to use the Premises exclusively during the Lease Term for the purpose stated herein and for no other purpose, unless such other use or purpose is authorized in writing by the Lessor.
- b. Lessee acknowledges that the Premises are in a condition satisfactory to Lessee’s purposes. Lessee accepts, acknowledges and agrees that the Premises herein described are in an “as is”, “with all faults” condition and agrees that Lessor has not made, and does not hereby make any representation, warranty or covenant, expressed or implied, with respect to the condition, quality, durability, capability, or suitability of the Premises or against any patent or latent defects therein. The Lessee agrees that Lessor shall not be liable to the Lessee for any liability, claim, loss, damage or expense of any kind or nature caused directly or indirectly by the Premises or the inadequacy thereof for any purpose, or for any deficiency or defect therein, or for the use, operation or maintenance thereof, or for any repairs, servicing, adjustments, replacement, or expenses thereto or for any damage whatsoever and howsoever caused.
- c. Lessee shall not use or operate or permit the use or operation of the Premises in violation of any Federal, State, County or City laws, ordinances, rules or regulations, or contrary to the provisions of the applicable insurance policies and warranties covering the same. Lessee, by acceptance of this Agreement, agrees to abide by the terms hereof and to indemnify Lessor for any losses occurring as a result of such use in violation of said terms, laws, rules and ordinances.
- d. Lessee shall not do or permit anything to be done in or about the Premises nor bring or keep anything therein which will in any way increase the existing rate of or affect any fire or other insurance upon the Premises or any of its contents, or cause a cancellation of any insurance policy covering the Premises or any part of the Premises or any of its contents. Lessee shall not use or allow the Premises to be used for any unlawful or objectionable purpose, nor shall Lessee cause, maintain or permit any nuisance in, on or about the Premises. More specifically,

Lessee shall not use or store any noxious chemicals on the Premises, except to the extent necessary for the Premises to be used for the purposes stated herein. Noxious chemicals are those defined as toxic and hazardous substances pursuant to OSHA health standards and applicable regulations.

- e. Lessee shall not intentionally commit or allow to be committed any waste on, destruction of, or damage to, or nuisance on the Premises. Should the Lessee intentionally commit or allow to be committed any waste on or destruction of the Premises, the Lessee shall immediately restore the Premises to the original condition of the Premises at the inception of this Lease or as altered in accordance with plans and specifications as submitted to, and approved by the Lessor's City Manager, or, alternatively, pay to Lessor the cost of restoring the Premises to the condition herein stated, payment to be made within 30 days from the date of written notice given by the Lessor to the Lessee of the amount of such costs.
- f. Lessee shall have the right to use the second and third floor of the Premises for the purposes stated herein and no other purposes or uses. Occasional access to the first floor may be granted at no additional fee to the Lessee, contingent upon availability and only during weekday evenings and weekends, or when the first floor is not otherwise in use, and subject to the prior approval by the Director of Parks and Facilities. Use of the first floor by Lessee shall be a temporary, terminable licensed use only, except that such use shall be subject to the terms and conditions of this Lease, as applicable to the use, including but not limited to permitted uses conditions, property maintenance, reserved rights, responsibility for damages, indemnification, alterations, compliance with laws and policies, insurance, and default.
- g. During the Lease Term and except as otherwise provided in this Agreement, Lessee shall, at Lessee's sole cost and expense, be responsible for the operation, repair, replacement, and maintenance of the Premises, including but not limited to any Lessee paid and Lessor approved improvements to the Premises.
- h. In the event that the Lessee fails to perform to the Lessor's satisfaction any of the above obligations or any other terms of this Agreement, the City may perform the work and shall invoice Lessee for all costs incurred by the City in performing such work. Invoices shall be due and payable within 30 days of the date of the invoice. The City may take any action it is authorized under law to take to recover such unpaid charges, including terminating this Lease.
- i. Lessee will be solely responsible for security of the Premises during the Lease Term and for any loss, damage, or destruction thereof. Lessee agrees that it will be solely responsible for security of any and all personal property located therein and for any loss, damage, or destruction thereof. Lessee hereby expressly waives any claims therefore against and indemnifies the Lessor for the same. During the Term of this Lease, the Lessee shall comply with all applicable laws, regulations,

conditions, and covenants affecting the Premises, whether federal, state, local, or contractual.

- j. Lessee shall, at Lessee's expense, obtain all necessary licenses and/or permits required for its operations on the Premises.
- k. Alcohol at Certain Events. Alcohol may be sold at events, but only by a licensed provider. The Lessee shall either: i. obtain a valid liquor license as applicable to the sale and/or consumption of alcoholic beverages within the Premises; ii. obtain all applicable permits and licenses with regard to the sale and/or consumption of alcoholic beverages for events within the Premises; and/or iii. use a validly licensed caterer for such approved events. The consumption of alcoholic beverages from open containers shall be permitted within the Premises only as provided herein and strictly subject to all applicable liquor licensing, use and other requirements contained in state law and City Code. A copy of any caterer's permit or other license held by Lessee licensing the sale and consumption of alcohol on the Premises must be provided to the City Clerk and must be maintained through the Term of this Agreement. The sale and consumption of alcoholic beverages must be limited to a specific controlled area within the Premises pursuant a validly issued liquor license defining the licensed premises for such purposes, or in the event of a caterer's license, as otherwise approved by the Director of Parks and Facilities with ingress to and egress from the service area controlled by the Lessee.
- l. Concessions for Events. During the Term hereof, the Lessee and/or event operator may operate, sell, serve and provide concessions, food and beverages for events. The Lessee and/or event operator shall be responsible and liable for the same in all respects within the Premises and all activities incidental thereto, including but not limited to the following:
 - i. Obtain all necessary state and local permits for its operations on the Premises, including but not limited to, from the Minnesota Department of Health, Winona County and food vending permits, as applicable.
 - ii. Operate in accordance with all federal, state and local regulations, including those of the Minnesota Department of Health.
 - iii. Provide staffing and ensure that the staff are properly trained.
 - iv. Be solely responsible for security, including but not limited to supplies, equipment, and for any loss, damage, or destruction thereof.
 - v. Clean the Premises and all accompanying equipment and serving areas following each use thereof.

- vi. Be responsible for the maintenance and repair of all equipment, including any expenses incurred.
- vii. Provide cleaning products necessary for cleaning and all accompanying equipment and serving areas.
- viii. Provide any food preparation equipment and management and training for the operation and maintenance thereof.
- ix. Not sell alcohol and tobacco products, except as otherwise licensed and/or approved in writing by the Director of Parks and Facilities.
- x. Not cause, maintain or permit any statutory nuisance or City code violations in, on or about the Premises.
- xi. Not use or store any noxious chemicals on the Premises.
- xii. Operate within the Premises only, except as otherwise licensed and/or approved in writing by the Park and Recreation Department.
- xiii. The City reserves the right to restrict or prohibit the sales of any goods or merchandise on the Premises, which it deems inconsistent with City or Parks and Recreation Department purposes, in the sole judgment and discretion of the City. The Lessee and/or event operator shall immediately cease and desist sales of such identified goods or merchandise upon written notice from the Director of Parks and Facilities or the City Manager.
- xiv. Operate only within event established hours of operation as approved by the Parks and Recreation Department.
- xv. Purchase its own account inventory for the concessions, food and beverages, determine the types and quantities of merchandise available for sale and the pricing thereof, and be exclusively responsible for profits, losses, damage or shrinkage relating to the inventory.
- xvi. The Lessor shall have no responsibility for any costs or expenses, and the Lessee and event operator are solely responsible for such costs and expense as well as assuming all risk associated therewith. The Lessee and even operator expressly waive and release the City from any and all liability for claims related thereto.
- xvii. Revenues received by the Lessee and/or event operator shall be retained by the Lessee and/or event operator as Lessee and/or event operator income and the same shall be determined between the

Lessee and event operator without Lessor involvement, liability, or responsibility. The Lessee and/or event operator shall be solely responsible for all tax obligations of whatever kind.

- xviii. The Lessee shall hold harmless, indemnify and defend the City against any and all claims damages, losses or judgments against the City related to such activities of Lessee and/or an event operator.

ARTICLE THREE **Term and Possession**

3.1 Term. This Lease shall be for an initial term beginning on the Commencement Date and ending on the Expiration Date, unless either; (a) sooner terminated as provided in this Agreement, or (b) renewed as provided in this Agreement (the "Lease Term"). Subject to Lessor's reservation of rights, Lessee shall be entitled to exclusive possession of the Premises on the Commencement Date through the Lease Term and shall give up possession on the Expiration Date.

3.2 Renewal. This Lease shall automatically renew for two successive additional five (5) year term(s) and the Expiration Date shall be adjusted accordingly for the renewal term(s), unless a Party hereto provides 90 days written notice to the other of its intent to terminate this Lease upon the Expiration Date. Unless agreed otherwise by the Parties, the Lease shall terminate following proper notice effective on the Expiration Date.

3.3 Renegotiation of Lease. This Lease is subject to review and renegotiation following years 1 and 3 respectively after the Commencement Date at the request of any of the Parties upon 90 days written notice, and every 5 years thereafter. If the Parties review the Lease in accordance with the preceding sentence and are unable to reach an agreement on an amendment to this Lease, then the existing Lease in effect immediately prior to said review shall remain in effect subject to the renewal, termination and default provisions of this Agreement.

3.4 Termination. Notwithstanding any provisions to the contrary contained in this Agreement, this Lease or any renewal or extensions thereof shall terminate upon; (a) the Expiration Date, (b) upon 90 days written notice by either Party to the other Party, or (c) upon uncured default, whichever comes first.

3.5 Action Upon Termination. If this Agreement expires or is terminated for any reason, Lessee shall remove its personal property from the Premises prior to the date of expiration or termination. Failure of the Lessee to remove its personal property by such date shall constitute a waiver of the right to do so and such personal property shall be deemed abandoned and the items may then be disposed of or used at the discretion of the Lessor without compensation to Lessee. All improvements to the Premises that are not personal property are the property of the Lessor and there shall be no compensation for the same paid by Lessor to Lessee during the Term hereof or following expiration, termination or cancelation of this Agreement. Upon expiration, termination or cancelation of this Agreement, the Premises shall be returned to its pre-lease condition, reasonable wear and tear excepted, unless an alternate condition is agreed upon in writing by Lessor. Lessee shall be responsible for the costs of repairs for any damages caused by Lessee to

the Property during the Term, including but not limited to damage caused by Lessee's removal of Lessee's personal property, reasonable wear and tear excepted, as well as costs incurred by the Lessor to store or dispose of Lessee's personal property if Lessee abandons any of Lessee's personal property on the Property.

ARTICLE FOUR

Rent

4.1 Except as otherwise provided herein, Lessee shall, for the entire Lease Term, pay to Lessor without demand, rent in the amount of One Thousand Five Hundred and No/100ths Dollars (\$1,500.00) per month (the "Rent"). The Rent shall be paid on or before the first day of each respective month during the Term hereof. All payments by Lessee to Lessor pursuant to this Agreement shall be made to the address specified for Lessor herein. A late penalty of 5% of the payment due will be assessed on all late payments. Lessee agrees and acknowledges that the late penalty is necessary to compensate Lessor for lost interest, the opportunity cost of renting the Premises, and any legal fees or expenses incurred in enforcing its rights pursuant to this Agreement. At the conclusion of years 1 and 3 of this Agreement, the monthly Rent shall be subject to review and renegotiation, with adjustments contingent upon changes in utility costs and any other unforeseen factors that may impact operational expenses.

4.2 Annually the monthly Rent amount under this Agreement shall increase by a fixed rate of 4% each year. This increase shall take effect on each anniversary of the Commencement Date, applied to the current year's monthly Rent amount, without regard to any other adjustments or indices.

4.3 Unless otherwise expressly and implicitly stated herein to the contrary, it is the intention of this Agreement that all costs and expenses of any nature or kind whatsoever, attributable to the Premises, including but not limited to any existing or future Lessee paid and Lessor approved improvements, shall be borne by Lessee and Lessee shall have the total responsibility and liability for such costs and expenses and the City shall not have any responsibility or liability therefor.

ARTICLE FIVE

Payment of Taxes

5.1 Lessee shall pay all taxes, assessments and other governmental charges (collectively referred to as "Taxes") that accrue against the Premises during the Lease Term, which are the result of this Lease or Lessee's use of the Premises.

5.2 Lessee shall be liable for all taxes levied or assessed against any personal property, improvements or fixtures placed on the Premises.

5.3 Lessee will reimburse and hold Lessor harmless for any and all amounts Lessor may pay in satisfaction, release or discharge thereof attributable to this Lease.

ARTICLE SIX
Lessee's Responsibilities

Lessee shall be responsible, at Lessee's cost and expense, for the following services, which services shall be performed at a frequency and level as needed and determined by Lessee, or as otherwise required by the City and in compliance with City of Winona City Code:

6.1 Custodial and Cleaning Services for Events. All Lessee's event-related cleaning, garbage collection and disposal, and janitorial services at the Premises and on the Property. The Lessee shall be responsible for cleaning and restoring the building to its original pre-event condition at the conclusion of each day of use.

6.2 Trash Removal. All trash collection, removal and proper disposal and recycling from within the Premises and grounds used by Lessee, including but not limited to Lessee's events. Lessee shall use the building dumpster for disposal of trash collected by Lessee. Lessor shall regularly haul away trash properly disposed of by Lessee in the dumpster serving the building.

6.3 Licenses and Permits. All applicable licenses and permits, whether state, county or City of Winona as necessary or required for management, operation, repair, replacement and maintenance of the Premises or any improvements located thereon.

6.4 Marketing and Promotion. Lessee shall manage and direct all marketing and sales activities, which shall be undertaken so as to maximize the use of the Premises for events.

6.5 New Rentals/Subleasing. Lessee shall be responsible for marketing the Premises to prospective new tenants. Lessee may enter into sublease agreements for office space in the Premises. Notwithstanding the prior sentence, Lessee shall not sublet the theater space within the Premises, except for limited duration events. Lessee shall not sublet the entirety of the Premises, and Lessee must maintain office space at all times during the Term of this Agreement within the Premises of a minimum of 1,000 square feet. In addition to obtaining written approval of the Lessor to any assignment or subletting of the Premises as provided in Article Eight, all terms and conditions of any assignment or sublease shall be on a form prepared by or acceptable to Lessor and approved by action of the respective governing body of Lessor consenting to each sublease at duly noticed meetings thereof. Any assignment or sublease must abide by the terms and conditions of this Lease and such assignment or sublease must incorporate the terms and conditions hereof by reference. Upon termination of this Agreement, Lessor shall assume the rights, duties, obligations and responsibilities under any Lessor approved new lease agreements entered into by Lessee pursuant to this Agreement. No sublease shall have a term longer than the Term of this Agreement, and every sublease shall have the same expiration date as provided in Article One of this Agreement.

6.6 Scheduling. The Lessee shall, at its expense, develop, operate, manage, promote, and market events at the Premises. Lessee shall develop and maintain all schedules for events held in the Premises and on the Property. The schedule is subject to review, alteration and approval by the Parks and Recreation Department in its reasonable discretion and judgment. Lessee shall use an event rental agreement acceptable in form to Lessor for events held at the Premises. The Parties

understand and agree that Lessee is empowered to negotiate short-term rental agreements of the Premises for events and to manage and coordinate any sublessee or other events on the Premises, except City specific events based on the City's reserved rights as specified herein. Scheduling shall be coordinated with and approved by the City of Winona Parks and Recreation Department. The following terms and conditions shall apply to events at the Premises:

- a. Administration. The Lessee shall have the right to schedule events that occur on the Premises within the limitations set forth herein.
- b. Notice. The Lessee shall provide to the Parks and Recreation Department, a 12-month continuous, rolling written schedule and calendar of events that includes the dates and times of scheduled events on the Premises in coordination with the Parks and Recreation Department. The events schedule shall be updated monthly by Lessee and provided monthly to the Director of Parks and Facilities. The Director of Parks and Facilities shall work with the Lessee to maintain an official schedule of events at the Premises that will also include any City events based on the Lessee's proposed events schedule, but reserving to the City discretion to work with the Lessee on such alterations and adjustments to the Lessee's events schedule as are reasonably necessary in the City's reasonable judgment and discretion in consultation with the Lessee to facilitate the best use of the Premises and reserving to the City the scheduling of other City events. The rolling schedule approved by the Director of Parks and Facilities shall be the official schedule (the "Official Schedule") of events to be held within the Premises by the Lessee, accounting for and including all other uses and events as scheduled by the City. On such dates and during those times that are so scheduled for Lessee events on the Official Schedule, the Lessee shall have exclusive use of the Premises for such Lessee events. The Official Schedule may be altered and adjusted as necessary from time to time for additional events, including City scheduled events throughout the applicable calendar year by the Director of Parks and Facilities in consultation with the Lessee.
- c. Rescheduling. The Lessee and the City each shall have the right to provide a notice of rescheduling to the other of any scheduled events. The rescheduling shall be determined cooperatively by the City and Lessee and shall not interfere with a previously scheduled City event.
- d. Official Schedule. The City and Lessee shall each maintain a copy the Official Schedule, as the same may be altered and adjusted as necessary from time to time, which shall be updated each month and govern and supersede all other prior schedules and be binding upon the parties. It shall be the responsibility of the Lessee to deliver to the City Parks and Recreation Department a copy of the Official Schedule at least monthly and any amendments thereto made throughout the calendar year, or more frequently if circumstances warrant.
- e. Admission Charges, Hours and Regulations. The Lessee shall consult with the Parks and Recreation Department on the establishment of admission charges,

hours of operation, and general regulations for the clean, safe and sanitary use of the Premises for events. The Lessee shall be subject to any rules of operation, program requirements or such other requirements as the Parks and Recreation Department considers necessary or appropriate for the management, operation and maintenance of the Premises and events at the Premises, including but not limited to use of the theater space, bleachers, drops and theater equipment. The Premises shall be subject to those City policies and procedures applicable to similar City owned recreational facilities serving the public, including minors, as the same may be adopted by the City or Parks and Recreation Department from time to time, and the Lessee, sublessees, and event operators shall abide by the same for all events at the Premises.

- f. Common Areas. Within the building structure within which the Premises are located and the grounds upon which the building is located are what is typically referred to as “common space” or “common areas” and the same includes shared space or shared areas within the building structure and grounds, not otherwise being leased, and not otherwise included within the leased Premises, such as building entrances/exits, hallways and stairs located outside the Premises or another leased space within the building, the common trash dumpster, the yard and grounds surrounding the exterior of the building, and the parking lot area serving the building. In the event Lessee desires to schedule a portion of the grounds or parking lot in conjunction with Lessee certain events scheduled within the Premises where such use of the common areas involves activities other than the ingress and egress of patrons for scheduled events, then in such circumstances Lessee shall follow the same scheduling procedures as provided herein for the use of the common areas, except that such additional use shall be expressly identified for each event seeking such additional use on the Official Schedule and receive prior approval in writing by the Parks and Recreation Department. Lessee may be required to complete a permit or license for such additional use in the judgment and discretion of the Parks and Recreation Department. Lessee is responsible for and liable for its use of all such common areas, including but not limited to additional use of such common areas as provided herein, and the indemnification provisions of this Agreement shall apply to all such use.

6.7 Operational Services. Lessee shall be responsible for all services required to manage and host events on the Property within the Premises. Lessee shall hire and manage all required and necessary management staff and other personnel required for the operation of the Premises and events.

6.8 Revenues and Payment of Operating Expenses. Lessee shall be responsible for the collection of all revenues and payment of all operating expenses for the Premises and events, including payment and remittance of applicable sales taxes. As used herein, "Revenue" is defined as the total amount received by Lessee or any other person or entity operating on Lessee's behalf from third parties, directly or indirectly arising out of or connected with and on behalf of the

Premises and events, less applicable sales taxes. Lessee shall use such Revenue for Lessee's operations on the Premises.

6.9 Financial and Other Reporting. The Lessee agrees to submit to the City a yearly financial report on or before February 1, regarding the activities, and all revenues and expenditures of the Premises for the preceding calendar year.

6.10 Staffing. Lessee shall be responsible for supervision and direction of all Lessee personnel, volunteers and agents staffing the Premises and events. All such Premises staff, other than subcontractors, will be in the employment of Lessee. All expenses associated with the employment of staff will be considered operating expenses of Lessee.

6.11 Use of Lessor Equipment. Lessee is authorized to use equipment at the Premises for its operations and its performance of its obligations hereunder. Prior to the Commencement Date, the Parties will conduct an inventory of equipment on the Premises to be used by Lessee during the Term of this Agreement. Lessor is not obligated to repair or replace any of the equipment used by Lessee at the Premises, and Lessee is responsible for damages thereto and liable for Lessee's use thereof and any related damage to property or personal injuries from Lessee's use thereof.

6.12 Property Maintenance. Lessee's responsibilities for Premises maintenance are provided in Article Thirteen.

6.13 Historic Preservation. Lessee acknowledges and agrees that the Premises and Property are a local heritage preservation site subject to applicable historic preservation laws, ordinances and rules. Lessee agrees to comply with all regulations set forth by the Minnesota State Historic Preservation Office ("SHPO") regarding historic preservation of the Property, including but not limited to interior decorating and the display of Masonic artwork and historic artifacts. Lessee shall ensure that all activities related to interior design and the arrangement of such items adhere to SHPO guidelines to preserve the historic integrity of the Premises and Property.

6.14 Other. Except as otherwise provided in this Agreement, Lessee is responsible, at Lessee's expense, for obtaining all services and paying corresponding expenses, of any kind or nature whatsoever, related to Lessee's use of the Premises.

ARTICLE SEVEN

Utilities

7.1 Lessee Responsible for Utilities. Except for electricity, gas, water, sewer and storm sewer services (the "excepted services"), all utilities for the Premises are the responsibility of Lessee, at Lessee's expense, including but not limited to, telephone, cable or satellite television, internet, connection fees, or any other like utilities serving the Premises. Not including the excepted service, all other services required by Lessee shall be obtained, supplied and paid for by Lessee. Nor including the excepted services, if any utilities used by Lessee for the Premises cannot be billed directly to Lessee in Lessee's name, and the Lessor incurs the costs of such utilities for the Premises, such costs incurred by Lessor shall constitute additional operating expenses for which

Lessee is responsible and shall be invoiced to Lessee for payment within 30 days of invoicing in addition to Rent and commensurate with payment of Rent. With respect to the excepted services, which shall continue to be paid by Lessor since the same are not separately metered and as authorized pursuant to Minnesota Statutes, section 471.941, in the event that the Premises are enlarged at a future date to include the entire building by amendment of this Agreement, Lessee shall as part of such amendment be responsible thereafter for the cost of all utilities serving the building including but not limited to the excepted services.

7.2 No Warranty. Lessor does not warrant that any of the services referred to above or any other services upon or to the Premises will be free from interruption. Lessee acknowledges that any one or more of such services may be suspended if there is a strike, an accident, or if repairs or improvements must be made for reasons beyond Lessor's control. Any such interruption or discontinuance of services shall never be deemed an eviction or disturbance of Lessee's use and possession of the Premises, or any part thereof, or render the Lessor liable to Lessee for damages by abatement of rent or otherwise, or relieve Lessee from performance of Lessee's obligations under this Lease.

ARTICLE EIGHT

Subletting and Assignment

8.1 Except as otherwise provided in Section 6.5 of this Agreement, Lessee shall not assign its interest in this Lease and shall not sublet any portion of the Premises, or any right or privilege provided under the Lease or use of the Premises, or suffer any other person to occupy or use any portion of the Premises without the written consent of Lessor, which consent may be withheld in Lessor's sole judgment and discretion.

ARTICLE NINE

Quiet Possession and Subordination

9.1 Lessor covenants that Lessee, upon paying the Rent and performing the covenants under this Lease, shall peaceably and quietly have, hold and enjoy the Premises during the Lease Term.

9.2 This Lease is subject and subordinate to all present or future financial encumbrances on the Premises and Property, and is further subject to all present and future easements, conditions, contracts and encumbrances of record, and to all applicable laws, ordinances and governmental rules and regulations. Such subordination shall be self-executing without further act on the part of Lessor or Lessee; provided, however, that Lessee shall at any time hereafter, at the request of Lessor or any lien holder, or any purchaser of the Premises or Property, execute any instruments that may be required, and Lessee hereby irrevocably authorizes Lessor to execute and deliver in the name of Lessee any such instrument if Lessee fails to do so.

ARTICLE TEN
Lessor's Reserved Rights

10.1 Lessor reserves the following rights: (a) to take any and all measures necessary or desirable for the operation, safety, protection or preservation of the Premises, including repairs, alterations, decorations, additions or improvements, whether structural or otherwise, in and about the Premises or any part thereof; and (b) to enter to verify use of the Premises or perform cleaning or other Premises related maintenance services. Lessor may enter upon the Premises and may exercise any or all of the foregoing rights or any other rights provided in this Agreement without being deemed guilty of an eviction (actual or constructive) or disturbance of Lessee's use or possession and without being liable in any manner to Lessee and without abatement of Rent or affecting Lessee's obligations hereunder. Nothing in this Agreement shall be interpreted as requiring the City to perform any such acts independent of the requirements of the other provisions of this Agreement.

10.2 City's Right to Enter and Right to Use Premises. Notwithstanding any provision of this Agreement to the contrary, and without compensation to the Lessee therefore, the City reserves the following rights with respect to the Premises:

- a. The City may use the theater space and common areas located in the Premises for City licensed, permitted, or sponsored community events as scheduled on the Official Schedule and without compensation to Lessee.
- b. The City, its employees and its agents shall have the right to enter the Premises at all times for all reasonable purposes, including without limitation, enforcing all applicable laws, regulations and/or ordinances, keeping the peace, and inspecting and improving the Premises.
- c. Nothing in this Agreement shall be interpreted as requiring the City to perform any such acts independent of the requirements of the other provisions of this Agreement. The City may order the immediate cessation of any use, improvements, project or work that exceeds the scope of this Agreement or otherwise poses a threat to the life, health, safety or welfare of the public.

ARTICLE ELEVEN
Lessor's Title

11.1 Lessee acknowledges that this is an agreement to lease the Premises only and that the Lessee does not in any way acquire title to the Premises, under or by virtue of this Agreement.

11.2 Without the prior written consent of Lessor, Lessee agrees not to do any act to encumber, convert, pledge, sell, assign, lease, lend, conceal, abandon, give up possession of, or destroy the Premises.

ARTICLE TWELVE
Alterations and Improvements

12.1 Lessor has made no promise to alter, remodel, repair, replace or improve the Premises or any improvements thereon and has made no representation of the condition of the Premises or any improvements thereon or the suitability of the Premises or any improvements thereon for the purpose stated herein other than what is contained in this Lease.

12.2 Lessee shall not make material alterations or replacement of the improvements to the Premises without the written consent of Lessor. Consent shall be obtained by submitting a written description to Lessor of the proposed alteration, improvement or replacement, including its location, size, proposed use, and any other information that may be required by the Lessor. Lessor may approve, disapprove, require more information, or require certain modifications to the proposed alteration, improvement or replacement its sole judgment and discretion. Prior to the use of the Premises for the permitted purpose herein stated and prior to placing any improvements on or making any improvements to the Premises to accommodate the permitted purpose, Lessee shall present specific plans and specifications to the City Manager of the Lessor, or the City Manager's designated representative, for approval. If approved, that fact shall be noted on the plans and specifications submitted, which shall then be filed with the City Clerk of the Lessor. Plans and specifications shall be sufficiently detailed to show the materials to be used, the color of any interior/exterior paint, shape and size of the improvement(s), safety features, lighting, the presence of utilities, which may be affected by the work, and such other or different information as the Lessor may require. Lessee's final written proposal including a clear indication of Lessor's assent and signed by Lessor's City Manager shall constitute written consent of Lessor. Unless otherwise agreed by both parties, approved alteration, improvement or replacement of the improvements shall be at the sole expense of Lessee.

12.3 Lessee shall allow no mechanic's liens to be incurred or filed against the Premises. Lessee shall promptly pay for all alterations and improvements, which it may make under this Lease that are approved by Lessor, and shall save and hold harmless Lessor from any and all losses, including attorneys' fees, incurred by reason of mechanic's liens or other claims for skill, labor or material furnished or performed, or claimed to have been furnished or performed, on account of any such alteration or improvement made by Lessee hereunder. Lessee may contest any such mechanic's liens and prosecute all proceedings for the purpose of such contest pursuant to Minn. Stat. § 514.01, et seq. Lessee shall indemnify Lessor against any loss or liability by reason of such contest.

12.4 Any leasehold alterations or improvements to the Premises shall be and remain the property of Lessor and no compensation shall be paid to the Lessee regarding the same at any time during the Lease Term or following expiration, termination or cancelation of this Agreement.

12.5 Lessee shall, at Lessee's expense, make any improvements to the Premises, which are needed to maintain the Premises in their original condition or their condition as altered, if such alteration has been approved in writing by the Lessor. The Lessee shall at all times maintain the Premises, and any allowed improvements made thereto, in a good and safe condition.

12.6 Bleachers: The City will consider selling the bleachers on the Premises and replacing them with a modular stage system for the Masonic Theater located in the Premises at Lessee's expense. In the event the City sells the old bleachers on the Premises, the proceeds of such sale, if any, will be applied to the cost of replacing the same with a modular bleacher system chosen by the City in the City's discretion. The new bleachers are and shall remain the property of the City during and following the term hereof without any compensation paid to Lessee.

ARTICLE THIRTEEN
Operation, Repairs and Maintenance

13.1 Lessee's Responsibility. Lessee, at its expense, shall keep the Premises in a safe and Leasable condition based on the purpose of this Agreement. If Lessee does not do so, Lessor may (but need not) restore the Premises to a safe and Leasable condition, but Lessor has no duty or obligation to do so, and Lessee shall pay the cost within thirty (30) days of being billed by Lessor. This Article shall not apply to damage or destruction otherwise provided for in this Agreement.

13.2 Except as otherwise provided in this Agreement, Lessee, at its expense, shall be responsible for all operating costs of the Premises as well as maintenance or repairs to the Premises.

13.3 Lessee shall bear maintenance or repair costs for damage to the Premises caused by acts or omissions of Lessee, its agents, employees, tenants, visitors, volunteers, contractors, guests, clients, customers, patrons or invitees.

13.4 At the expiration or termination of this Lease, the Premises will be returned to Lessor in good condition, reasonable wear and tear excepted.

ARTICLE FOURTEEN
Destruction or Damage

14.1 Lessee Obligations. Lessee agrees:

- a. That it will obtain all necessary state and local permits for its operations as necessary.
- b. That it will operate in accordance with all federal, state and local laws and regulations.
- c. That it will be solely responsible for security of the Premises and for any loss, damage, or destruction thereof.
- d. That it will keep the Premises in such repair as at the commencement of the Lease Term or may be put in during continuance thereof, reasonable wear and tear and damage by fire or extended peril coverage perils only excepted.
- e. That it will not injure, overload or suffer to be injured or overloaded the Premises or any part thereof.
- f. That it will not make or suffer any unlawful, improper or offensive use of the Premises or any use thereof contrary to any law of the State of Minnesota or any ordinance of the City of Winona now or hereafter made, or which shall be

injurious to any person or property or which shall be liable to endanger or affect any insurance on the said Premises.

14.2 Casualty Damage. If all or a substantial portion of the Premises is rendered un-Leasable by fire or casualty, and it is reasonably anticipated by Lessor that even though undertaken and pursued with all due diligence, it will require more than six (6) months to repair the Premises, then within twenty-one (21) days after the fire or casualty, Lessor shall send a written notice of its determination to the Lessee. Then either Party may terminate this Lease as of the date of the fire or casualty by sending the other party a notice in writing of its election to so terminate within fourteen (14) days after the date of the notice from the Lessor described above. During the period when the Premises are 50% or more un-Leasable due to fire or casualty such that all or a substantial portion of the Premises cannot be occupied or operated for the purposes stated herein, the Rent shall be abated on a prorated basis for the period during which the Premises is un-Leasable.

ARTICLE FIFTEEN

Hold Harmless

15.1 Indemnification. Lessee shall defend, indemnify and hold Lessor harmless from any liability, loss, cost, and obligations, including reasonable attorneys' fees, arising out of the condition, repair, maintenance, use, replacement, construction or operation of the Premises and any improvements located thereon, any subleases and sublessee uses, and any event uses, including but not limited to any accident or other occurrence causing or inflicting injury and/or damage to any person or property, happening or done, in, upon, or about the Premises or Property, or due directly or indirectly to this Lease, subleases, events, or the condition, maintenance, use or operation of the Premises or Property by Lessee, Lessee's employees, tenants, assignees, visitors, members, board, officers, agents, contractors, volunteers, clients, customers, patrons, quests, and invitees. The indemnification provision of this Article shall not apply to damages or other losses proximately caused by or resulting from the negligence or willful misconduct of Lessor. All indemnification obligations shall survive termination, expiration or cancellation of this Lease.

15.2 Assumption of Risk. Lessee knows, understands and acknowledges the risks and hazards associated with using the Premises for the purposes stated herein, including but not limited to subleasing and event uses of the Premises and Property, and hereby assumes any and all risks and hazards associated therewith. Lessee hereby irrevocably waives any and all claims against the Lessor or any of its officials, employees or agents for any bodily injury (including death), loss or property damage incurred by Lessee as a result of using the Premises or Property, including but not limited to subleasing and event uses of the Premises and Property, except to the extent such claims arise out of the negligence or willful misconduct of Lessor, and Lessee hereby irrevocably releases and discharges the Lessor and any of its officials, employees or agents from any and all claims of liability, except to the extent such claims arise out of the negligence or willful misconduct of Lessor.

15.3 Hazardous Materials. Lessee agrees that it shall indemnify, defend and hold the Lessor, and its officials, agents and employees harmless from any claims, judgments, damages, penalties, fines, costs, liabilities (including sums paid in settlement of claims and cost of cleanups) or loss including attorney's fees, consultant fees and expert fees that arise during or after the Term of this Lease from or in connection with the presence or suspected presence of toxic or hazardous

substances in the soil, groundwater, or soil vapor on or under the Premises, which exist as a result of the operations, acts, defaults, omissions, negligence or willful misconduct of Lessee, its officers, employees, tenants, assignees or agents. Lessee shall not use or engage in the manufacture of hazardous chemicals on the Premises.

15.4 No Third-Party Right of Action. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against Lessor or Lessee. Lessee's services under this Agreement are being performed solely for Lessor's benefit, and no other entity shall have any claim against Lessee because of this Agreement or the performance or nonperformance of services provided hereunder.

ARTICLE SIXTEEN

Holding Over

16.1 Lessor's Rights. If Lessee without the consent of Lessor retains possession of the Premises or any part thereof after termination, expiration or cancelation of the Lease Term, then Lessor can elect to recover possession of the Premises by pursuing its rights under this Lease or at law. In such case Lessor shall further be able to recover in damages for the period Lessee holds over an amount equal to one hundred fifty percent (150%) of the Rent computed on a daily basis until Lessor receives possession of the Premises and in addition thereto, Lessee shall pay Lessor all direct damages sustained by reason of Lessee's retention of possession. Alternatively, Lessor can elect to retain Lessee on a month to month tenancy, terminable by 30 days written notice from Lessor to Lessee, at a rent amount equal to one hundred fifty percent (150%) of the Rent.

ARTICLE SEVENTEEN

Surrender of Possession

17.1 Upon the termination of the Lease Term, Lessee shall immediately surrender the Premises (together with any alterations and improvements) to Lessor in good order, repair and condition, ordinary wear and fire or casualty losses for which Lessee is not responsible excepted, and shall remove all equipment, trade fixtures and other items of Lessee's personal property from the Premises. Lessee shall pay Lessor upon demand the cost of repairing any damage to the Premises caused by such removal. Lessee shall leave the Premises in its pre-Lease condition, reasonable wear and tear and any approved improvements and alterations excepted. If Lessee fails or refuses to remove Lessee's personal property from the Premises, Lessee shall be presumed to have abandoned the personal property and Lessor may dispose of the same without incurring liability, at Lessee's expense, and without any compensation by Lessor to Lessee for such personal property or any improvements.

ARTICLE EIGHTEEN

Compliance with Laws, Ordinances and Regulations

18.1 Throughout the Lease Term, Lessee, at its sole cost and expense, shall promptly comply with all present and future laws, ordinances, orders, rules, opinions, directives, regulations and requirements of all federal, state, city and other local governments having jurisdiction over the same.

18.2 Lessee shall likewise observe and comply with, or shall cause to be observed and complied with, all the requirements of all policies of commercial/comprehensive general liability, fire and other insurance at any time in force with respect to the Premises.

ARTICLE NINETEEN

Insurance

19.1 Personal Property Insurance Coverage. Lessee shall at all times during the term of this Lease, and at the Lessee's sole expense, insure all personal property owned or under the control of Lessee, which is situated on the Premises against loss or damage by fire and other perils as required by the Minnesota Standard Fire Insurance Policy and the Extended Coverage Endorsements for 100% of the full replacement thereof. Further, Lessee agrees to defend, indemnify, and hold Lessor harmless from any loss, claim, demand, or cause of action resulting from destruction to, or damage of, such personal property.

19.2 Liability Insurance Coverage. Lessee shall, at Lessee's expense, maintain in effect commercial general liability insurance covering both bodily injury and property damage with limits not less than the maximum liability amount for a municipality as provided in Minnesota Statutes, Section 466.04 (as of the effective date of this Agreement: \$1,500,000); the City of Winona shall be named as additional insured. The Lessee's insurance policy and certificate shall not be canceled or its conditions altered in any manner without 10 days prior written notice to the Lessor and to the Winona City Clerk. The insuring company shall deliver to Lessor and to the Winona City Clerk certificates of all insurance required, signed by an authorized representative, and stating that all provisions of the specified requirements are satisfied.

19.3 Lessor's Right to Pay Premiums on Behalf of Lessee. All of the policies of insurance referred to in this section shall be written in a form satisfactory to Lessor and by an insurance company satisfactory to Lessor and licensed to operate in the State of Minnesota. If Lessee fails, either to effect such insurance herein called for or to pay the premiums therefor or to deliver such policies or certificates thereof to Lessor, Lessor shall be entitled, but shall have no obligation, to effect such insurance and pay the premiums therefor. Such premiums shall be immediately repayable to Lessor and failure to repay the premiums shall be an event of default.

19.4 Failure to Maintain Insurance. Failure by Lessee to maintain insurance as required herein during the Term hereof, shall constitute a default subject to termination of this Agreement pursuant to Article Twenty hereof.

19.5 Sublessees. Unless Lessee's policies of insurance required herein also are written to cover Lessee's sublessees, Lessee shall require that all sublessees are covered by insurance coverage to the same extent as Lessee as provided herein, and that the Lessor has been named as an additional insured. No sublessee shall be allowed to set-up operations on the Premises until the Lessee has verified that the sublessee has the required insurance coverages as provided herein. For purposes of this Agreement, "sublessees" are those persons, organizations, or legal entities who are subleasing tenantable office space within the Premises from Lessee pursuant to Sections 6.5 and 8.1 of this Agreement.

19.6 Vendors and Event Operators. Lessee shall require that all vendors and event operators (if other than Lessee's sublessees), as applicable, are covered by commercial general liability insurance coverage to the same extent as Lessee as provided herein, and that the Lessor has been named as an additional insured. No vendor or event operator (if other than Lessee's sublessees) shall be allowed to set-up operations on the Premises until the Lessee has verified that the vendor or event operator, as applicable, has the required commercial general liability insurance coverage as provided herein

ARTICLE TWENTY **Default and Remedies**

20.1 If Lessee shall default in the payment of any Rent, or in the payment of any other sum required to be paid by Lessee under this Lease, and such default shall continue for ten (10) days after written notice to Lessee, or if Lessee shall default in the observance or performance of any of the other covenants or conditions in this Lease, which Lessee is required to observe or perform, and such default shall continue for thirty (30) days after written notice to Lessee, or if a default involves a hazardous condition and is not cured by Lessee immediately upon written notice to Lessee, or if the interest of Lessee in this Lease shall be levied upon under execution or other legal process, or if any voluntary petition in bankruptcy or for corporate reorganization or any similar relief shall be filed by Lessee, or if any involuntary petition in bankruptcy shall be filed against Lessee under any federal or state bankruptcy or insolvency act and shall not have been dismissed within thirty (30) days following the filing thereof, or if a receiver shall be appointed for Lessee or any of the property of Lessee by any court and such receiver shall not be dismissed within thirty (30) days from the date of appointment, or if Lessee shall make an assignment for the benefit of creditors, or if Lessee shall abandon or vacate the Premises, then Lessor may treat the occurrence of any one or more of the foregoing events as a breach of this Lease and thereupon at its option may, without notice or demand of any kind to Lessee or any other person, terminate this Lease and immediately repossess the Premises, in addition to all other rights and remedies provided at law or in equity. The provisions of this Section shall survive any termination of this Lease.

20.2 No right or remedy conferred upon or reserved to Lessor or Lessee by this Agreement shall be exclusive of any other right or remedy herein or by law provided; all rights and remedies conferred upon Lessor and Lessee by this Agreement or by law shall be cumulative and in addition to every other right and remedy.

20.3 If any action at law or in equity shall be brought by Lessor to recover any payments and/or costs to be made by Lessee under this Agreement or on account of any breach of this Agreement by Lessee or for the recovery of the possession of the Premises, Lessor shall be entitled to recover from Lessee, as applicable, reasonable attorney's fees, the amount of which shall be fixed by the Court and shall be made a part of any judgment or decree rendered.

ARTICLE TWENTY-ONE

Notices

21.1 All notices required under the terms of this Lease shall be deemed to have been properly served or given three (3) days after their deposit in the United States mail if sent by registered or certified mail, return receipt requested, postage prepaid, or two (2) days after deposit in a nationally recognized overnight courier service, addressed to Lessor or Lessee at the addresses identified below or to such other address within the continental limits of the United States and to the attention of such Party as the Parties may from time to time designate by written notice to the other.

If to Lessor: Chad Ubl, City Manager
City of Winona
207 Lafayette Street
PO Box 378
Winona MN 55987
507-457-8234

If to Lessee: Great River Shakespeare Festival
Attention: Aaron Young
251 Main Street
Winona, MN 55987
507-474-9372

ARTICLE TWENTY-TWO

Lessor's Responsibilities

Lessor shall be responsible, at Lessor's cost and expense, for the following services, which services shall be performed at a frequency and level as needed and determined by Lessor:

22.2 Daily General Custodial and Cleaning Services. Daily general cleaning and janitorial services on the Property, including the Premises, but not including Lessee's event related uses.

22.3 Lawn and Snow. Lessor shall be responsible for all snow and ice removal, plowing, landscaping, mowing, lawn care, maintenance, and groundskeeping of the entire Property, including but not limited to adjacent sidewalk areas.

22.4 Property Maintenance. With the exception of Lessee's responsibilities otherwise provided herein above, Lessor, at Lessor's expense, is responsible for general Property maintenance other than within the Premises except as provided in Article Seven. Except as otherwise provided in this Agreement, Lessor is responsible for all major and minor exterior building and Property maintenance, repairs and replacement, including walls, foundations, sidewalks, windows, HVAC, and roof, in Lessor's sole judgment and discretion. Except as otherwise provided in this Agreement, Lessor is responsible for all major interior building maintenance, repairs and replacement, including

floors, lighting, plumbing, electrical, and HVAC, in Lessor's sole judgment and discretion. Lessor has not made any representations to Lessee that Lessor will undertake any such improvements on the Property or within the Premises other than general upkeep of the Property during the Term hereof, and Lessee accepts, acknowledges and agrees that the Premises herein described are in an "as is", "with all faults" condition.

22.5 Pest Control. All pest control at the Property.

ARTICLE TWENTY-THREE

Signage

23.1 Lessee shall be allowed to install signs on the facade of the Premises subject to Lessor's approval of the signs' location and size, which shall comply with the Lessor's sign ordinance. All signs shall be removable and temporary and in compliance with City Code. Any damages or costs incurred by the Lessor caused by the installation or removal of signs shall be the responsibility of the Lessee and shall be reimbursed to the Lessor within thirty (30) days of invoicing the Lessee. All signage or banners (whether interior or exterior) placed by Lessee on the Premises shall be removable and shall be subject to the following:

- a. All signs and banners must comply with City ordinances;
- b. Sign and banner installation or removal shall be conducted by the City in a location approved by the City;
- c. All signs and banners shall only be for purposes of identifying Lessee or Lessee's tenants and events at the Premises and must be approved by the Department of Parks and Recreation prior to use; and
- d. The Parties agree that the City, in permitting the Lessee to install signs and banners on the Premises, is not creating a forum for public speech protected by the United States or Minnesota constitutions. The City hereby reserves the right to reject any banner, sign, or other media.

ARTICLE TWENTY-FOUR

Miscellaneous

24.1 Voluntary and Knowing Action. The Parties, by executing this Lease, state that they have carefully read this Lease and understand fully the contents thereof; that in executing this Lease they voluntarily accept all terms described in this Lease without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound thereby.

24.2 Authorized Signatories. The Parties each represent and warrant to the other that (1) the persons signing this Lease are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Lease against it; each party indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.

24.3 No Partnership, Joint Venture, or Fiduciary Relationship. Nothing contained in this Lease shall be interpreted as creating a partnership, joint venture, or relationship of principal and agent between the Parties, it being understood that the sole relationship created hereby is one of Lessor and Lessee. No third party is entitled in any way to rely upon any provision in this Lease. This Lease is intended solely for the benefit of Lessor and Lessee and no third party shall have any rights or interest in any provision of this Lease, or as a result of any action or inaction of the Lessor in connection therewith.

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

24.5 Governing Law. This Lease shall be deemed to have been made and accepted in Winona County, Minnesota, and the laws of the State of Minnesota shall govern any interpretations or constructions of the Lease without regard to its choice of law or conflict of laws principles.

24.6 Data Practices. The Parties acknowledge that this Lease is subject to the requirements of Minnesota's Government Data Practices Act, Minn. Stat. c. 13.

24.7 Nondiscrimination. The provisions of any applicable law or ordinance relating to civil rights and discrimination shall be considered part of this Agreement as if fully set forth herein.

24.8 Dispute Resolution. Lessor and Lessee agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice of dispute prior to proceeding to formal dispute resolution or exercising their rights under law.

24.9 Force Majeure. The Parties shall each be excused from performance under this Agreement while and to the extent that either of them are unable to perform, for any cause beyond its reasonable control. Such causes shall include, but not be restricted to fire, storm, flood, earthquake, explosion, war, pandemic, total or partial failure of transportation or delivery facilities, raw materials or supplies, interruption of utilities or power, and any act of government or military authority. In the event either party is rendered unable wholly or in part by force majeure to carry out its obligations under this Agreement then the party affected by force majeure shall give written notice with explanation to the other party immediately.

24.10 Interest City Officials. No elected or appointed official, officer, or employee of the Lessor shall during his or her tenure or employment and for one year thereafter, have any interest, direct or indirect, in this Agreement or the proceeds thereof.

24.11 No Waiver. Any Party's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Lease or to exercise any right herein

conferred shall not be construed as a waiver or relinquishment of that right or of that Party's right to assert or rely upon the terms and conditions of this Lease. Any express waiver of a term of this Lease shall not be binding and effective unless made in writing and properly executed by the waiving Party.

24.12 Severability. The invalidity or unenforceability of any provision of this Lease shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Lease to the extent of its invalidity or unenforceability, and this Lease shall be construed and enforced as if the Lease did not contain that particular provision to the extent of its invalidity or unenforceability.

24.13 Headings and Captions. Headings and captions contained in this Lease are for convenience only and are not intended to alter any of the provisions of this Lease and shall not be used for the interpretation of the validity of the agreement or any provision hereof.

24.14 Survivability. All covenants, indemnities, guarantees, releases, representations and warranties by any party or parties, and any undischarged obligations of Lessor and the Lessee arising prior to the expiration of this Lease (whether by completion or earlier termination), shall survive such expiration.

24.15 Recitals and Exhibits. The recitals hereto and exhibits attached to this Lease are considered an integral part of it as if fully set forth within it.

24.16 Entire Agreement. All prior understandings, letters of intent, discussions and agreements are merged in the governing terms of this Lease, which is a complete and final written expression of the intent of the Parties superseding all prior agreements and understandings.

24.17 Modification/Amendment. Any alterations, variations, modifications, amendments or waivers of the provisions of this Lease shall only be valid when they have been reduced to writing, and signed by authorized representative of the Lessor and the Lessee.

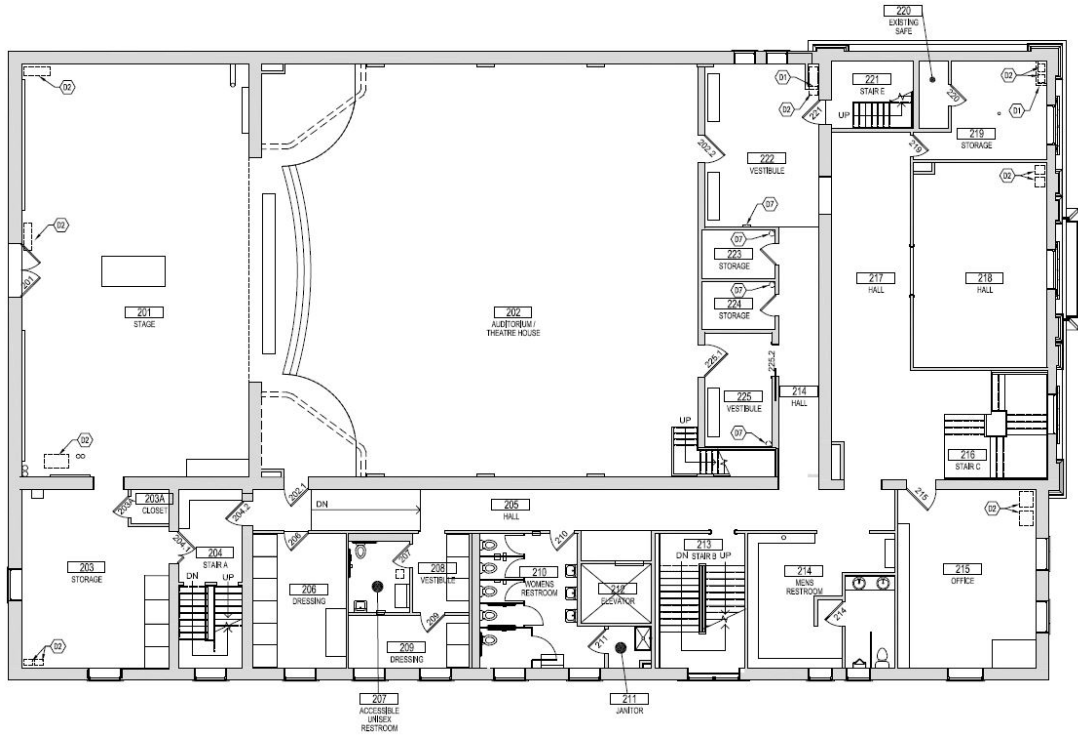
24.18 Compliance with Laws. The Lessee shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Agreement, the Property, or to the facilities, programs and staff for which the Lessee is responsible.

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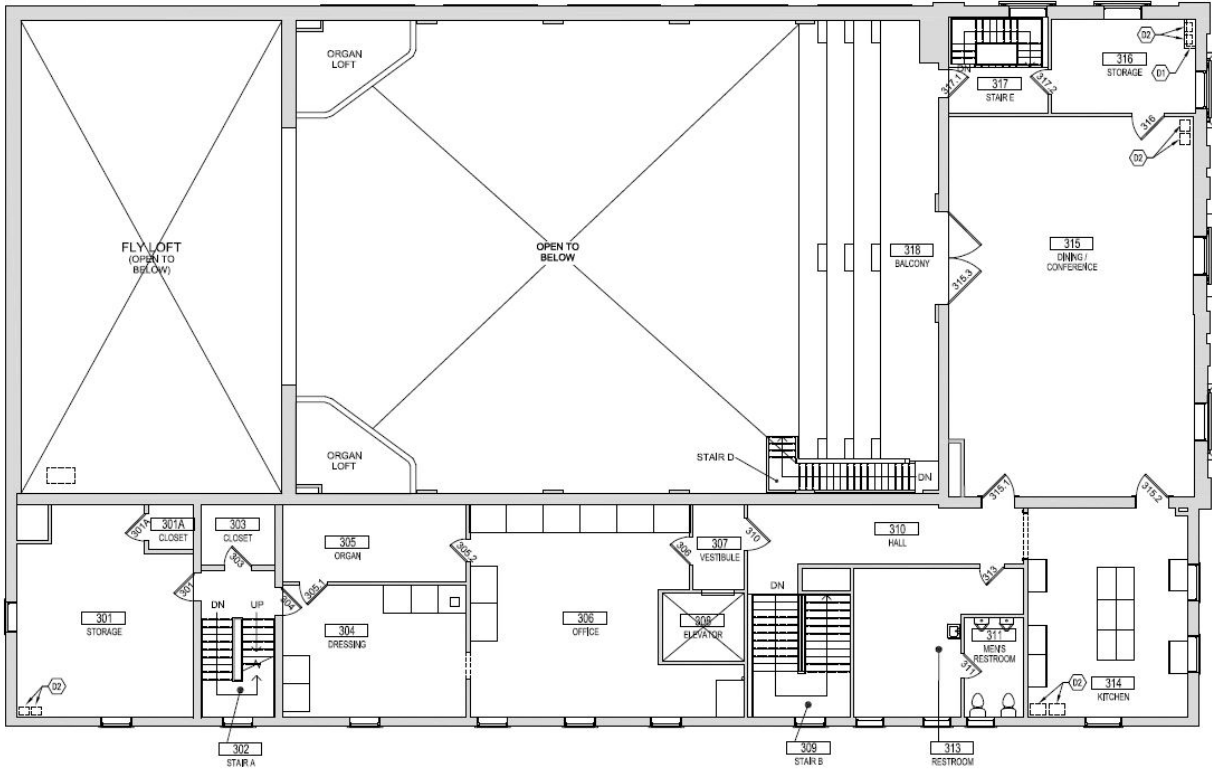
EXHIBIT A

DEPICTION OF PREMISES

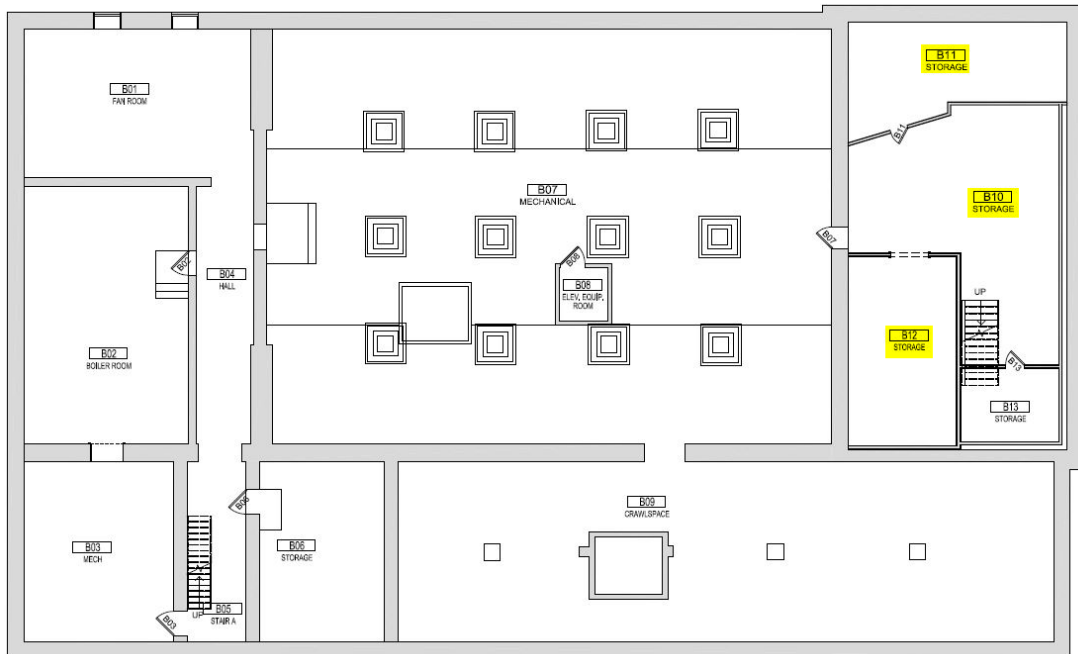
**Second Floor
Entire**

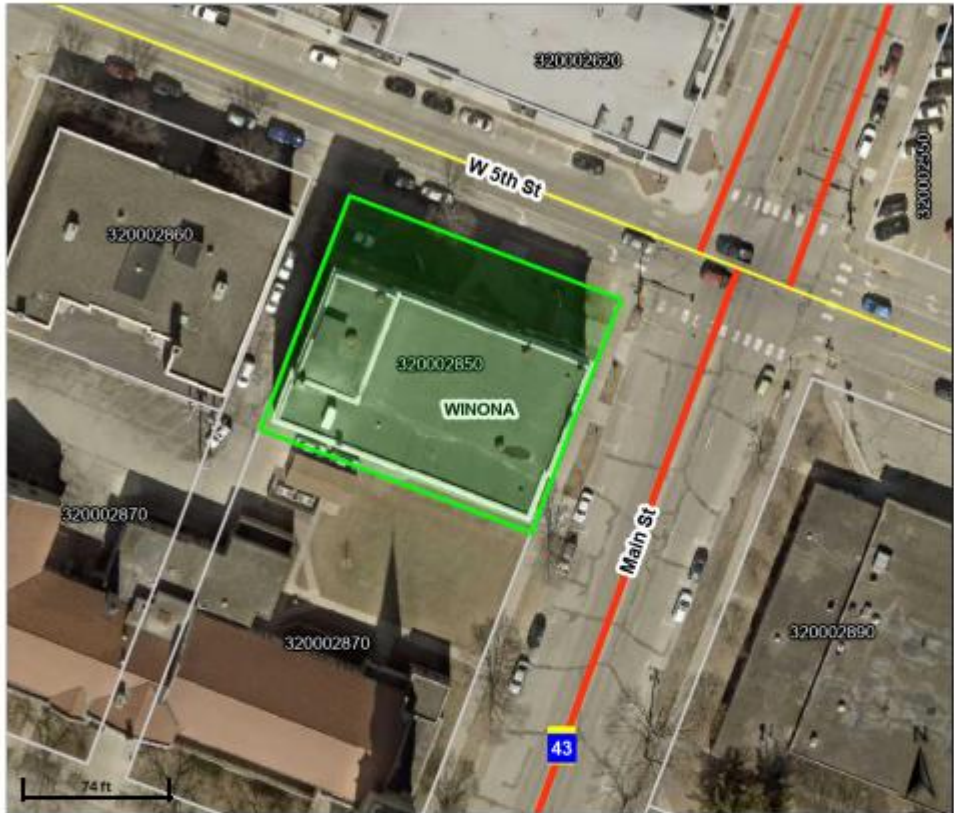


Third Floor Entire



Basement Use of rooms B10, B11, B12





- Legend**
- Roads**
-  Interstate
 -  US/State Highway
 -  City Streets
 -  County Road
 -  Township Road
 -  Private Drive
 -  Other
-  Municipalities
-  Winona Boundary
-  Parcel

Parcel ID	320002850	Alternate ID	n/a	Owner Address	WINONA CITY
Sec/Twp/Rng	23-107-007	Class	933 - SENIOR CITIZEN FAC		207 LAFAYETTE ST
Property Address	251 MAIN ST	Acreage	n/a		PO BOX 378
	WINONA				WINONA, MN 55987
District	WINONA CITY				
Brief Tax Description	Sect-23 Twp-107 Range-007 ORIGINAL PLAT Lot-001 Block-032 ORIGINAL PLAT & LOT 4 BLK 32 (MASONIC TEMPLE)				
	<i>(Note: Not to be used on legal documents)</i>				

Note: This map is created from data contained in Winona County GIS and is for reference purposes only. While significant effort has been invested to depict boundary extents as accurately as possible per existing records, this map should not be considered a replacement for professional land survey.

Date created: 12/26/2023
 Last Data Uploaded: 12/26/2023 4:08:45 AM

Developed by  **Schneider**
 GEOSPATIAL



Agenda Report

Regular City Council – December 16, 2024

Item Number: 4.1

Title

Cannabis Ordinance Registration

Originating Departments: City Clerk's Office
Presenter(s): Amy VanGuilder, Deputy City Clerk

Action Requested

Adopt the ordinance as amended and approve summary ordinance publication.

Background

The ordinance addresses cannabis business registration and fees. Previously, on December 2, 2024, staff recommended that the cannabis ordinance mirror the City of Winona's alcohol ordinance to allow consistency for citizens, city administration, and law enforcement. Thus, the original proposed cannabis ordinance to council on December 2, 2024, did not limit the number of cannabis retail business registrations within the city limits, hours of cannabis sales would be set similar to alcohol sales, and cannabis events would be allowed on city property with a license agreement and City Council approval. Private cannabis events would also be allowed within the City with proper cannabis registration from the City Clerk's office.

Public consumption of cannabis, however, is slightly different as cannabis can be consumed in several forms. Therefore, staff recommended that cannabis infused beverages follow the public consumption ordinance as to no consumption on city streets, sidewalks, and only in approved city parks and/or city property. Other cannabis forms (i.e. smoking, vaping) would be allowed to be consumed in public like tobacco smoking due to the lack of city-wide smoking ordinance.

Per council discussion, direction to staff, and approved amended motion, the cannabis registration ordinance has been amended to limit retail cannabis registrations to three (3) and have approval be conducted on a first come/first serve basis by the City Clerk. Under the proposed ordinance, the first 3 completed retail registration applications certified by the City Clerk that also pass zoning review and local building compliance inspection, will be awarded the three registrations.

Per state statute 342.22, local governments may only refuse the registration and/or certification of a license renewal if the license:

- 1) is associated with an individual or business who no longer holds a valid license
- 2) has failed to pay the local registration or renewal fee, or
- 3) has been found in noncompliance in connection with a preliminary or renewal compliance check.
- 4) is not current on all property taxes and assessments at the location where the retail establishment is located.

Once City staff receive notification from the Office of Cannabis Management for a license approval, the city has only 30 days to certify registration compliance, zoning requirements, and preliminary site inspection.

Budget Impact

Registration activity is budgeted for under the City Clerk's office budget. Registration application fees cover a portion of the cost of administering the registration process.

Attachments

Ordinance Amendments for Cannabis Business Registrations, Registration Fees, and Public Consumption Restrictions

Staff Contact: Amy VanGuilder

ORDINANCE NO. _____

AN ORDINANCE AMENDING WINONA CITY CODE, CHAPTER 51 – LICENSES AND PERMITS AND SERVICE CHARGES OF THE CITY, AND ADDING A NEW CHAPTER 57 – REGULATION OF CANNABIS AND HEMP RETAIL BUSINESSES AND TEMPORARY CANNABIS EVENTS

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

SECTION 1. That Winona City Code, Chapter 51 – Licenses and Permits and Service Charges of the City, Sec. 51.01, Fees and Charges Established, be amended to add classes and fees for cannabis and hemp businesses, as follows:

City Clerk's Office	Adopted Fee
<u>Cannabis and Hemp Business Classes and Fees</u>	
<u>Cannabis Retailer</u>	
<u>Initial Retail Registration Fee</u>	<u>\$500.00</u>
<u>Retail Registration Renewal Fee</u>	<u>\$1,000.00</u>
<u>Cannabis Microbusiness</u>	
<u>Initial Retail Registration Fee</u>	<u>\$0.00</u>
<u>Retail Registration Renewal Fee</u>	<u>\$500.00</u>
<u>Cannabis Mezzobusiness</u>	
<u>Initial Retail Registration Fee</u>	<u>\$500.00</u>
<u>Retail Registration Renewal Fee</u>	<u>\$1,000.00</u>
<u>Medical Cannabis Combination Business</u>	
<u>Initial Retail Registration Fee</u>	<u>\$500.00</u>
<u>Retail Registration Renewal Fee</u>	<u>\$1,000.00</u>
<u>Lower-Potency Hemp Edible Retailer</u>	
<u>Initial Retail Registration Fee</u>	<u>\$125.00</u>
<u>Retail Registration Renewal Fee</u>	<u>\$125.00</u>
<u>Temporary Cannabis Event Application Fee</u>	<u>\$375.00</u>

SECTION 2. That Winona City Code be amended to add a new Chapter 57 entitled “Regulation of Cannabis and Hemp Retail Businesses and Temporary Cannabis Events”, as follows:

**CHAPTER 57: REGULATION OF CANNABIS AND HEMP RETAIL BUSINESSES AND
TEMPORARY CANNABIS EVENTS**

GENERAL REGULATIONS

57.01 STATE LAW ADOPTED

Except as further restricted or regulated by this chapter, the provisions of Minn. Stat. ch. 342, relating to cannabis and hemp regulation and the corresponding state rules with respect to the same are hereby adopted and made a part of this chapter as if set out herein in full. In accordance with Minn. Stat. §§ 342.13 and 342.22, the city may impose further restrictions and regulations within city limits. Whenever there is an inconsistency between the provisions of Minn. Stat. ch. 342, as amended, and the provisions of this chapter, the more restrictive provision shall govern, unless preempted by state law.

57.02 DEFINITIONS

The words, terms and phrases contained in Minn. Stat. § 342.01 and the corresponding promulgated state rules shall have the same meanings in this chapter; said definitions, as the same may be amended from time to time, being hereby incorporated herein by reference. Unless otherwise noted in this chapter, the following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Cannabis Cultivation means a cannabis business licensed to grow cannabis plants within the approved amount of space from seed or immature plant to mature plant, harvest cannabis flower from mature plant, package and label immature plants and seedlings and cannabis flower for sale to other cannabis businesses, transport cannabis flower to a cannabis manufacturer located on the same premises, and perform other actions approved by the office.

Cannabis Retail Businesses means a cannabis retailer location and the retail location(s) of a mezzobusinesses with a retail operations endorsement, microbusinesses with a retail operations endorsement, medical combination businesses operating a retail location, excluding lower-potency hemp edible retailers.

Cannabis Retailer means any person, partnership, firm, corporation, or association, foreign or domestic, selling cannabis product to a consumer and not for the purpose of resale in any form.

Daycare means a location licensed with the Minnesota Department of Human Services to provide the care of a child in a residence outside the child's own home for gain or otherwise, on a regular basis, for any part of a 24-hour day.

Lower-potency Hemp Edible is defined under Minn. Stat. § 342.01, subd. 50.

Lower-potency Hemp Edible Retailer means a person or entity licensed or authorized to acquire, possess, transfer, sell, dispense, or distribute lower-potency hemp edible products and related supplies and products pursuant to Minnesota Statutes, Chapter 342.

Office of Cannabis Management means the Minnesota Office of Cannabis Management, referred to as "OCM" in this chapter.

Preliminary License Approval means OCM pre-approval for a cannabis business license for applicants who qualify under Minn. Stat. § 342.17.

Residential Treatment Facility is defined under Minn. Stat. § 245.462 subd. 23.

Retail Registration means an approved registration issued by the city to a state-licensed cannabis retail business or lower-potency hemp edible retailer.

Registered Retail Business means either a cannabis retail business or lower-potency hemp edible retailer with a valid retail registration issued by the city.

School means a public school as defined under Minn. Stat. § 120A.05 or a nonpublic school that must meet the reporting requirements under Minn. Stat. § 120A.24.

State License means an approved license issued by the State of Minnesota's Office of Cannabis Management to a cannabis retail business.

Temporary cannabis event means a cannabis event lasting no more than four days, organized by a holder of a cannabis event organizer license pursuant to Minn. Stat. § 342.39 and subject to the requirements of Minn. Stat. § 342.40.

57.03 CONDITIONS

All retail registrations issued to cannabis retail businesses or lower-potency hemp edible retailers under this chapter shall be issued subject to the conditions set forth in this chapter and subject to all city ordinances and sections of this Code applicable thereto and the laws of the state. All other regulations contained in state law and city code, including but not limited to chapters 21, 32, 43, 51, 52, and 55 of this city code, as applicable to a respective otherwise licensed or registered retail business enterprise regarding operational requirements and restrictions and prohibited acts and sales, shall not be limited by virtue of issuance of a retail registration under this chapter and shall be complied with as applicable to the otherwise registered cannabis retail business to the same extent as if such business enterprise were not a cannabis retail business. All such regulations applicable to an otherwise licensed or registered retail business shall remain applicable to the operations of the registered cannabis retail business during the term of a registration issued under this chapter.

57.04 VIOLATIONS

- (a) Notice. Any person or registered retail business violating this chapter may be issued, either personally or by mail, a notice of violation/citation by the city clerk in consultation with the city administrator and chief of police that sets forth the alleged violation, the penalties imposed and timing for serving a suspension, and that informs the alleged violator of the alleged violator's right to a hearing on the matter. The notice of violation/citation shall provide notice that a hearing must be requested by the alleged violator within ten business days of the date of issuance of the notice of violation/citation and that such hearing rights shall be waived by the alleged violator and terminated if a hearing is not requested in writing by the alleged violator and filed with the city clerk within the ten business day period. The notice of violation/citation shall provide information on how and where a hearing may be requested, including a contact address and phone number for the city clerk.

- (b) Hearing. If a person or registered retail business accused of violating this chapter or the governing state law so requests in writing, filed with the city clerk, a hearing shall be scheduled, the time and place of which shall be published and provided by the city clerk to the accused violator. Hearing requests must be made within ten business days of the issuance of the notice of violation/citation and delivered to the city clerk or other designated city officer. Failure to properly request a hearing within ten business days of the issuance of the notice of violation/citation will terminate the person's right to a hearing and constitute waiver of said right to a hearing. The city clerk or other designated city officer will set the time and place for the hearing. Written notice of the hearing time and place will be mailed or delivered to the accused violator at least ten calendar days prior to the hearing.
- (c) Hearing officer. The city council shall serve as the hearing officer. The hearing officer will be an impartial employee of the city or an impartial person retained by the city to conduct the hearing, if other than the city council.
- (d) Decision. If the hearing officer determines that a violation of this chapter did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed under his chapter, shall be recorded in writing, a copy of which shall be provided to the accused violator by in person or mail delivery as soon as practicable following the hearing date or the date of any continuance, recess or postponement thereof. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, such findings shall be recorded and a copy provided to the acquitted accused violator by in person or mail delivery as soon as practicable.
- (e) OCM notification of suspension. Following issuance of a notice of suspension of the registration of a registered retail business by the city clerk pursuant to this chapter, the city clerk shall immediately notify the OCM and provide the OCM a copy of the notice of suspension issued to the registered retail business. The notice of suspension shall include a description of the grounds for such suspension. The city may hold a hearing pursuant to this chapter if timely requested by the alleged violator or stay such hearing pending a response from OCM. If a hearing is timely requested and held and a suspension is imposed, the city clerk shall additionally immediately notify the OCM and provide the OCM a copy of the hearing officer's order of suspension issued to the registered retail business. A suspension shall not be imposed and served until notice to OCM and any determination by OCM. The OCM may order reinstatement of the retail registration or take other action authorized by law, up to and including revocation of the state license for the cannabis retail business or lower-potency hemp edible retailer. Failure by OCM to respond or to timely respond following notice from the city clerk to OCM as provided herein shall not prohibit or limit the city's enforcement action or subsequent enforcement actions.
- (f) Timing of suspension. A suspension imposed following notice to OCM and a determination by OCM shall be served by the registered retail business on such date(s) as determined by the city clerk in consultation with the city administrator and chief of police, and included in a subsequent written notice from the city clerk to the registered retail business. The noticed and ordered date(s) of suspension shall be consecutive days and shall be served by the registered retail business within 60 days following the final determination of suspension by OCM or as otherwise provided herein if OCM fails to respond following notice.
- (g) Reinstatement. The city may reinstate a retail registration if it determines that the violation(s) has been resolved. The city shall reinstate a registration if the OCM determines

that the violation(s) has been resolved. The city may wait for a determination from the OCM with regard to the violation(s) before reinstating a registration issued by the city.

- (h) *Complaint to OCM.* In addition to providing notification to the OCM of any suspension of the registration of a registered retail business as set forth above, the City shall submit to the OCM notification of any violation(s) through the complaint process as set forth in Minn. Stat. § 342.13(g) and corresponding state rules.
- (i) *Misdemeanor prosecution.* In addition to the process contained in this section for registration violations, violations of this chapter or failure to comply with any of its requirements herein shall constitute a criminal misdemeanor offense and may be prosecuted accordingly.
- (j) *Continued violation.* Each violation, and every day in which a violation occurs or continues, shall constitute separate offenses.
- (k) *Hearing costs and expenses.* If the notice of violation/citation is upheld by the hearing officer, the city's actual expenses in holding the hearing up to a maximum of \$1,000.00 shall be paid by the person requesting the hearing and shall be in addition to any penalties imposed. In such event, hearing expenses shall be included as part of the hearing officer's findings and paid at the same time the penalty is paid.
- (l) *Timely payment.* In the event that any imposed penalty or hearing costs and expenses are not timely paid in accordance with the notice of violation/citation or the hearing officer's decision, as applicable, such failure shall serve as grounds for additional enforcement actions, up to and including but not limited to immediate retail registration suspension as provided in this chapter.

57.05 PENALTIES AND SUSPENSION

- (a) *Penalties generally.* In addition to any other penalties that may be imposed under this chapter, any registered retail business with a retail registration from the city found to have violated this chapter, or whose employee shall have violated this chapter, shall be subject to administrative penalties and/or suspension in accordance with the following schedule:

 - (1) *First offense:* \$250.
 - (2) *Second offense at the same registered retail business within a 24-month period:* \$500.00 and a registration suspension of at least five consecutive days.
 - (3) *Third offense at the same location within a 36-month period:* \$2,000.00 and a retail registration suspension of at least 30 consecutive days.

For the purposes of this section, "within a 24-month period" means a period, two years in duration, which begins to toll on the date of the occurrence of the first violation, and ends two years from the date of the first violation.

Notwithstanding the foregoing and the penalties contained in the city clerk's notice of violation/citation, the hearing officer, following notice and a hearing as provided in section 57.04, may deviate from the administrative penalties provided above herein, by

increasing or decreasing such imposed penalties subject to statutory limits, based upon the hearing officer's findings following consideration of the facts, circumstances, history and evidence presented and such other factors and evidence as the hearing officer deems relevant. A history of repeated violations extending beyond the time periods stated herein may be considered by the hearing officer to impose a longer suspension period or revocation or non-renewal of a registration as provided in this chapter subject to OCM approval or corresponding enforcement actions by the OCM.

- (b) Civil penalty for registration violations. Subject to Minn. Stat. § 342.22, subd. 5(e), the city may impose a civil penalty, as specified in the city's Fee Schedule, not to exceed \$2,000, on any cannabis retail business or lower-potency hemp edible retailer, which makes any sale to a customer or patient without a valid retail registration pursuant to this chapter or for any other registration violation.
- (c) Criminal penalty. Any violation of the provisions of this chapter or failure to comply with any of its requirements constitutes a misdemeanor and is punishable as defined by law. Nothing in this section shall prohibit the city from seeking prosecution as a misdemeanor for any violation of this chapter. Prosecution may precede, run consecutively with, or follow any administrative civil enforcement action. Violations of this chapter can occur regardless of whether or not a permit is required for a regulated activity listed in this chapter.

57.06 EXCEPTIONS AND DEFENSES

Nothing in this chapter shall prevent the providing of sales by a registered cannabis retail business or lower-potency hemp edible retailer to a person under the age of 21 as part of a lawfully recognized religious, spiritual, or cultural ceremony. It shall be an affirmative defense to the violation of this chapter for a person to have reasonably relied on proof of age as described by state law in Minn. Stat. § 342.27, subd. 4.

57.07 ENFORCEMENT

Pursuant to Minn. Stat. § 342.22, subd. 5, if the city determines that a registered retail business is not operating in compliance with the requirements of this chapter, including but not limited to sections 67.28, 57.66, and/or the governing state statutes and rules, or that the operation of the business poses an immediate threat to the health or safety of the public, the city may impose penalties and/or suspend the retail registration of the cannabis retail business pursuant to §§ 57.04 and 57.05 of this chapter.

57.08 MINIMUM EMPLOYEE AGE

Pursuant to Minn. Stat. § 342.24, subd. 1(a), cannabis businesses may not employ an individual under 21 years of age and may not contract with an individual under 21 years of age if the individual's scope of work involves the handling of cannabis plants, cannabis flower, artificially derived cannabinoids, or cannabinoid products.

57.09 USE IN PUBLIC PLACES

- (a) No person shall consume as a beverage any cannabis products, lower-potency hemp edibles, or hemp-derived consumer products while in or upon any public street, alley,

sidewalk, parking lot or other public way, except as provided in this section, or this chapter or other applicable law.

- (b) No person shall consume as a beverage any cannabis products, lower-potency hemp edibles, or hemp-derived consumer products in the following places, unless a permit allowing such consumption has been granted by the City Council: Aghaming Park; Belmont-Whitten; Bluffside Park; Bridge Plaza; Bob Welch Aquatic Center; Bud King Ice Arena; Central Park; East Recreation Center and Park; Gabrych Field Park; Garvin Heights Park; Gilmore Valley Park/Country Drive; Gilmore Valley Park; Glenview Park; Knopp Valley Park; Lake Park Lodge; Levee Park; Lions Park; Madison Park; Miller Park; Prairie Island Park; Sinclair Park; Sobieski Park; Sugarloaf Park; Tillman Park; Valley Oaks Field; Valley Oaks Park; West Recreation Center; Westfield Golf Course; Wincrest Park; Windom Park; and all city-owned community playgrounds.
- (c) No person shall consume as a beverage any cannabis products, lower-potency hemp edibles, or hemp-derived consumer products in Lake Park or on Latsch Island after the hours of 10:00 p.m. and before 8:00 a.m. For the purposes of this section Lake Park is described as that area of land (1) lying southerly of the south line of Lake Street, northerly of the centerline of U.S. Highway 61 and 14, westerly of the centerline of Huff Street and easterly of the easterly boundary lines of the privately owned lands lying westerly of the westerly end of Lake Winona; and (2) lying northerly of the centerline of U.S. Highway 61 and 14, westerly of Mankato Avenue (excluding privately owned lands), southerly of Sarnia Street between Mankato Avenue and Franklin Street and lying northerly of the centerline of U.S. Highway 61 and 14 and southerly of the southerly boundary lines of privately owned land south of Sarnia Street between Franklin and Huff Streets. For the purposes of this section, Latsch Island shall be defined as all of Latsch Island with the exception of the Winona Municipal Marina and the further exception of the area lying within 50 feet of any boathouse.
- (d) Penalty. A person who violates this section is guilty of a petty misdemeanor.

57.10 PRE-LICENSE APPLICATION RESPONSE REQUIRED

Pursuant to Minn. Stat. § 342.13, within 30 days of receiving a copy of a state license application from OCM, the city shall certify on a form provided by OCM whether any proposed cannabis business as defined under Minn. Stat. § 342.01, including any cannabis retail business and lower-potency hemp edible retailer required to register with the city, complies with the city's Unified Development Code (chapter 43), the fire code, the building code, and the provisions of this chapter, if applicable to the state license application.

57.11 SEVERABILITY

If any part, term, or provision of this chapter or the application thereof to any person or circumstances is held by a court of competent jurisdiction to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such portion shall be deemed severable and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this chapter, which remaining portions shall continue in full force and effect.

57.12—57.20 Reserved

CANNABIS RETAIL BUSINESS REGISTRATION

57.21 REGISTRATION REQUIRED

No person or entity may operate a state-licensed cannabis retail business within the corporate limits of the city without first registering with the city. Any operation of a state-licensed cannabis business within the corporate limits of the city without valid retail registration shall be a violation of this chapter and the business shall be subject to the penalty set forth in sections 57.04 and 57.05.

57.22 NUMBER OF RETAIL REGISTRATIONS

~~The city shall issue no fewer than one cannabis retail business registration for every 12,500 residents within the city.~~

~~Under Minn. Stat. § 342.13(h), the city may limit the number of active cannabis retail businesses registrations if the city has one active cannabis retail businesses registration for every 12,500 residents. Pursuant to this authority, the city shall limit the number of cannabis retail business registrations to three (3), excluding medical cannabis combination businesses and any potential municipal cannabis retail business. The city shall process cannabis retail registration applications in the order in which the completed applications are received until the city has registered three cannabis retail businesses. An application for city registration pursuant to this chapter shall not be received or processed by the city until an applicant has been issued the applicable license by the state or written notice of license preapproval by the OCM pursuant to applicable state law. Any application received by the city prior to an applicant's issuance of valid state licensure or written notice of license preapproval by the OCM shall be returned to the applicant unprocessed along with the applicant's registration fee.~~

57.23 APPLICATION

The city shall issue a retail registration to a state-licensed cannabis retail business that adheres to the requirements of Minn. Stat. 342.22, this chapter, the Unified Development Code, and the state fire code and building code, as applicable.

(a) An applicant for a retail registration shall fill out an application form, as provided by the city. Said form shall include, but is not limited to:

- (1) Full name of the property owner, ~~business owner and~~ (applicant), and ~~business manager~~;
- (2) Address, email address, and telephone number of the applicant;
- (3) If the applicant is a corporation or any other type of business organization, the application shall also contain the names, addresses and respective percentage ownership interest of all of the owners of the corporation or business organization, provided however that if the number of owners exceeds ten persons only the ten owners having the largest percentage of ownership shall be listed;
- (4) The address and parcel ID for the property which the retail registration is sought;

- (5) Certification that the applicant complies with the requirements of this chapter, the Unified Development Code, and with the state fire code and building code;
- (6) Certification that the applicant has a valid license or license preapproval issued by the OCM; ~~and~~
- (7) Confirmation that all property taxes and city utilities are current on the property;
- (8) A detailed floor plan description and drawing of the retail location including security camera locations and security measures being implemented;
- (9) Any other information the city deems necessary.

(b) The applicant shall include with the form:

- (1) the application fee as required in section 57.27; ~~and~~
- (2) a copy of a valid state license or written notice of OCM license preapproval; ~~and~~
- (3) if the applicant does not own the business premises, a true and complete copy of the executed lease for the premises, if applicable.

(c) Once an application is considered complete by the city clerk, the city clerk or their designee shall inform the applicant as such, process the application fees, and ~~approve or deny the application. If the registration form is incomplete, the retail registration will not be processed/issued, and notice will be sent by the City Clerk or their designee. forward the application to the city council for approval or denial.~~

(d) The application fee shall be non-refundable once processed.

57.24 PRELIMINARY INSPECTION PRIOR TO RETAIL REGISTRATION

Prior to issuance of a cannabis retail business registration, the city shall conduct a preliminary inspection to ensure compliance with the requirements of this chapter and all city ordinances.

57.25 APPROVAL OR DENIAL OF RETAIL REGISTRATION

~~The city clerk shall issue a retail registration to a cannabis retail business that has complied with section 57.23, has passed the preliminary inspection required under section 57.24, and has been approved by the city council. A state-licensed cannabis retail business registration application shall not be approved or renewed if the applicant is unable to meet the requirements of this chapter. If the registration is denied, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal such denial to the city council. Notice shall also be provided to OCM by the city clerk in the same manner as provided in section 57.04 (e).~~

Registration of a cannabis retail business will be approved by the City Clerk or their designee and in effect so long as the following requirements are met:

- (1) The applicant holds a valid license or license preapproval issued to the cannabis retail business by OCM for a cannabis retail license issued by OCM;
- (2) All applicable registration/renewal fees are paid in full;
- (3) During the preliminary compliance check, the cannabis retail business is found to be in compliance with zoning and all requirements of Chapter 57;
- (4) The owners of the premises are current on all property taxes, assessments, and city utilities at the location of where the cannabis retail establishment will be located; and
- (5) The cannabis retail registration will not exceed the limit on the number of permitted cannabis retail business registrations set forth in section 57.22.

57.26 BASIS FOR DENIAL

The following shall be grounds for denying the issuance of retail registration or a renewal required under this chapter:

- (1) The cannabis retail business would exceed the maximum number of registered cannabis retail businesses permitted under Section 57.22. ~~The city shall process cannabis retail registration applications in the order in which the applications are received until the maximum number of registered cannabis retail businesses has been met.~~
- (2) The applicant does not have a valid license or license preapproval issued by the OCM.
- (3) The applicant fails to provide any information required on the application or provides inaccurate, false or misleading information.
- (4) The fee for the registration or registration renewal has not been paid.
- (5) The applicant's cannabis retail business does not comply with the requirements of this chapter, the Unified Development Code, and with the state fire code and building code.
- (6) The applicant's cannabis retail business operates in violation of any section of Minn. Stat. ch. 342.
- (7) The applicant's cannabis retail business made any sales with the city prior to issuance of a valid retail registration by the city pursuant to this chapter.
- (8) The applicant has otherwise failed a compliance check completed by the city.
- (9) No registration shall be granted or renewed for operation of a cannabis retail business on any premises on which taxes, assessments, service charges, or other financial claims of the city or of the state are delinquent. The City Council may, upon request by the applicant or licensee, waive strict compliance with this provision if the applicant or

licensee has contested their tax liabilities or other financial claims through a process permitted by federal or state regulations or by city ordinance; or is working out debt problems under the supervision of a bankruptcy court or pursuant to some other formal agreement. No waiver may be granted, however, if taxes or any portion thereof, remain unpaid for a period exceeding 1 year after becoming due.

57.27 FEES

- (a) *Registration fee.* A registration fee shall be charged to applicants depending on the type of retail business state license applied for by the applicant as set forth in Section 51.01. The initial retail registration fee shall not exceed \$500 or half the amount of an initial state license fee under Minn. Stat. 342.11, whichever is less. The initial registration fee shall include the initial retail registration fee and the first annual renewal fee.
- (b) *Renewal registration fee.* Any renewal retail registration fee imposed by the city as set forth in Section 51.01 shall be charged at the time of the second renewal and each subsequent renewal thereafter. A renewal retail registration fee shall not exceed \$1,000 or half the amount of a renewal state license fee under Minn. Stat. 342.11, whichever is less.
- (c) *Medical cannabis combination business.* A medical combination business operating an adult-use retail location may only be charged a single registration fee, not to exceed the lesser of a single retail registration fee, defined under this section, of the adult-use retail business.
- (d) *Fees generally.* Subject to the foregoing and applicable law, fees shall be in the amount(s) duly established by ordinance of the city council from time to time. Registration fees shall not be prorated for registrations issued for less than a full year.

57.28 PROHIBITED ACTS

It shall be a violation of this chapter for any person or cannabis retail business regulated under this chapter to violate any provisions of Minn. Stat. ch. 342 applicable to cannabis retail businesses, including, but not limited to the following:

- (1) To operate a state-licensed cannabis retail business within the corporate limits of the city or make any sale to a customer or patient without validly registering with the city.
- (2) To sell cannabis flower, cannabis products, lower-potency hemp edibles, or hemp-derived consumer products to a person who is visibly intoxicated.
- (3) To knowingly sell more cannabis flower, cannabis products, lower-potency hemp edibles, or hemp-derived consumer products than a customer is legally permitted to possess.
- (4) To give away immature cannabis plants or seedlings, cannabis flower, cannabis products, lower-potency hemp edibles, or hemp-derived consumer products.
- (5) To operate a drive-through window.

- (6) To allow for the dispensing of cannabis plants, cannabis flower, cannabis products, lower-potency hemp edibles, or hemp-derived consumer products in vending machines.
- (7) To sell cannabis plants, cannabis flower, or cannabis products if the cannabis retailer knows that any required security or statewide monitoring systems are not operational.
- (8) To permit an individual under 21 years of age to enter the business premises other than entry by a person enrolled in the registry program as defined by Minn. Stat. § 342.01, subd. 59.
- (9) To sell or give cannabis flower, cannabis products, lower-potency hemp edibles, or hemp-derived consumer products to an individual under 21 years of age unless the individual is a person enrolled in the registry program as defined by Minn. Stat. § 342.01, subd. 59 and the cannabis business holds a medical cannabis retail endorsement.
 - a. Age verification. Registered cannabis retail businesses must verify by means proof of age as described by state law in Minn. Stat. § 342.24, subd. 4 that the purchaser is at least 21 years of age.
- (10) To sell or give cannabis flower, cannabis products, lower-potency hemp edibles, or hemp-derived consumer products by any other means, to any other person, or in any other manner or form prohibited by federal, state, or other local law, ordinance, or other regulation.

57.29 MOVEABLE PLACE OF BUSINESS

No retail registration required under this chapter shall be issued to a moveable place of business. Only fixed-location cannabis retail businesses shall be eligible to be registered under this chapter.

57.30 ANNUAL COMPLIANCE CHECKS

- (a) Annual compliance checks. The city shall complete at minimum one compliance check per calendar year of every cannabis retail business with a valid retail registration to assess the business's compliance with age verification requirements in applicable law as well as compliance with this chapter, the Unified Development Code, the state fire code and building code, and all other applicable city ordinances.
- (b) Unannounced age verification compliance checks. Age verification compliance checks shall involve persons at least 17 years of age but under the age of 21 who, with the prior written consent of a parent or guardian if the person is under the age of 18, attempt to purchase adult-use cannabis flower, adult-use cannabis products, lower-potency hemp edibles, or hemp-derived consumer products under the direct supervision of a law enforcement officer or an employee of the city.
- (c) Compliance check failures. Any failures under this section shall be reported to the Office of Cannabis Management and constitute a violation of section 57.28 of this code.

(d) Other compliance checks. Nothing in this section shall prohibit compliance checks authorized by state or federal laws for educational, research, or training purposes or required for the enforcement of a particular state or federal law.

57.31 TERM

All registrations issued under this chapter must be renewed annually at the same time OCM renews the cannabis retail business's state license. In the event that OCM does not renew the license for any cannabis retail business subject to this chapter, the retail registration for that cannabis retail business shall terminate automatically without further action from the city.

57.32 RENEWAL

A state-licensed cannabis retail business shall apply annually to renew registration on a form established by the city pursuant to section 57.33. The applicant shall provide notice to the City Clerk of its intent to renew its state license and retail registration at least 30 days prior to submitting an application for a license renewal to the OCM and shall timely submit a renewal application to the city clerk when the OCM renews the cannabis retail business's state license. A cannabis retail registration issued under this chapter shall not be transferred.

57.33 RENEWAL APPLICATION

The application for renewal of a retail registration shall include, but is not limited to the items required under section 57.23 of this chapter. The renewal application shall not be deemed complete until the city has received the renewal fee required under section 57.27.

57.34 LOCATION CHANGE AND TRANSFERABILITY

Every retail registration issued under this chapter shall be valid only on the premises for which the registration was issued and only for the person to whom the registration was issued. No transfer of any registration to another location or person shall be valid. A state-licensed cannabis retail business shall be required to submit a new application for registration under Section 57.23 if it seeks to move to a new location still within the legal boundaries of the city. Retail registration fees shall not be prorated.

57.35 RESPONSIBILITY OF REGISTERED CANNABIS RETAIL BUSINESS

Every person issued a retail registration under this chapter shall be responsible for the actions of the registrant's employees in regard to the operation of the state-licensed cannabis retail business, and the sale of such items by an employee shall be considered a sale by the retail registration holder. Nothing in this section shall be construed as prohibiting the city from also subjecting the registered cannabis retail business's employee(s) to whatever penalties are appropriate under this chapter, state or federal law, or other applicable law or regulation for violations thereof.

57.36 DISPLAY OF REGISTRATION

Each retail registration issued under this chapter shall be posted/displayed in a conspicuous place in plain view of the general public on the premises of the cannabis retail business for which it is issued.

57.37 PENALTIES AND SUSPENSION

Every cannabis retail business registered pursuant to this chapter will be subject to suspension or revocation of their registration, or any other penalty as set forth in this chapter, or not renewed by the city council according to the procedures as provided in sections 57.04 and 57.05, for any of the following reasons:

- (1) Violation of any provision of this chapter.
- (2) One or more of the bases for denial of a retail registration under section 57.26 existing at the time the registration application was made or at any time before the registration was completed.
- (3) Other good cause related to violation of applicable ordinances, law and/or rules by the business in selling or furnishing products regulated under Minn. Stat. ch. 342.

Revocation of a retail registration shall be subject to OCM approval or corresponding enforcement actions by the OCM.

57.38 REGISTRATION CONDITIONS

Each retail registration issued under this chapter is subject to all of the following conditions:

- (1) The cannabis retail business must fully light the interior of the retail establishment during business hours.
- (2) The cannabis retail business must fully cooperate with representatives from the city when present at the retail establishment for city business purposes.
- (3) The cannabis retail business must maintain clean and clear front and rear entrances of the retail establishment.
- (4) The cannabis retail business must utilize security cameras in good working order pursuant to Minn. Stat. § 342.27, subds. 9 and 10.
- (5) The cannabis retail business must promptly remove any graffiti on the exterior of the retail establishment.
- (6) Individuals employed by a registered cannabis retail business must be at least 21 years of age.

57.39 HOURS OF OPERATION

Cannabis retail businesses may sell cannabis, cannabis flower, cannabis products, lower-potency hemp edibles, or hemp-derived consumer products only between the hours of 8:00 a.m. and 10:00 p.m. on the days of Monday through Saturday and between the hours of 10:00 a.m. and 9:00 p.m. on Sunday pursuant to Minn. Stat. § 342.27.

57.40 SMOKING IN CANNABIS BUSINESSES PROHIBITED

Pursuant to Minn. Stat. § 144.417 and Minn. Stat. § 342.28, subd. 10, a cannabis retail business with an on-site consumption endorsement may not permit adult-use cannabis flower, adult-use cannabis products, hemp-derived consumer products, or tobacco to be consumed through smoking or a vaporized delivery method on the premises.

57.41 ON-SITE CONSUMPTION WITHIN CANNABIS MICROBUSINESSES

- (a) Conditions. A cannabis microbusiness with an on-site consumption endorsement may permit on-site consumption of edible cannabis products and lower-potency hemp edibles if:
- (1) Premises. The portion of the premises in which on-site consumption is permitted must be definite and distinct from all other areas of the microbusiness and must be accessed through a distinct entrance.
 - (2) Products. The edible cannabis products and lower-potency hemp edibles sold for on-site consumption comply with Minn. Stat. ch. 342 and rules adopted pursuant to that chapter regarding the testing, packaging, and labeling of cannabinoid products.
 - (3) Packaging. The edible cannabinoid products and lower-potency hemp edibles sold for on-site consumption are served in the required packaging but may be removed from the products' packaging by customers for consumption on site.
 - (4) Food and drink. Food and beverages may be prepared and sold on site provided that the cannabis microbusiness complies with all relevant state and local laws, the Code, licensing requirements, and zoning requirements.
 - (5) Display. The display and consumption of any edible cannabis product or lower-potency hemp edible is not visible from outside of the licensed premises of the business.
 - (6) Entertainment. The cannabis microbusiness may offer recorded or live entertainment, provided that the cannabis microbusiness complies with all relevant state and local laws, ordinances, licensing requirements, and zoning requirements.
- (b) Prohibited acts for on-site consumption. A cannabis microbusiness with an on-site consumption endorsement may not:
- (1) Sell an edible cannabis product or a lower-potency hemp edible to an individual who is under 21 years of age.
 - (2) Permit an individual who is under 21 years of age to enter the premises.

- (3) Sell an edible cannabis product or a lower-potency hemp edible to a person who is visibly intoxicated.
- (4) Sell or allow the sale or consumption of alcohol or tobacco on the premises.
- (5) Sell products that are intended to be eaten or consumed as a drink, other than packaged and labeled edible cannabis products and lower-potency hemp edibles, that contain cannabis flower or hemp plant parts or are infused with cannabis concentrate, hemp concentrate, or artificially derived cannabinoids.
- (6) Permit edible cannabis products or lower-potency hemp edibles sold in the portion of the area designated for on-site consumption to be removed from that area.
- (7) Permit adult-use cannabis flower, adult-use cannabis products, hemp-derived consumer products, or tobacco to be consumed through smoking or a vaporized delivery method on the premises.
- (8) Distribute or allow free samples of cannabis flower, cannabis products, lower-potency hemp edibles, or hemp-derived consumer products.

57.42 ADVERTISING

Cannabis retail businesses are permitted to erect up to two fixed signs on the exterior of the building or property of the business subject to compliance and any other limits in the city code including the city's sign ordinance.

57.43 OTHER CONDITIONS FOR REGISTERED CANNABIS RETAIL BUSINESSES

In addition to the registration conditions required in section 57.38, each retail registration issued under this chapter for a cannabis retail business is subject to all of the following conditions:

- (1) The registered cannabis retail business must post signs in visible locations that prohibit loitering inside or near the front entrance of the retail establishment.
- (2) The sales counter, store entrance, and interior of the retail establishment shall be visually recorded with a videotape or similar device at a quality level that allows the visual identification of patrons and employees. The recordings shall be maintained and made available to the police for 15 days before being reused, erased or otherwise deleted.
- (3) The registered cannabis retail business must have the following notices posted:
 - a. a sign at the front entrance of the retail establishment that prohibits persons under the age of 21 from entering the retail establishment;
 - b. a statement that operating a motor vehicle under the influence of intoxicating cannabinoids is illegal;

- c. a statement that cannabis flower, cannabis products, lower-potency hemp edibles, and hemp-derived consumer products are only intended for consumption by individuals who are at least 21 years of age; and
 - d. information about any product recall.
- (4) The front windows of the retail establishment must be clear, untinted, and unobstructed.
- (5) Each day of business, the cannabis retail business must inspect the parking lot and entrances of the retail establishment for litter and properly dispose of such litter.

57.44. CITY AS CANNABIS RETAILER

- (1) The city may establish, own, and operate one municipal cannabis retail business subject to the restrictions in this chapter.
- (2) The municipal cannabis retail store shall not be included in any limitation of the number of registered cannabis retail businesses under section 57.22.
- (3) The city shall be subject to all of the same retail registration requirements and procedures applicable to all other applicants.

57.45—57.60 Reserved

LOWER-POTENCY HEMP EDIBLE RETAILER REGISTRATION

57.61 LOWER-POTENCY HEMP EDIBLES SALES PERMITTED WITH VALID REGISTRATION

The sale of lower-potency hemp edibles is permitted by lower-potency hemp edible retailers, subject to compliance with the retail registration requirements in this chapter and and the specific terms of sections 57.61 through 57.76 for a retail registration for a lower-potency hemp edible retailer.

57.62 REGISTRATION, FEES, AND RENEWAL

- (a) Initial application. The procedures for and content of an application for a retail registration for a lower-potency hemp edible retailer under this chapter shall be as provided in section 57.23 of this code.
- (b) Fees. Registration fees for a retail registration for a lower-potency hemp edible retailer shall be as provided in section 51.01.
- (c) Renewal Application. The procedures for and content of a renewal application for a retail registration for a lower-potency hemp edible retailer under this chapter shall be as provided in section 57.33 of this code.

57.63 TERM

All registrations issued under this chapter must be renewed annually at the same time OCM renews the lower-potency hemp edible retailer license. In the event that OCM does not renew the license for any lower-potency hemp edible retailer subject to this chapter, the retail registration for that the lower-potency hemp edible retailer shall terminate automatically without further action from the city.

57.64 BASIS FOR DENIAL

The following shall be grounds for denying the issuance of retail registration or a renewal required under this chapter:

- (1) The applicant does not have a valid license issued by the OCM.
- (2) The applicant fails to provide any information required on the application or provides inaccurate, false or misleading information.
- (3) The fee for the registration or registration renewal has not been paid.
- (4) The applicant's lower-potency hemp edible retail business does not comply with the requirements of this chapter, the Unified Development Code, and with the state fire code and building code.
- (5) The applicant's lower-potency hemp edible retail business operates in violation of any section of Minn. Stat. ch. 342.
- (6) The applicant has otherwise failed the compliance check completed by the city.
- (7) No registration shall be granted or renewed for operation of a lower-potency hemp edible retailer on any premises on which taxes, assessments, service charges, or other financial claims of the city or of the state are delinquent. The City Council may, upon request by the applicant or licensee, waive strict compliance with this provision if the applicant or licensee has contested their tax liabilities or other financial claims through a process permitted by federal or state regulations or by city ordinance; or is working out debt problems under the supervision of a bankruptcy court or pursuant to some other formal agreement. No waiver may be granted, however, if taxes or any portion thereof, remain unpaid for a period exceeding 1 year after becoming due.

57.65 RESPONSIBILITY OF LOWER-POTENCY HEMP EDIBLE RETAILERS

Every person issued a lower-potency hemp edible retail registration under this chapter shall be responsible for the actions of the registrant's employees in regard to the sale of lower-potency hemp edibles, and the sale of such an item by an employee shall be considered a sale by the registration holder. Nothing in this section shall be construed as prohibiting the city from also subjecting the registered retail business's employee(s) to whatever penalties are appropriate under this chapter, state or federal law, or other applicable law or regulation for violation thereof.

57.66 PROHIBITED ACTS

It shall be a violation of this chapter for any person or lower-potency hemp edible retailer regulated under this chapter to violate any provisions of Minn. Stat. ch. 342 applicable to hemp businesses, including, but not limited to the following:

- (1) To operate a state-licensed lower-potency hemp edible retail business within the corporate limits of the city or make any sale to a customer or patient without validly registering with the city.
- (2) To knowingly sell more lower-potency hemp edibles or hemp-derived consumer products than a customer is legally permitted to possess.
- (3) To sell lower-potency hemp edibles to individuals who are under 21 years of age.
 - a. *Age verification.* Lower-potency hemp edible retailers must verify by means proof of age as described by state law in Minn. Stat. § 342.24, subd. 4 that the purchaser is at least 21 years of age.
- (4) To sell lower-potency hemp edibles to a person who is visibly intoxicated.
- (5) To sell lower-potency hemp edibles:
 - a. *Between the hours of 2:00 a.m. and 8:00 a.m. on the days of Monday through Saturday.*
 - b. *Between the hours of 2:00 a.m. and 10:00 a.m. on Sundays.*
 - c. *Such sales shall be subject to further restriction for on-site consumption sales under section 57.68(b)(5).*
- (6) To sell cannabis flower, cannabis products, or hemp-derived consumer products.
- (7) To allow for the dispensing of lower-potency hemp edibles in vending machines.
- (8) To distribute or allow free samples of lower-potency hemp edibles, except when the business is licensed by the OCM to permit on-site consumption and samples are consumed within its licensed premises.
- (9) To sell or give cannabis flower, cannabis products, lower-potency hemp edibles, or hemp-derived consumer products by any other means, to any other person, or in any other manner or form prohibited by federal, state, or other local law, ordinance, or other regulation.

57.67 OTHER CONDITIONS FOR REGISTERED LOWER-POTENCY HEMP EDIBLE RETAILERS

- (a) *Notices.* Lower-potency hemp edible retailers must have the following notices posted:

- (1) A statement that operating a motor vehicle under the influence of intoxicating cannabinoids is illegal;
- (2) A statement that cannabis flower, cannabis products, lower-potency hemp edibles, and hemp-derived consumer products are only intended for consumption by individuals who are at least 21 years of age; and
- (3) Information about any product recall.

57.68 ON-SITE CONSUMPTION

- (a) Conditions. A lower-potency hemp edible retailer may permit on-site consumption of lower-potency hemp edibles if:
 - (1) The lower-potency hemp edible retailer has an on-site consumption endorsement issued by the OCM.
 - (2) The lower-potency hemp edible retailer holds an on-sale license issued under Minn. Stat. ch. 340A.
 - (3) Lower-potency hemp edibles that are intended to be consumed as a beverage are either served in their required packaging or outside of their packaging if the information that is required to be contained on the label of a lower-potency hemp edible is posted or otherwise displayed by the lower-potency hemp edible retailer.
 - (4) Lower-potency hemp edibles sold for on-site consumption, other than lower-potency hemp edibles that are intended to be consumed as a beverage, are served in the required packaging. The lower-potency hemp edible products may be removed from their packaging by customers and consumed on site.
- (b) Prohibited acts for on-site consumption. A lower-potency hemp edible retailer with an on-site consumption endorsement may not:
 - (1) Sell, give, furnish, or in any way procure for another lower-potency hemp edibles for the use of an obviously intoxicated person.
 - (2) Sell lower-potency hemp edibles that are designed or reasonably expected to be mixed with an alcoholic beverage.
 - (3) Permit lower-potency hemp edibles that have been removed from the products' packaging to be removed from the premises of the lower-potency hemp edible retailer.
 - (5) Lower-potency hemp edibles may not be sold for on-site consumption:
 - a. Between the hours of 1:00 a.m. and 8:00 a.m. on the days of Monday through Saturday.
 - b. Between the hours of 1:00 a.m. and 10:00 a.m. on Sundays.

57.69 PENALTIES AND SUSPENSION

The procedures for violations of this chapter by lower-potency hemp edible retailers and penalties shall be as provided in sections 57.04 and 57.05 of this code.

57.70 COMPLIANCE CHECKS

- (a) Preliminary inspection. The procedure for state licensing and preliminary inspection shall be as provided in section 57.24.
- (b) Annual compliance checks. The procedure for each annual compliance check shall be as provided in section 57.30.

57.71 DISPLAY OF REGISTRATION

Each retail registration issued to a lower-potency hemp edible retailer under this chapter shall be posted/displayed in a conspicuous place in plain view of the general public on the premises of the lower-potency hemp edible retailer for which it is issued.

57.72 ADVERTISING

Lower-potency hemp edible retailers are permitted to erect up to two fixed signs on the exterior of the building or property subject to compliance and any other limits in the city code including the city's sign ordinance.

57.73 STORAGE OF PRODUCT.

Lower-potency hemp edibles, other than lower-potency hemp edibles that are intended to be consumed as a beverage, must be displayed behind a checkout counter where the public is not permitted or in a locked case. All lower-potency hemp edibles that are not displayed must be stored in a secure area.

57.74 EDIBLE CANNABINOID PRODUCTS

Except as to any provision requiring retail registration, the requirements related to the operation of lower-potency hemp edible retailers as set forth in this chapter shall apply to any business registered with the state to sell edible cannabinoid products pursuant to Minn. Stat. § 151.72, subd. 5b. Upon conversion of an edible cannabinoid product registration under Minn. Stat. § 151.72, subd. 5b to a lower-potency hemp edible retailer license or the issuance of a lower-potency hemp edible retailer license in any other manner, the lower-potency hemp edible retailer license holder shall come into full compliance with this chapter and retail registration requirements.

§§ 57.75—57.90 Reserved.

TEMPORARY CANNABIS EVENTS

57.91 PERMIT REQUIRED

A temporary cannabis event permit is required to be issued and approved by the city prior to holding a temporary cannabis event. The cannabis event organizer must enter into a license agreement approved by the city council prior to holding a temporary cannabis event.

57.92 EVENT REGISTRATION AND APPLICATION FEE

An event registration permit fee, shall be charged to applicants for temporary cannabis events. Subject to applicable law, fees for temporary cannabis events under this chapter shall be in the amount(s) duly established by ordinance of the city council from time to time.

57.93 APPLICATION

The city shall require an application for temporary cannabis event permits. The application shall be submitted to the city clerk. If the city clerk or the city clerk's designee determines that a submitted application is incomplete, the city clerk shall return the application to the applicant with a notice of deficiencies.

- (1) An applicant for a temporary cannabis event permit shall fill out an application form, as provided by the city. This form shall include, but is not limited to the following contents:
 - a. Full name of the property owner and applicant;
 - b. Address, email address, and telephone number of the applicant; and
 - c. If the applicant is a corporation or any other type of business organization, the application shall also contain the names, addresses and respective percentage ownership interest of all of the owners of the corporation or business organization, provided however that if the number of owners exceeds ten persons only the ten owners having the largest percentage of ownership shall be listed.
- (2) The applicant shall include with the form:
 - a. The application fee as required in section 57.92;
 - b. A copy of the OCM cannabis event license application, submitted pursuant to Minn. Stat. § 342.39, subd. 2;
 - c. A depiction of any premises for which the applicant seeks approval from the city to designate as an area for on-site consumption of adult-use cannabis flower, adult-use cannabis products, lower-potency hemp edibles, hemp-derived consumer products, or any combination thereof. The city reserves the right to deny any application for on-site consumption at a temporary cannabis event with or without denial of the application for the temporary cannabis event in its entirety; and
 - d. A certificate of insurance evidencing a valid liability and property damage insurance policy protecting the licensee, filed with the city clerk, and naming the city as an additional insured in an amount not less than the maximum liability limits for a municipality as provided in Minn. Stat. §. 466.04.
- (3) Once an application is considered complete, the city clerk shall inform the applicant as such, process the application fees, and forward the application to city council for approval or denial.
- (4) The application fee shall be non-refundable once processed.

57.94 LOCATIONS PERMITTED

Temporary cannabis events shall be held on non-residential zoning districts except for events on City owned property as permitted by the City Council. Cannabis events in the Agricultural/Natural Resource zoning district shall only occur on properties approved for cannabis businesses or on City owned property as permitted by the City Council.

57.95 OPERATING HOURS OF EVENTS

Temporary cannabis events shall only be held between the hours of 10:00 a.m. and 1:00 a.m., provided the cannabis event organizer complies with the city's noise regulations.

57.96 ON-SITE CONSUMPTION

On-site consumption of cannabis flower, cannabis products, lower-potency hemp edibles, hemp-derived consumer products, or any combination of those items, if approved by the city, must be limited to the designated area approved by the city and, if located in an outdoor area, must be surrounded by commercial grade fencing.

57.97 BASIS FOR DENIAL

A request for a temporary cannabis event permit that does not meet the requirements of this chapter or raises public health, safety, or welfare concerns shall be denied. The city shall notify the applicant of the standards not met and basis for denial.

57.98 SOCIAL HOST

- (a) Purpose and findings. The purpose and findings contained in section 55.19 of this code related to discouraging underage possession and consumption of alcohol equally apply to cannabis product and are incorporated herein by reference, except that where the term "alcohol" is used therein, it is replaced with the term "cannabis product" for purposes of this section 57.98.
- (b) Definitions. In addition to the definitions provided in section 57.02 of this chapter, the definitions contained in section 55.19 of this code, except for the terms "alcohol" and "alcoholic beverages" are incorporated in this section 57.98 by reference.
- (c) Prohibited acts. It is unlawful for any person to host or allow any event or gathering at any residence, premises, or on any other private or public property, where any form of cannabis product is present, when the person knows or reasonably should know that an underage person will or does:
- (1) Consume any form of cannabis product; or
 - (2) Possess any form of cannabis product with the intent to consume it and the person fails to take reasonable steps to prevent possession or consumption by the underage person.
- (b) Criminal liability. A person is criminally responsible for violating this section if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures another

to commit the prohibited act. A person who hosts an event or gathering does not have to be present at the event or gathering to be criminally responsible.

(c) Exceptions. This section shall not apply to: conduct solely between an underage person and their parent/guardian while present in the parent/guardians household; legally protected religious observances; or situations where underage persons are lawfully in possession of any form of cannabis product during the course and scope of employment.

(d) Enforcement. This section can be enforced by any licensed police officer. A violation of this section is a misdemeanor.

57.99—57.105 Reserved

SECTION 3. That this ordinance shall take effect upon its passage and publication.

Passed by the City Council of the City of Winona, Minnesota, this ____ day of _____, 2024.

Mayor

Attested By:

City Clerk

SUMMARY PUBLICATION OF CITY OF WINONA ORDINANCE NO. 4270

AN ORDINANCE AMENDING WINONA CITY CODE, CHAPTER 51 – LICENSES AND PERMITS AND SERVICE CHARGES OF THE CITY, AND ADDING A NEW CHAPTER 57 – REGULATION OF CANNABIS AND HEMP RETAIL BUSINESSES AND TEMPORARY CANNABIS EVENTS

SUMMARY: Ordinance No. 4270 amends Winona City Code, Chapter 51 – License and Permits and Service Charges of the City, Section 51.01, fees and charges established, by amending the classes and fees for cannabis and hemp businesses, and adds a new Chapter 57 – Regulation of Cannabis and Hemp Retail Businesses and Temporary Cannabis Events.

The complete text of Ordinance No. 4270 may be obtained at no charge from the City Clerk at City Hall, 207 Lafayette Street, Winona MN 55987, or from the City of Winona website www.cityofwinona.com.

Passed by the City Council of the City of Winona, Minnesota, this ____ day of _____, 2024.

Mayor

Attested By:

City Clerk



Agenda Report

Regular City Council – December 16, 2024

Item Number: 5.1

Title

2025 Minnesota City Participation Program

Originating Department: Community Development
Presenter(s): Austin Klein, Community Development Specialist

Action Requested

Adopt the attached resolution to authorize the Mayor and City Clerk to execute the Commitment Agreement.

Background

The Community Development Department has the opportunity to apply for the 2025 Minnesota City Participation Program (MCP) through Minnesota Housing. The program uses a State Tax Exempt Housing Bond authorized by the Office of Minnesota Management and Budget to enable local financial institutions throughout Minnesota to provide first-time homebuyer loans in their communities. The Community Development Department would submit the application during the acceptance period of January 2 to January 15, 2025. Allocations are based on the number of applications received by Minnesota Housing and a community's population. Allocations will be announced in February of 2025. The 2025 MCP agreement would commence on January 16, 2025, and shall continue through November 30, 2025.

The MCP offers affordable, fixed-rate mortgages through local financial institutions. If awarded, these funds will be available to lenders for first-time homebuyers in the City of Winona. Qualified first-time homebuyers earning up to 80% of Area Median Income, based on family size, may be eligible to receive down payment and closing cost assistance up to \$18,000. Funds may be used for the purchase of a new or existing home, with a current purchase price limit of \$604,400.

Local lenders have shown great enthusiasm and interest in making the MCP successful for first-time home buyers in Winona. The table below shows past and current performance of Minnesota Housing Homebuyer programs in the City of Winona.

YEAR	ALLOCATED AMOUNT	COMMITTED LOAN AMOUNTS	NUMBER HOMEBUYER LOANS
2021	\$393,832	\$4,963,677	33
2022	\$430,841	\$2,398,368	17
2023	\$453,317	\$4,115,427	26
2024	\$470,217	\$3,304,220	20

Financial institutions submit mortgage applications directly to Minnesota Housing for the MCP. The role of the Community Development Department is to promote the program to our local lenders, potential first-time homebuyers, and to provide a list of participating lenders to

interested homebuyers. The Community Development Department also partners with Three Rivers Community Action and SEMMCHRA to promote first-time homebuyer education workshops.

Staff recommends the approval of the 2025 Minnesota City Participation Program Application. If Council concurs, a motion to approve the attached resolution would be appropriate and to authorize the Mayor and City Clerk to execute the attached Program Application Commitment Agreement.

Budget Impact

None

Attachments

- Resolution
- Program Application
- Commitment Agreement

Staff Contact: Austin Klein

RESOLUTION

WHEREAS, local financial institutions are interested in the Minnesota Housing’s Minnesota City Participation Program (MCP) funds for first time homebuyers; and

WHEREAS, the City has the ability to support the program by approving this resolution.

BE IT RESOLVED, the City Council of the City of Winona, Minnesota, hereby approves the 2025 MCP application through Minnesota Housing which will enable the City to obtain an allocation of funds for local lenders to utilize in assisting qualified first-time home-buyers.

BE IT FURTHER RESOLVED, the City Council of the City of Winona, Minnesota, hereby approves to accept the allocated award, and for the Mayor and City Clerk to execute the Program Application Commitment Agreement.

Dated this _____ day of _____, 2024.

Scott D. Sherman
Mayor

Attest:

Monica Hennessy Mohan
City Clerk

Minnesota Housing 2025 Minnesota City Participation Program (MCP) Application

Minnesota Housing must receive your application by email between January 2-15, 2025 at 5:00

Please provide all the information below.

Agency Contact Information

Agency Name: City of Winona

Contact Person: Austin Klein

Mailing Address: 207 Lafayette Street PO Box 378 Physical Address: 207 Lafayette Street

City: Winona State: MN Zip: 55987 Website: www.cityofwinona.com

Phone #: 507-457-8250 E-Mail: aklein@winonamn.gov

Administrative Information

1. Check agency type: City City HRA/CDA/EDA County HRA/ Port Authority
 Multi-County HRA: Receive single allocation for all counties within your jurisdiction
 Consortium of local government units applying jointly by agreement (please submit evidence of agreement with this application, even if you provided one in previous years).

2. List the legal name(s) of all cities and counties where the funds will be utilized. For county and multicounty applications, only list the counties.

The City of Winona

3. Check the box below to confirm this statement:

MCP helps the community meet an identified housing need and the program is economically viable.

4. Does your City (or County) offer a down payment program or other homeownership assistance?

Yes No

If yes, list program names (For informational purposes only; does not impact your application status):

Signature

Provide authorized signature(s) from the organization submitting this application, including printed or typewritten name, title and phone number. Scan original and email application to mn.housing@state.mn.us

(Original not needed).

Austin Klein

Signature

Austin Klein

Community Development Specialist

Name (Print)

Title

Phone number or check here if same as above.

E-mail or check here if same as above.

Program and Contact Information

Minnesota Statute sets Borrower Income Limits and House Purchase Price Limits. Minnesota Housing makes final determinations of the total amount of program funds available and individual allotments (in compliance with a per capita distribution method specified in statute).

Questions about MCP or this application? Contact Greg Krenz at (651)297-3623 or greg.krenz@state.mn.us

**MINNESOTA HOUSING FINANCE AGENCY
MINNESOTA CITY PARTICIPATION PROGRAM**

**PROGRAM APPLICATION
COMMITMENT AGREEMENT**

THIS APPLICATION AND AGREEMENT (this "Agreement") is between City of Winona with its office at 207 Lafayette Street, Room 210, Winona, MN 55987 and Minnesota Housing Finance Agency ("Minnesota Housing"), with its office at 400 Wabasha Street North, Suite 400, St. Paul, MN 55102.

RECITALS:

A. Minnesota Housing, under the provisions of Minn. Stat. §474A.061, Subd. 2a is authorized to issue qualified mortgage bonds, as that term is used in the Internal Revenue Code of 1986, as amended (the "Code"), on behalf of the City, and it will issue bonds for that purpose (the "Bonds").

B. The City applying to participate is a Minnesota city, county, city or county housing and redevelopment authority, economic development authority, port authority or a consortium of local government units, as defined by Minnesota Statutes §474A.061, Subd. 2a(c).

C. Minnesota Housing has implemented Minnesota Housing Finance Agency Minnesota City Participation Program (the "Program") and will use the proceeds from the issuance of the Bonds to fund the Program.

D. The City has requested and received a set-aside of funds from the Program.

E. The City wishes to obtain a commitment by Minnesota Housing to direct Minnesota Housing's designated Master Servicer (the "Master Servicer") to purchase mortgage notes ("Mortgages") that will be originated by a lender or lenders that meet Minnesota Housing requirements for participation in programs funded by qualified mortgage bonds (collectively, the "Lender").

F. Mortgages that the Master Servicer purchases pursuant to the commitment requested by the City must only be for residences located within a geographic area to be established and designated by the City.

G. Minnesota Housing is willing to issue a commitment agreeing to purchase Mortgage-Backed Securities backed by Mortgages that are (i) originated by the Lender; (ii) purchased by the Master Servicer; (iii) in accordance with the terms and conditions of this Agreement, the Program, and the Start Up Procedural Manual to be supplied by Minnesota Housing (the "Procedural Manual"), the provisions of which are hereby incorporated by reference into this Agreement as if set forth in full herein; and (iv) made to borrowers with adjusted incomes not exceeding the greater of 80 percent of statewide or area median income as calculated by Minnesota Housing.

NOW, THEREFORE, in consideration of the covenants contained in this Agreement, Minnesota Housing and the City agree as follows:

1. **City Requirements.** All Mortgages submitted to Minnesota Housing for purchase under the Program must comply with all of the requirements of the Program, the Start Up Procedural Manual and this Agreement.

2. **Commitment and Commitment Amount.** The City, which applied in January 2025 for a commitment, hereby requests that Minnesota Housing cause its Master Servicer to purchase Mortgages that have been originated by the Lender and meet the requirements of, and are made in accordance with the provisions of, this Agreement, the Program, and the Procedural Manual. Minnesota Housing, by accepting this Agreement, commits to the purchase of those Mortgages in the aggregate principal amount (the "Commitment Amount") to be determined and allocated

by Minnesota Housing in accordance with Minnesota Statutes §474A.061, Subd. 2a(d), and provided to the City.

The Master Servicer will only purchase Mortgages pursuant to this Agreement securing property that, and borrowers who, satisfy the requirements and provisions of this Agreement, the Program, and the Procedural Manual. The City acknowledges that the commitment is effective upon the approval thereof by Minnesota Housing and the delivery of a copy of this Agreement by Minnesota Housing to the City.

3. **Lender Qualifications.** Lenders must meet Minnesota Housing requirements for participation in programs funded by qualified mortgage bonds.

4. **Commitment Term.** The term of this Agreement and the City's participation in the Program (the "Commitment Term") will commence on January 16, 2025 and shall continue through November 30, 2025. This Agreement, and the City's participation in the Program, will automatically terminate, without the need for any action by either party hereto, at the end of the Commitment Term.

5. **Set-Aside Term.** The Commitment Amount will be set-aside and held by Minnesota Housing for the sole use by the City for a period of time to be established by Minnesota Housing, in its sole option and discretion, provided, however, that time period will not be less than six months (the "Set-Aside Term") commencing on a date to be selected and specified by Minnesota Housing. Minnesota Housing will notify the City in writing of the date on which the Set-Aside Term commences.

Any portion of the Commitment Amount not reserved for the purchase of qualifying Mortgages as of the end of the Set-Aside Term shall be canceled and returned to Minnesota Housing for redistribution under the Program. In addition, any portion of the Commitment Amount reserved for Mortgages that are not delivered to the Master Servicer for purchase within the time period delineated in the Procedural Manual for that purchase, will be canceled and Minnesota Housing will redistribute that amount under the Program. Minnesota Housing may make any funds available to the Program at the end of the Commitment Term for mortgage loans that are eligible to be financed with proceeds of the Bonds.

6. **Commitment Fees.** There is no commitment fee payable by the City for the commitment by Minnesota Housing to the purchase by the Master Servicer of qualifying Mortgages.

7. **Purchase Price.** The purchase price of each Mortgage to be purchased by the Master Servicer pursuant to this Agreement will be as set forth in the requirements of the Procedural Manual and posted on Minnesota Housing's website.

8. **Mortgage Terms.** The terms and conditions for all Mortgages, including but not limited to the interest rate, will be set from time to time by Minnesota Housing, at its sole option and discretion, and communicated to the Lender in accordance with the procedures set forth in the Procedural Manual.

9. **Area Limitation.** Minnesota Housing, pursuant to this Agreement, is required to purchase only those Mortgages that are for residences located within a geographic area to be established and designated by the City.

10. **Servicing.** The servicing of Mortgages shall be the sole responsibility of the Master Servicer or one or more other entities that Minnesota Housing may designate in its sole discretion.

11. **Contract Documents.** The purchase by the Master Servicer of each Mortgage pursuant to Minnesota Housing's commitment is a contract consisting of this Agreement and the provisions and requirements contained in the Procedural Manual, with all amendments and supplements thereto in effect as of the date of Minnesota Housing's acceptance of this Agreement.

12. **Paragraph Captions and Program Headings.** The captions and headings of the paragraphs of this Agreement are for convenience only and will not be used to interpret or define the provisions thereof.

13. **Applicable Law.** This Agreement is made and entered into in the State of Minnesota, and all questions relating to the validity, construction, performance and enforcement hereof will be governed by the laws of the State of Minnesota.

14. **Agreement Conditional Upon Minnesota Housing Approval.** This Agreement will be a binding obligation of Minnesota Housing upon its execution by Minnesota Housing and delivery of a copy of the same to the City; provided, however, Minnesota Housing may, in its sole option and discretion, any time on or after January 16, 2025 revoke such obligation and terminate this Agreement if the City has not fully executed and returned a fully executed original hereof to Minnesota Housing. That revocation and termination will be accomplished and evidenced by Minnesota Housing notifying the City thereof by way of a “Certified Letter - Return Receipt Requested” addressed and delivered to the City. Upon revocation and termination this Agreement will be null and void and of no force or effect.

15. **Issuance of Bonds.** The City hereby authorizes Minnesota Housing to issue, on behalf of the City, qualified mortgage bonds, as that term is used in the Code, in an amount equal to the Commitment Amount, and Minnesota Housing agrees to issue those bonds if and when federal law authorizes and Minnesota Housing deems it is economically feasible to do so.

(THE REMAINING PORTION OF THIS PAGE IS INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the City has executed this Agreement this _____ day of
(Day)

_____, _____
(Month) (Year)

By: _____
(Signature of Authorized Officer)

(Name of Authorized Officer)

By: _____
(Signature of Authorized Officer)

(Name of Authorized Officer)

Minnesota Housing APPROVAL

Minnesota Housing hereby accepts the above Program Application-Commitment Agreement and approves and grants participation in the program.

MINNESOTA HOUSING FINANCE AGENCY

By: _____
Kayla Schuchman

Its: Assistant Commissioner, Single-Family Division

Signed this _____ day of _____, 2025



Agenda Report

Regular City Council – December 16, 2024

Item Number: 5.2

Title

Workforce Housing Development Loan Agreement

Originating Department: Community Development
Presenter(s): Nick Larson, Community Development Coordinator

Action Requested

Approve the agreement and authorize the Mayor and City Clerk to execute it.

Background

On April 1, 2024, by resolution, the City Council approved Community Development staff to apply to MHFA for funding through their Workforce Housing Development Program to support Mr. Sanchez's redevelopment project of 14 workforce housing rental units at 971 W. Fifth Street.

The Workforce Housing Development Program offers \$2 of State funds for every \$1 of "local match". Funds are considered "local match" if the funds come from a unit of government, business, non-profit organization, or a federally recognized Indian Tribe.

On March 14, 2024, the Port Authority approved a \$149,000 loan to be utilized as "local match" for the City's Workforce Housing Development Program application. The \$149,000 Port loan would be matched up to \$298,000 from the Workforce Housing Development Program. The Port Loan was contingent on the City of Winona's application being selected for funding through the Workforce Housing Development Program.

The State loan is structured as a 3-year deferred loan at 0% interest. The \$298,000 loan is forgiven provided the project is completed within the 3-year period and the guidelines of the program are complied with. The loan from the State to the City was executed on December 3, 2024.

The agreement presented this evening is to assure the developer is responsible to reimburse the City for any funds that must be repaid to MHFA. This would occur only in a situation of default.

Budget Impact

None. The City receives funding from MHFA, and the City loans the funds to the developer for eligible construction costs.

Attachments

Loan Agreement

Staff Contact: Nick Larson

**LOAN AGREEMENT
WORKFORCE HOUSING DEVELOPMENT PROGRAM**

THIS LOAN AGREEMENT (the “Loan Agreement”) is made and entered into as of this ___ day of _____, 20__ by and between the City of Winona, a municipal corporation under the laws of the State of Minnesota, 207 Lafayette Street, Winona, Minnesota, 55987 (the “Lender” or “City”) and Christopher D. Sanchez, an individual, 121 Wildwood Drive, Winona, Minnesota 55987 (the (“Recipient”); (collectively the “parties”).

Recitals

1. The Lender has applied to the Minnesota Housing Finance Agency (“MHFA”) for a Workforce Housing Development Program Deferred Loan (the “Program Deferred Loan”) pursuant to an application (the “Workforce Housing Development Program Application”) and received approval for the Program Deferred Loan; and
2. The Program Deferred Loan Agreement between MHFA and the Lender has been executed allowing the Lender to receive the funds by which Lender may make a loan to Recipient as provided in this Loan Agreement; and
3. The Lender has entered into the Program Deferred Loan Agreement with MHFA solely for the purpose of acting as a conduit to use the proceeds thereof from MHFA to make this Loan to Recipient using such loan proceeds as received from MHFA, and the Lender would not have entered into such Agreement but for Recipient’s commitment to construct the Project as defined herein; and
4. Based on these recitals and the terms and conditions contained in this Loan Agreement, in order to make this Loan to Recipient, the Lender requires the Recipient to agree to the terms of the Program Deferred Loan and the MHFA Deferred Loan Agreement between Lender and MHFA; and
5. The parties hereto agree that the terms and conditions contained in the Program Deferred Loan Agreement between the MHFA and the Lender, dated December 3, 2024 (the “Program Deferred Loan Agreement”) and the MHFA Program Guide are incorporated herein and made a part hereof by reference, and that the Recipient agrees to and shall abide by and at all times be in compliance with the same during the Term of this Loan Agreement; and
6. Recipient and Lender wish to set forth the terms and conditions upon which Lender will make the Loan under this Loan Agreement to Recipient.

NOW THEREFORE, it is agreed by and between the parties hereto as follows:

**ARTICLE 1
Definitions**

Section 1.1. **Definitions.** In this Loan Agreement, unless a different meaning clearly appears from

the context, the following terms shall have the meanings ascribed to them below:

“Bank” means WNB Financial.

“City” means the City Winona.

“County” means Winona County.

“Construction Period” means the effective date of the Program Deferred Loan Agreement and continues through the later of January 1, 2028, or any extension of this period agreed to in writing by MHFA and the Lender and constitutes the period in which the Recipient is required to construct and complete the Project.

“Development Property” means the real property located at 971 W. Fifth Street, Winona, MN 55987 and legally described in Exhibit A, which is attached hereto and incorporated herein by reference, upon which the Recipient is required to construct and complete the Project during the Construction Period.

“Effective Date” means the date this Loan Agreement is fully executed by Lender and Recipient.

“Initial Disbursement Date” means the date of the first disbursement of any Loan Proceeds by the Lender to the Recipient.

“Loan” means the Program Funds provided by the Program to the Lender by MHFA pursuant to the Program Deferred Loan Agreement in the amount of up to \$298,000 by which such sum as received by Lender from MHFA is loaned hereby by the Lender to the Recipient pursuant to this Loan Agreement.

“Loan Documents” means this Loan Agreement, the Promissory Note, Borrower’s Affidavit, and the Personal Guaranty.

“Loan Proceeds” means the proceeds of the Loan disbursed to the Recipient by Lender in the amount up to \$298,000 based on the amount received by Lender from MHFA and as subsequently loaned to Recipient by Lender pursuant to this Loan Agreement.

“Matching Funds” means the \$149,000 loan provided as matching funds for the Project by the Port Authority of Winona to the Recipient.

“MHFA” means State of Minnesota Housing Finance Agency.

“Other Project Funds” means all funds required to complete the Project and provided by the Recipient.

“Program” means the MHFA Workforce Housing Development Program established by Minn. Stat. § 462A.39 and administered by MHFA.

“Program Funds” means the Program Deferred Loan made by MHFA to Lender in an amount

up to \$298,000 pursuant to the Program Deferred Loan Agreement and which funds are to be used by Lender to make this Loan to Recipient pursuant to this Loan Agreement.

“Program Deferred Loan Agreement” means the MHFA Deferred Loan Agreement between MHFA and the Lender attached hereto and incorporated herein by reference as Exhibit B.

“Program Deferred Loan” means the award of funds by MHFA to the Lender pursuant to the Program Deferred Loan Agreement.

“Program Guide” means the MHFA Workforce Housing Development Program Guide attached hereto and incorporated herein by reference as Exhibit D.

“Project” means the new construction of a 14-unit market-rate apartment building by the Recipient during the Construction Period to be located at 971 W. Fifth Street, Winona, MN 55987. The Project sources of funding are attached hereto and incorporated herein by reference as Exhibit C.

“Promissory Note” means a legal document that represents the Recipient’s promise to repay this Loan in the event of default of the terms and conditions hereof, including but not limited to if the Recipient uses the Loan Proceeds on ineligible costs or causes the Lender to become non-compliant with the terms of the Program Deferred Loan Agreement and/or the Program Guide.

“Qualified Expenditures” means the acquisition of property and/or construction of Project improvements by the Recipient during the Construction Period pursuant to this Loan Agreement.

“State” means the State of Minnesota.

ARTICLE 2

Loan, Use of Proceeds and Conditions of Repayment

Section 2.1. **Deferred Loan.** The Lender agrees on the terms and subject to the conditions herein set forth, to make a Loan to the Recipient in an aggregate principal amount not to exceed \$298,000 for the Project. The obligation of the Recipient to repay the Loan shall be evidenced by the Promissory Note. The Recipient’s obligations under this Loan Agreement are expressly contingent on the Lender’s receipt of the Program Deferred Loan Program Funds from MHFA in an amount adequate to make the Loan to Recipient.

Section 2.2. **Other Project Funds.** The Recipient has secured a commitment for the private financing necessary to complete the Project, in a form and under conditions satisfactory to the Bank and Lender.

(a) The Recipient shall commit not less than \$0 of equity and not less than \$1,888,338 of other private financing for the completion of the Project.

(b) Other Project Funds described in the Workforce Housing Development Program Application must be used on Qualified Expenditures as defined in the Program Guide.

Section 2.3. Loan Terms. FORGIVABLE LOAN: The Loan shall be forgiven by the Lender and MHFA upon satisfaction by the Recipient of the terms of this Loan Agreement, the Program Deferred Loan Agreement, and the Program Guide. In the event the Loan is not forgiven, the Loan shall be repayable as set forth in this Loan Agreement. The Loan terms may not be modified without prior written approval from MHFA.

Section 2.4. Early Repayment. The Promissory Note may be prepaid in whole or in part at any time without penalty. A prepayment shall first be applied against any accrued interest, and then against any outstanding and past due payments which are due and owing hereunder or under the Loan Agreement, and then the remaining portion of such prepayment shall be applied against the remaining outstanding and unpaid principal balance.

Section 2.5. Maintenance and Operation of the Project. As long as any portion of this Loan is still outstanding, Recipient shall maintain and operate the Project and use the Loan Proceeds in compliance with the terms of Program Guide, the Program Deferred Loan Agreement, this Loan Agreement, and all applicable federal, state and local laws, regulations and ordinances, including but not limited to all environmental laws and regulations.

Article 3 Conditions of Lending

Section 3.1. Condition Precedent to Any Advance. The obligation of the Lender to close the Loan and disburse the Loan Proceeds thereof to Recipient shall, subject to receipt by the Lender of the Program Funds from MHFA following full execution MHFA Program Deferred Loan Agreement and be subject to the condition precedent that the Lender shall have received on or before the date of such closing the Loan Documents fully executed by the Recipient and Lender as applicable.

Section 3.2. Further Conditions Precedent to Disbursement. The obligation of the Lender to disburse the Loan Proceeds shall also be subject to the following conditions precedent:

(a) The Loan which is being made to the Recipient shall be consistent with the provisions of the Program and be in compliance with the Program Deferred Loan Agreement, Program Guide and this Loan Agreement.

(b) No Event of Default hereunder or event which would constitute such 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.

Section 3.3. Disbursement and Deposit of Loan Proceeds. The Recipient may request up to one-third of awarded Program Funds upon execution of this Loan Agreement and the execution of the Deferred Loan Agreement between MHFA and the Lender. The Recipient may request an additional one-third of Program Funds no sooner than the commencement of Project construction or at the time when a building permit is issued, and invoices and proof of payment for items funded by this Loan Agreement, Matching Funds, and Other Project Funds are submitted to and approved by the Lender. The Recipient may request the remaining balance of Program Funds at the completion of the Project when the Certificate of Occupancy has been issued by the City of

Winona Inspections Division and as approved by MHFA. The Recipient shall provide identifying information for the Qualified Expenditures prior to final one-third disbursement of Program Funds in accordance with the Program Guide.

Upon the execution of this Loan Agreement and the satisfaction of all the conditions specified in Article 6, the Lender shall disburse Loan Proceeds to the grantee as described in Section 3.3.

Section 3.4. **Termination.** This Loan Agreement shall automatically terminate without any notice to Recipient:

(a) If no Loan Proceeds have been disbursed to the Recipient at the expiration of the Construction Period; or

(b) If the Recipient fails to pay its debts as they become due, makes an assignment for the benefit of its creditors, admits in writing its inability to pay its debts as they become due, files a petition under any chapter of the Federal Bankruptcy Code or any similar law, state or federal, now or hereafter existing, becomes "insolvent" as that term is generally defined under the Federal Bankruptcy Code, files an answer admitting insolvency or inability to pay its debts as they become due in any involuntary bankruptcy case commenced against it, or fails to obtain a dismissal of such case within sixty (60) days after its commencement or convert the case from one chapter of the Federal Bankruptcy Code to another chapter, or is the subject of an order for relief in such bankruptcy case, or is adjudged a bankrupt or insolvent, or has a custodian, trustee, or receiver appointed for it, or has any court take jurisdiction of its property, or any part thereof, in any proceeding for the purpose of reorganization, arrangement, dissolution, or liquidation, and such custodian, trustee, or receiver is not discharged, or such jurisdiction is not relinquished, vacated, or stayed within sixty (60) days of the appointment.

Section 3.5. **Return of Funding.** Any awarded Program Funds disbursed to the Recipient and not used to pay for Qualified Expenditures within the Construction Period, as determined at the discretion of the Lender and/or MHFA, must be immediately returned to MHFA upon request. Any awarded Program Funds returned or repaid to the Lender from the Recipient must be immediately returned to MHFA

ARTICLE 4

Acknowledgments, Incorporation, Representations, and Warranties

Section 4.1. **Acknowledgments/Incorporation.**

(a) The Recipient acknowledges that the Lender, in order to obtain the Program Funds for part of the Recipient's activities in connection with the Project, has applied for the Program Deferred Loan to the State under the Workforce Housing Development Program through MHFA and that the Lender has entered into the Program Deferred Loan Agreement with MHFA attached as Exhibit B, setting forth the terms, conditions, and requirements of this Loan for the sole purpose of making this Loan, and but for Recipient's request for such Loan the Lender would not have proceeded with such Program Deferred Loan Agreement. The Recipient further acknowledges that Recipient has made certain representations and statements in the Workforce Housing Development Program Application concerning its activities relating to the

Project to induce Lender to proceed accordingly with this Loan Agreement, and that the Recipient is designated and identified in the Workforce Housing Development Program Application.

(b) Under the Program Deferred Loan Agreement, the Lender has undertaken certain obligations with respect to, and among other things, repayment to MHFA of the Program Funds in the event certain conditions are not met. A copy of the Program Deferred Loan Agreement, and this Loan Agreement shall be on file in the offices of the Lender. In the event any provision of this Loan Agreement relating to the Recipient's obligations hereunder is inconsistent with the provisions of the Program Deferred Loan Agreement relating to the Recipient's activities thereunder, the provisions of the Program Deferred Loan Agreement and Program Guide shall prevail, in that order.

(c) The Recipient acknowledges that nothing contained in the Program Deferred Loan Agreement or this Loan Agreement, nor any act of MHFA or the Lender, shall be deemed or construed to create between MHFA and the Recipient (or, except as Recipient and Lender between the Lender and the Recipient) any relationship, including but not limited to that of third party beneficiary, principal and agent, limited or general partnership, or joint venture. As such, the Recipient agrees to hold the State and Lender harmless from any claim, demand, suit, action, or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from this Loan Agreement, any events related to the Project or the Recipient's participation in this Loan, or Recipient's activities on the Development Property.

Section 4.2. Representations and Warranties. The Recipient warrants and represents, in connection with this Loan and for the benefit of the State and the Lender, that:

(a) Recipient is in good standing under the laws of the State of Minnesota and is authorized to enter into this Loan Agreement and perform any of the acts required herein.

(b) Recipient has the legal authority and is duly authorized to construct and operate the Project, to incur the indebtedness of the Promissory Note and to perform its obligations under this Loan Agreement, to execute and deliver the Loan Documents to which Recipient is a party and Recipient has taken all actions necessary and incident to Recipient's execution and delivery of the Loan Documents.

(c) Recipient's execution and delivery of the Loan Documents to which Recipient is a party, and its incurrence of the Loan does not violate any provision of law.

(d) The Promissory Note was duly and validly authorized, executed and delivered, and it constitutes the legal, valid and binding obligation of the Recipient enforceable in accordance with its terms. The Loan Documents to which Recipient is a party, have been duly and validly authorized, executed and delivered, and are the legal, valid and binding obligations of the Recipient enforceable against the Recipient in accordance with their respective terms, except to the extent the enforceability thereof may be limited by bankruptcy, insolvency or other law affecting creditor's rights, or the application of equitable principles generally.

(e) Recipient is not in violation of any provisions of the laws of local governments,

State of Minnesota or U.S. Government, and there are no actions, suits or proceedings pending, or to Recipient's knowledge threatened, before or by any judicial body or governmental authority, against or effecting Recipient, and Recipient is not in default with respect to any order, writ, injunction, decree, or demand of any court or any governmental authority which would impair Recipient's ability to enter into this Loan Agreement or to perform any of the acts required of Recipient in the Loan Documents to which Recipient is a party.

(f) Neither the execution and delivery of the Loan Documents to which Recipient is a party, nor compliance with any of the terms, conditions, requirements or provisions contained herein or in such referenced documents, is prevented by, is a breach of, or will result in a breach of any term, condition or provision of any agreement or document to which Recipient is now a party or by which it is bound.

(g) Recipient will maintain adequate capital for the proper operation and administration of its duties under this Loan Agreement.

(h) Representations, statements, and other matters provided by the Recipient relating to those activities of the Project to be completed by the Recipient on the Development Property within the Construction Period, which were contained in the Workforce Housing Development Program Application, were true and complete in all material respects as of the date of submission to the Lender and such representations, statements, and other matters are true as of the date of this Loan Agreement and there are no adverse material changes in the financial condition of the Recipient.

(i) The Recipient acknowledges that MHFA, in selecting the Lender as recipient of the Program Deferred Loan and related Program Funds, relied in material part upon the assured completion of the Project to be carried out by the Recipient within the Construction Period, and the Recipient warrants that said Project will be carried out as promised.

(j) The Recipient warrants that to the best of Recipient's knowledge, Recipient has obtained or will obtain all federal, state, and local governmental approvals, reviews, and permits required by law to be obtained in connection with the Project and has undertaken and completed all actions necessary for Recipient to lawfully execute this Loan Agreement as binding upon Recipient.

(k) The Recipient warrants that Recipient shall keep and maintain books, records, and other documents relating directly to the Other Project Funds and the Loan Proceeds, and that any duly authorized representative of the State and Lender shall, at all reasonable times, have access to and the right to inspect, copy, audit, and examine all such books, records, and other documents of the Recipient for seven years after the termination of this Loan Agreement or until such time that the Lender and the State have both determined that all issues, requirements, and close-out procedures relating to or arising out of this Loan and the Project have been settled and completed, whichever is later.

(l) The Recipient warrants that no transfer of any or all of the Loan Proceeds by the Lender to the Recipient shall be or be deemed an assignment of Loan Proceeds, and the Recipient shall neither succeed to any rights, benefits, or advantages of the Lender under the

Program Deferred Loan Agreement, nor attain any right, privileges, authorities, or interest in or under the Program Deferred Loan Agreement.

Section 4.3. **Affirmative Covenants.** Recipient further warrants and agrees that:

(a) It has sufficient funds to complete the purposes of the Project and sufficient capacity to administer the Project.

(b) The Project will be performed in full compliance with all applicable federal, state and local laws, regulations, rules and ordinances, which include but are not limited to all applicable environmental laws, regulations and rules.

(c) Recipient agrees to timely submit reports required in this Loan Agreement.

ARTICLE 5

Events of Default and Rights and Remedies

Section 5.1. **Events of Default.** Any one or more of the following events shall be deemed and shall constitute an “Event of Default”:

(a) The interest or principal due under the Promissory Note, or any other payments due and payable under this Loan Agreement or any other document referred to herein, are not paid when due and such nonpayment is not remedied within ten (10) days after written notice thereof to the Recipient by the Lender;

(b) The Recipient is in breach of any of the requirements, terms, conditions, covenants or other agreements in this Loan Documents and remains in breach in any material respect for thirty (30) days after written notice thereof to the Recipient by the Lender; provided, however, that if such breach shall reasonably be incapable of being cured within such thirty (30) days after notice, and if the Recipient commences and diligently prosecutes the appropriate steps to cure such breach, no default shall exist so long as the Recipient is proceeding to cure such breach in a reasonable period of time;

(c) Any representation or warranty made by the Recipient in the Loan Documents, any other document referred to in such documents, or any financial statement, certificate, or report furnished pursuant to this Loan Agreement, or any representation or warranty made in order to induce the Lender to close the Loan or disburse the Loan Proceeds, which proves to have been untrue in any material respect or materially misleading as of the time such representation or warranty was made;

(d) Recipient shall make an assignment for the benefit of its creditors, or shall be dissolved, or shall commit an act of bankruptcy under the United States Bankruptcy Act (as now or hereafter amended), or shall admit in writing its inability to pay its debts as they become due, or shall file a petition in bankruptcy, or shall become or be adjudicated as bankrupt or insolvent, however defined, or shall file a petition seeking any reorganization, dissolution, liquidation, arrangement, composition, readjustment or similar relief under any present or future bankruptcy or insolvency statute, law or regulation, or shall file an answer admitting to or not contesting the

material allegations of a petition filed against it in such proceedings, or shall not, within 60 days after the filing of such a petition against it, have the same dismissed or vacated, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of a material part of its properties, or shall not, within 60 days after the appointment (without its consent or acquiescence) of a trustee, receiver or liquidator of any material part of its properties, have such appointment vacated;

(e) A court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against Recipient seeking any reorganization, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or any trustee, receiver or liquidator of such entity, shall be appointed without the consent or acquiescence of State;

(f) Recipient shall refuse to allow the State or Lender, at any reasonable time and upon prior written notice, to inspect, audit, copy or abstract, any and all of its books, records, papers or other documents relevant to the Recipient's use of the Loan Proceeds;

(g) Recipient shall refuse to allow the Minnesota Legislative Auditor or the State Auditor for the State of Minnesota, at any reasonable time and upon prior written notice, to inspect, audit, copy or abstract, any and all books referred to in Section 5.1(f);

(h) Recipient shall fail to provide annual reporting information as described herein.

(i) The Recipient sells, conveys, transfers, encumbers, or otherwise disposes of all or any part of the Development Property without the prior written approval of the Lender and MHFA prior to the completion of the Project or during the Construction Period, whichever occurs first;

(j) The Recipient merges or consolidates with an entity that is not an affiliate of the Recipient wherein the Recipient or such affiliate are not the surviving entity after such merger or consolidation without the prior written consent of the Lender and MHFA;

(k) There is a loss, theft, substantial damage, or destruction of all or any part of the Development Property that is not remedied to the Lender's satisfaction within sixty (60) days after written notice thereof by the Lender to the Recipient; or

(l) The Recipient is in breach of the reporting requirements of this Loan Agreement.

(m) The occurrence of any other act or event that is noncompliant under the Workforce Housing Development Program, the Program Deferred Loan Agreement, the Program Guide, or this Loan Agreement.

(n) Any funds awarded or loaned by the Recipient must obtain the prior written consent of MHFA and Lender, which consent may be withheld at each's sole discretion.

Section 5.2. **Rights and 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 the Lender, the Lender may, at

its option, exercise any and all of the following rights and remedies (as well as any other rights and remedies available to it):

(a) The Lender may, by notice in writing to the Recipient, refrain from disbursing any of the Loan Proceeds; provided, however, the Lender may make such disbursements after the occurrence of an Event of Default without thereby waiving its rights and remedies hereunder, or waiving its right to make any additional disbursements.

(b) The Lender may, by written notice to the Recipient, declare immediately due and payable all principal and interest due under the Promissory Note, together with all other sums payable under the Loan Documents and the same shall thereupon be immediately due and payable without presentment or other demand, protest, notice of dishonor or any other notice of any kind, all of which are hereby expressly waived.

(c) The Lender shall have the right, in addition to any other rights provided by law or equity, to enforce its rights and remedies under the Loan Documents.

(d) The Lender shall have the right, in addition to any other rights provided by law or equity, to initiate litigation for the breach of any term, condition, covenant, requirement or provision contained in the Loan Documents, and to recover damages for such breach.

(e) The Lender shall have the right, in addition to any other rights provided by law or equity, to apply to any court, state or federal, for specific performance of any term, condition, covenant, requirement or provision contained in the Loan Documents; for an injunction against any violation of any such term, condition, covenant, requirement and/or provision; or for such other relief as may be appropriate, since the injury to the Lender arising from a default under any of the terms, conditions, covenants requirements and/or provisions of the Loan Documents, would be irreparable and the amount of damage would be difficult to ascertain.

Section 5.3. Rights and Remedies Cumulative. The rights and remedies of the parties to this Loan Agreement, whether provided by operation of law or by this Loan Agreement, shall be cumulative, and the exercise by either party of any one or more of such remedies shall not be construed to preclude or waive its right to exercise, at the same or different times, any of the other such remedies for the same default or breach, or of any of its remedies for any other default or breach by the other party.

No waiver made by either such party with respect to the performance, manner or time thereof, of any obligation of the other party or any condition to its own obligation under this Loan Agreement or any document referred to herein, shall be considered a waiver of any rights of the party making the waiver with respect to the particular obligation of the other party or condition to its own obligation beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect in regard to any other rights of the party making the waiver or any other obligations of the other party. No delay or failure by either party to exercise any right or remedy shall be a waiver of such right or remedy, and no single or partial exercise by either party of any right or remedy shall preclude other or further exercise thereof for the exercise of any other right or remedy at any other time.

Section 5.4. Collection. Upon the occurrence of an Event of Default and at any time thereafter until such Event of Default is cured to the satisfaction of the Lender and MHFA, Recipient agrees to pay all costs and expenses of the Lender, including, but not limited to, reasonable attorney's fees, in the collection of any of the obligations or the enforcement of any of the Lender's rights. If any notice of sale, disposition or other intended action by the Lender is required by law to be given to Recipient, such notice shall be deemed reasonably and properly given if mailed to Recipient at the address specified in Article 9, or at such other address of Recipient as may be shown on the Lender's records, at least 15 days before such sale, disposition or other intended action.

The Lender shall have the right at its option and without demand or notice, to declare all or any part of the Loan immediately due and payable, and in addition to the rights and remedies granted hereby, the Lender shall have all of the rights and remedies available under the Uniform Commercial Code and any other applicable law.

Section 5.5. Assignment. If, prior to the expiration of the Construction Period or issuance of the Certificate of Occupancy, whichever occurs first, the Recipient sells, conveys, transfers, further mortgages or encumbers, or disposes of the Development Property, or any part thereof or interest therein, or enters into an agreement to do any of the foregoing, the Recipient shall immediately repay all amounts then outstanding on this Loan. This shall be in addition to any other remedies at law or equity available to the Lender.

Section 5.6. Appointment for Foreclosure. Upon the occurrence of an Event of Default and at any time thereafter until such Event of Default is cured to the satisfaction of the Lender and MHFA, Recipient agrees that the Lender may appoint an individual or entity to handle the default proceedings.

ARTICLE 6 Disbursement Provisions

Section 6.1. Payment Requisition Documentation. The Lender will disburse the Loan Proceeds as provided in Section 3.3 upon receipt and approval by the Lender and MHFA, of the following documentation as follows:

(a) The execution of the Loan Documents, including this Loan Agreement, Promissory Note, Personal Guaranty, and Borrower's Affidavit; and

(b) Upon execution of the Loan Agreement and Promissory Note from the Port Authority of Winona providing matching funds in a loan amount of \$149,000.

Upon receipt of such documentation, the Loan Proceeds shall be disbursed upon approval of the Lender and MHFA up to a total disbursement amount of \$298,000 based on the amount of Program Funds received by the Lender from MHFA, as follows:

(a) One-third of the Program Funds may be disbursed upon the execution of this Loan Agreement between the Lender and Recipient and the execution of the Program Deferred Loan Agreement between MHFA and the Lender;

(b) The second one-third when construction commences and a Building Permit is issued by the City of Winona Inspections Division for the Project, and invoices and proof of payment for items funded by this Loan Agreement, Matching Funds, and Other Project Funds are submitted to and approved by the Lender; and

(c) Completion of the Project evidenced by the issuance of a Certificate of Occupancy, and invoices and proof of payment for items funded by this Loan Agreement, Matching Funds, and Other Project Funds are submitted to and approved by the Lender.

Section 6.2. Other Documentation. Third party documentation of total Qualified Expenditures will be required prior to the second one-third disbursement of Loan Proceeds, and prior to the expiration of the Construction Period for the final one-third disbursement of Loan Proceeds.

Section 6.3. Review of Documents. The Recipient shall not be entitled to any disbursement of Loan Proceeds until the Lender's legal counsel has reviewed and approved this Loan Agreement and the exhibits attached hereto.

Section 6.4. Adverse Changes. The Lender and MHFA will not authorize disbursement of Program Funds if there has been any adverse change in the Recipient's financial condition, organization, operations or Recipient's ability to repay the Project financing.

ARTICLE 7 Progress Reporting

Section 7.1. Progress Information. The Recipient shall provide to the Lender information for incorporation into the Program's annual report, as required by MHFA and as needed by the Lender, to monitor the Project for compliance with Program and this Agreement. This information must be provided until the expiration of the Construction Period or when the Project is complete and the Certificate of Occupancy has been issued. The Lender and State reserves the right to ask for additional information before or after the expiration of the Construction Period or after the Project is complete and the Certificate of Occupancy has been issued.

Section 7.2 Documentation to be Provided to the Lender:

(a) Project status and the status of payments;

(b) The Recipient must provide to the Lender invoices, sworn construction statements, and or any other information, with each annual report, to document Other Project Funds in addition to the originally included Project costs, or when otherwise requested; and

(c) Other information the State or Lender may request

This information must be provided to the Lender no later than March 1 of each year for the previous year. If the Recipient does not submit the report, the Lender shall mail the Recipient a warning within one week of the required filing date. If, after 14 days of the postmarked date of the warning, the Recipient fails to provide a report, the Recipient must pay to the Lender a penalty of \$100 for each subsequent day until the report is filed. The maximum penalty shall not exceed \$1,000. Any

amount unpaid within 30 days of invoicing from the Lender may be assessed against the Development Property and certified to the County Auditor for collection in like manner and property taxes on the Development Property.

ARTICLE 8 Forgiveness / Repayment

Section 8.1. Loan Forgiveness / Repayment. The Loan shall be forgiven, without interest, provided that:

(a) The Loan Proceeds provided to the Recipient made hereunder are used only for Qualified Expenditures the Project; and

(b) The Recipient completes the Project on the Development Property within the Construction Period and obtains a Certificate of Occupancy from the City of Winona; and

(c) The Recipient operates and maintains the Project for market-rate residential apartments and does not to convert any of the units to income or rent restricted units for a period of at least ten (10) years from the date of Recipient's receipt of a Certificate of Occupancy; and

(d) The Recipient does not transfer title to the Development Property within ten (10) years from the effective date of this Agreement without the written consent of the Lender and MHFA. Any individual or entity to whom Recipient transfers title to the Property within ten (10) years of the effective date of this Agreement, shall assume in full all terms, covenants, conditions, and any other obligations whatsoever, contained in this Loan Agreement and shall assume or execute any other related loan documents at the request of, and in a form acceptable to, the Lender and MHFA; and

(e) The Recipient does not default or breach any of the promises, terms and conditions stated in this Loan Agreement or the Promissory Note of even date herewith; and

(f) The Recipient does not default or breach any of the promises, terms and conditions stated in the Revolving Loan Fund Loan Agreement, dated November 14, 2024, between the Recipient and the Port Authority of Winona.

Section 8.2. Default on this Loan Agreement

(a) In an Event of Default occurring as a result of a breach by the Recipient of any provision of Sections 5.1 or 8.1 of this Loan Agreement, the Recipient agrees to repay the principal in the amount of the Loan Proceeds hereof plus interest from the Effective Date set at the greater of three percent (3%) per annum or the implicit price deflator for government consumption expenditures and gross investment for state and local governments prepared by the Bureau of Economic Analysis of the United States Department of Commerce for the 12-month period ending March 31st of the previous year.

(b) Interest required in Section 8.2 (b) shall commence to accrue as of the Initial Disbursement Date.

(c) Nothing in this Section 8.2 shall be construed to limit the Lender's rights or remedies under any other provision of this Loan Agreement, and the provisions of Section 8.2 are in addition to any other such right or remedy the Lender may have available.

ARTICLE 9 Other Conditions

Section 9.1. Project Time Frame. The time frame outlined in the Workforce Housing Development Program Application, this Loan Agreement, Program Guide, and the Program Deferred Loan Agreement pertaining to the Project shall be met by the Recipient. The Project shall be constructed and completed within the Construction Period.

Section 9.2. Promissory Note. The Recipient shall execute a Promissory Note in substantially the form set forth by the Lender.

Section 9.3. Guaranty and Borrower's Affidavit. The Recipient shall execute a Personal Guaranty and Borrower's Affidavit in substantially the form set forth by the Lender.

Section 9.4. Annual Financial Statements. For the term of the Loan, upon request of the Lender, the Recipient shall submit the most recent annual financial statement prepared in accordance with generally accepted accounting principles for the Project. The annual financial statements shall include a profit and loss statement, balance sheet, and statement of cash flow, notes and an opinion from the accountants of such statements acceptable to the Lender.

Section 9.5. Discrimination on Account of Race, Creed, or Color. The provisions of Minn. Stat. § 181.59 and any successor statutes, which relate to civil rights and discrimination, shall be considered a part of this Loan Agreement as though wholly set forth herein and the Recipient shall comply with each such provision throughout the term of this Loan Agreement.

Section 9.6. Effect on Other Agreements. Nothing in this Loan Agreement shall be construed to modify any term of any other agreement to which the Lender and the Recipient are parties.

Section 9.7. Release and Indemnification Covenants. Except for any breach of the representations and warranties of the Lender or the negligence or other wrongful act or omission of the following named parties, the Recipient agrees to indemnify, protect, hold harmless, and defend the Lender and the governing body members, officers, agents, servants, and employees thereof, now and forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action, or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from the acquisition, construction, installation, ownership, maintenance, and operation of the Project, this Loan Agreement, and the Recipient's activities on the Development Property.

Section 9.8. Modifications. This Loan Agreement may be modified solely through written amendments hereto executed by the Recipient and the Lender and approved by MHFA.

Section 9.9. Notices and Demands. Any notice, demand, or other communication under this

Loan Agreement by either party to the other shall be sufficiently given or delivered only if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally:

- (a) As to the Lender: City of Winona
ATTN: Lucy McMartin
207 Lafayette Street,
Winona, MN 55987

- (b) As to the Recipient: Christopher D. Sanchez
121 Wildwood Drive
Winona, MN 55987

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

Section 9.10 Conflict of Interests; Representatives Not Individually Liable.

(a) No employee, officer or agent of the Lender shall participate in the administration of a contract supported by this Loan if a conflict of interest, real or apparent, would be involved. No employee, officer or agent of the Lender may obtain a financial interest in any agreement with respect to this Loan. No employee, officer, or agent of the Lender shall be personally liable to the Recipient or any successor in interest in the event of any default or breach by the Lender or for any amount that may become due to the Recipient or on any obligation or term of this Loan Agreement.

(b) To the best of the Recipient's knowledge, no member, officer, or employee of the Lender, or its officers, employees, designees, or agents, no consultant, member of the governing body of the Lender, and no other public official of the Lender, who exercises or has exercised any functions or responsibilities with respect to the Project during his or her tenure shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Project or in any activity, or benefit therefrom, which is part of the Project.

Section 9.11. Binding Effect. The covenants and agreements in this Loan Agreement shall bind and benefit the heirs, executors, administrators, successors, and assigns of the parties to this Loan Agreement.

Section 9.12. Provisions Not Merged With Deed. None of the provisions of this Loan Agreement are intended to or shall be merged by reason of any deed transferring any interest in the Development Property and any such deed shall not be deemed to affect or impair the provisions and covenants of this Loan Agreement.

Section 9.13. Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of this Loan Agreement are inserted only for convenience of reference and shall be disregarded in construing or interpreting any of its provisions.

Section 9.14. Counterparts. This Loan Agreement may be executed in any number of

counterparts, each of which shall constitute one and the same instrument.

Section 9.15. Choice of Law and Venue. This Loan Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota without regard to its conflict of laws provisions. Any disputes, controversies, or claims arising out of this Loan Agreement shall be heard in the State of Minnesota, and all parties to this Loan Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

Section 9.16. Waiver. The failure or delay of any party to take any action or assert any right or remedy, or the partial exercise by any party of any right or remedy shall not be deemed to be a waiver of such action, right, or remedy if the circumstances creating such action, right, or remedy continue or repeat.

Section 9.17. Entire Agreement. This Loan Agreement, with the exhibits hereto, constitutes the entire agreement between the parties pertaining to its subject matter and it supersedes all prior contemporaneous agreements, representations, and understandings of the parties pertaining to the subject matter of this Loan Agreement.

Section 9.18. Separability. Wherever possible, each provision of this Loan Agreement and each related document shall be interpreted so that it is valid under applicable law. If any provision of this Loan Agreement or any related document is to any extent found invalid by a court or other governmental entity of competent jurisdiction, that provision shall be ineffective only to the extent of such invalidity, without invalidating the remainder of such provision or the remaining provisions of this Loan Agreement or any other related document.

Section 9.19. Immunity. Nothing in this Loan Agreement shall be construed as a waiver by the Lender of any immunities, defenses, or other limitations on liability to which the Lender is entitled by law, including but not limited to the maximum monetary limits on liability established by Minn. Stat. § Chapter 466.

Section 9.20. Compliance with Law. During the term of this Loan Agreement, Recipient shall at all times comply with applicable local, state and federal laws, rules, regulations and ordinances, as well as any applicable MHFA policies.

Section 9.21. Recitals. The recitals hereto are made a part hereof by reference.

Section 9.22. Voluntary and Knowing Action. The parties, by executing this Agreement, state that they have carefully read this Agreement and understand fully the contents thereof; that in executing this Agreement they voluntarily accept all terms described in this Agreement without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound thereby.

Section 9.23. Authorized Signatories. The parties each represent and warrant to the other that (1) the persons signing this Agreement are authorized signatories for the entities represented and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Agreement against it; each party indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.

Section 9.24. **Data Practices.** The parties acknowledge that this Agreement is subject to the requirements of Minnesota's Government Data Practices Act, Minnesota Statutes Section 13.01 et seq.

Section 9.25. **Survivability.** All covenants, indemnities, guarantees, releases, representations and warranties by any party, and any discharged obligations of the Lender and Recipient arising prior to the expiration of this Loan Agreement (whether by completion or earlier termination), shall survive such expiration.

Section 9.26. **Execution.** This Loan Agreement may be executed simultaneously in two or more counterparts that, when taken together, shall be deemed an original and constitute one and the same document. The signature of any party to the counterpart shall be deemed a signature to the Agreement, and may be appended to, any other counterpart. Facsimile and email transmissions of executed signature pages shall be deemed as originals and sufficient to bind the executing party.

[Remainder of page left intentionally blank.]

LENDER:

CITY OF WINONA

Date: _____

By: _____

Scott D. Sherman
Its: Mayor

Date: _____

By: _____

Monica Hennessy Mohan
Its: City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF WINONA)

This instrument was acknowledged before me on _____, 20____, by Scott D. Sherman, the Mayor, and by Monica Hennessy Mohan, the City Clerk of the City of Winona, a municipal corporation under the laws of the State of Minnesota.

(Notary Seal)

Notary Public

EXHIBIT A
Legal Description of Development Property

Lot Thirty-Two (32), Second Plat of the Subdivision of Section 21, City (formerly Town) of Winona, located upon and forming a part of the Northeast Quarter of the Southeast Quarter (NE1/4 SE1/4) of Section 21, Township 107 North, of Range 7 West, Winona County, Minnesota.

Together with all hereditaments and appurtenances belonging to thereto subject to the following exceptions:

Easements of record, if any.

EXHIBIT B
Program Deferred Loan Agreement

MINNESOTA HOUSING FINANCE AGENCY
DEFERRED LOAN AGREEMENT

This Deferred Loan Agreement is between the Minnesota Housing Finance Agency (“MHFA”) and City of Winona, 207 Lafayette Street, Winona, MN 55987 (the “Borrower”).

Recitals

1. Under Minn. Stat. §462A.39, MHFA is empowered to enter into this Deferred Loan Agreement.
2. MHFA is in need of the development of rental housing to serve the employees of local businesses (“Workforce Housing”) in Winona County, City of Winona pursuant to MHFA’s Workforce Housing Development Program (the “Program”).
3. The Borrower represents that it is duly qualified and agrees to perform all activities described in this Deferred Loan Agreement to the satisfaction of MHFA. The Borrower agrees to minimize administrative costs as a condition of this Deferred Loan Agreement.

Deferred Loan Agreement

1 Term of Deferred Loan Agreement

1.1 Effective date:

The effective date of this Deferred Loan Agreement is the date that this Deferred Loan Agreement has been fully executed. Notwithstanding the foregoing, if this Deferred Loan Agreement is not fully executed on or before February 1, 2025, then this Deferred Loan Agreement shall be null and void and MHFA shall have no obligation to disburse any of the Program Funds and neither party shall have any continuing obligations or responsibilities pursuant to this Deferred Loan Agreement.

1.2 Construction period:

The construction period for the Program begins with the Effective Date of this Deferred Loan Agreement and continues through the later of January 1, 2028, or any extension of this period agreed to in writing by MHFA (the “Construction Period”). All funds provided through this Deferred Loan Agreement must be fully expended in compliance with this Deferred Loan Agreement by the end of the Construction Period.

1.3 Survival of Terms.

The following clauses survive the expiration or cancellation of this Deferred Loan Agreement: 8. Liability; 9. State Audits; 11. Publicity and Endorsement; 12. Governing Law, Jurisdiction, and Venue; and 14. Data Disclosure.

2 Duties and Contracts

2.1 Borrower’s Duties

The Borrower has made application to MHFA for the purpose of administering a Program project in the manner described in the Borrower's application (the “Project”) which is incorporated into this Deferred Loan Agreement by reference.

The Borrower, who is not a state employee, is awarded funds to provide financial assistance to address the need for Workforce Housing. The Project includes: The new construction of a 14-unit apartment building.

The Borrower will be in compliance with the Workforce Housing Development Program Guide, as amended (the “Program Guide”), which is incorporated into this Deferred Loan Agreement.

2.2 Provisions for Contracts and Sub-grants.

(a) Contract Provisions. The Borrower must include in any contract and subcontract, in addition to provisions that define a sound and complete agreement, such provisions that require recipients and subrecipients to comply with applicable local, state and federal laws, rules, regulations and ordinances, as well as any applicable MHFA policies.

(b) Use of Program Funds. The Program Funds (as defined below) awarded under this Deferred Loan Agreement may only be used by the Borrower or awarded by the Borrower to third parties as grant funds or loans in accordance with the terms of the Program Guide. All Program Funds must be used by an Eligible Project Area for the Qualified Expenditures of a Market Rate Residential Rental Property (as such terms are defined in the Program Guide). If awarded as a loan, any fees or interest charged cannot unduly enrich any parties involved beyond the approximate cost of the administrative costs associated with the Project.

3 Time

The Borrower must comply with all time requirements described in this Deferred Loan Agreement and the Program Guide. In the performance of this Deferred Loan Agreement, time is of the essence. Project construction must commence and be completed within the Construction Period

4 Loan

4.1 Loan Amount.

The total principal loan amount by MHFA to the Borrower under this Deferred Loan Agreement will not exceed \$298,000 (the "Program Funds").

4.2 Repayment

The Borrower promises to pay to MHFA the Program Funds with simple interest, if any, of 0% per annum accruing on such amounts of principal as may be advanced from time to time.

Further, the Program Funds and all accrued interest, if any, less any amounts previously paid or forgiven, are due and payable in one lump sum on the earlier to occur of: (i) a Default (as described below); or (ii) the 31st day of January 2028 (the "Maturity Date").

A Default occurs upon written notice by MHFA to the Borrower of noncompliance with this Deferred Loan Agreement or the Program Guide and failure of the Borrower to cure the noncompliance to the satisfaction of MHFA within 30 days of such notice.

Repayment of the Program Funds will be forgiven upon the Maturity Date provided: (i) MHFA has not given the Borrower notice of a Default; and (ii) the Borrower is in full compliance with this Deferred Loan Agreement and the Program Guide.

All amounts due are payable at the offices of MHFA, 400 Wabasha Street North, Suite 400, St. Paul, MN 55102-1109, or such other place as MHFA may designate in writing.

If a failure to pay the amounts due under this Deferred Loan Agreement occurs, and if the same is submitted for collection by MHFA, its successor and assigns, the Borrower must pay all costs of collection, including reasonable attorney's fees.

All parties to this Deferred Loan Agreement, whether principal, surety, guarantor or endorser, hereby waive presentment for payment, demand, protest and notice of dishonor.

4.3 Disbursement

For all disbursements of Program Funds, the Borrower must be in compliance with this Deferred Loan

Agreement and the Program Guide and complete and submit a Workforce Housing Development Program Disbursement Request Form, attached to this Deferred Loan Agreement as **Exhibit A**, to MHFA for review and approval. MHFA will promptly pay the Borrower up to one third of the Program Funds on or after closing. The Borrower may request an additional one third of the Program Funds as needed upon commencement of Project construction. The remaining one third of the Program Funds will be withheld for final disbursement and will not be released until construction completion of the Project and upon completion of all reporting and monitoring requirements pursuant to this Deferred Loan Agreement.

4.4 **Return of Funds**

The Borrower must promptly return to MHFA any Program Funds that have: (i) not been accounted for in a financial report to MHFA due annually or at Deferred Loan Agreement closeout; or (ii) not been used in compliance with the Program Guide.

4.5 **Contracting and Bidding Requirements**

The Borrower must comply with all applicable prevailing wage requirements as further described in the Legal Addendum attached to the Program Guide.

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

4.6 **Prepayment**

The Program Funds may be prepaid in whole or in part at any time without premium or penalty; provided, however, that payment by Borrower to MHFA of the amount of the Program Funds or any portion thereof shall not be deemed to be or constitute a release of Borrower from the terms or requirements of this Deferred Loan Agreement.

5 **Conditions of Payment**

All activities performed by the Borrower under this Deferred Loan Agreement must be performed to MHFA's satisfaction, as determined at the sole discretion of MHFA's Authorized Representative and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Borrower will be responsible for repaying any Program Funds found by MHFA to be noncompliant with this Deferred Loan Agreement or used in violation of federal, state, or local law.

6 **Authorized Representative**

MHFA's Authorized Representative is **Sara Bunn, Program Manager, 651.296.9827, sara.bunn@state.mn.us, 400 Wabasha St N, Suite 400, St. Paul, MN 55102** or her successor, and has the responsibility to monitor the Borrower's performance under this Deferred Loan Agreement.

The Borrower's Authorized Representative is Nick Larson, Development Coordinator, 507.457.8250, nlarson@ci.winona.mn.us, 207 Lafayette Street, Winona, MN 55987. If the Borrower's Authorized Representative changes at any time during this Deferred Loan Agreement, the Borrower must immediately notify MHFA.

7 **Assignment Amendments, Waiver, and Deferred Loan Agreement Complete**

7.1 **Assignment**

The Borrower shall neither assign nor transfer any rights or obligations under this Deferred Loan Agreement without the prior written consent of MHFA, approved by the same parties who executed and approved this Deferred Loan Agreement, or their successors in office.

7.2 **Amendments**

Any amendments to this Deferred Loan Agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Deferred

Loan Agreement, or their successors in office.

7.3 Waiver

If MHFA fails to enforce any provision of this Deferred Loan Agreement, that failure does not waive the provision or MHFA's right to enforce it.

7.4 Deferred Loan Agreement Complete

This Deferred Loan Agreement contains all negotiations and agreements between MHFA and the Borrower. No other understanding regarding this Deferred Loan Agreement, whether written or oral, may be used to bind either party.

8 Liability

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

9 State Audits

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

10 Workers Compensation

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

11 Publicity and Endorsement

11.1 Publicity

Any publicity regarding the subject matter of this Deferred Loan Agreement must identify MHFA as the sponsoring agency and must not be released without prior written approval from MHFA's Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Borrower individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Deferred Loan Agreement.

11.2 Endorsement

The Borrower must not claim that MHFA endorses its products or services.

12 Governing Law, Jurisdiction, and Venue

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

13 Termination

MHFA may immediately terminate this Deferred Loan Agreement if MHFA finds that there has been a failure to comply with the provisions of this Deferred Loan Agreement or the Program Guide, that reasonable progress has not been made or that the purposes for which the funds were loaned have not been

or will not be fulfilled. MHFA may take action to protect the interests of the State of Minnesota, including the refusal to disburse additional funds and requiring the return of all or part of the funds already disbursed.

14 Data Disclosure

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

15 Responsible Contractor Requirement

The Borrower agrees that it and its contractors will fully comply with all applicable provisions contained in Minn. Stat. §16C.285, as amended.

2. BORROWER

The Borrower certifies that the appropriate person(s) has/have executed the Deferred Loan Agreement on behalf of the Borrower as required by applicable articles, bylaws, resolutions, or ordinances.

By: [Signature]

Title: Mayor

Date: 12-2-2024

By: [Signature]

Title: City Clerk

Date: 11-21-2024

3. MINNESOTA HOUSING FINANCE AGENCY

By: [Signature]
(with delegated authority)

Title: Assistant Commissioner, Multifamily

Date: 12/03/2024

Distribution:
Agency
Borrower
MHFA's Authorized Representative

EXHIBIT A

Workforce Housing Development Program Disbursement Request Form



**Workforce Housing Development Program
Payment Information**

Summary

This form must be completed, signed, and submitted to MHFA prior to receiving a disbursement of funds. To complete the form, enter the amount of funds you are requesting and a summary of what the funds will be used for. Have the form signed by an Authorized Representative. Submit the completed form to Sara Bunn at WorkforceHousingDevProg.MHFA@state.mn.us.

Disbursement Request and Justification

Amount Requested (not to exceed one-third of the total award): _____

Use the space below to document what the funds will be used for:

Authorized Representative Signature

Authorized Representative Name: _____

Authorized Representative Title: _____

Date Signed: _____

Authorized Representative
Signature: _____

EXHIBIT D
Program Guide



Workforce Housing Development Program

Program Guide

01/25/2024



The Minnesota Housing Finance Agency does not discriminate on the basis of race, color, creed, national origin, sex, religion, marital status, status with regard to public assistance, disability, familial status, gender identity, or sexual orientation in the provision of services.

An equal opportunity employer.

This information will be made available in alternative format upon request.

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Chapter 1 – Introduction

1.01 Program Purpose and Authorizing Statute

The Workforce Housing Development Program (the Program) assists Eligible Recipients to finance Qualified Expenditures to develop Market Rate Residential Rental Properties to address the lack of workforce housing in Greater Minnesota. This program was established by [Minnesota Statute 462A.39](#).

Funds will be awarded through a competitive Request for Proposals (RFP) process. Funds will be awarded as deferred forgivable loans to Eligible Recipients that use the funds to make loans or grants to developers to create new Market Rate Residential Rental Properties.

All Recipients must maintain compliance with the Program requirements through the term of the Deferred Loan Agreement; however, Minnesota Housing strongly encourages Recipients to assess local workforce housing needs beyond the term of the Deferred Loan Agreement. Projects that remain available and affordable to the local workforce beyond the initial funding term will further strengthen the community by providing a long-term housing asset.

1.02 Program Guide

This Program Guide, including subsequent changes and additions, will be incorporated into the Deferred Loan Agreement executed between the Recipient and Minnesota Housing. If there are any conflicts between the terms of this Program Guide and the Deferred Loan Agreement, the Deferred Loan Agreement will control.

1.03 Definitions

Appendix A includes definitions of capitalized terms used in this Program Guide and is attached and incorporated into this Program Guide.

1.04 Legal Addendum

Any Recipient of an award pursuant to the Program agrees to comply with the additional requirements and obligations as described in Appendix B, which is attached and incorporated into this Program Guide.

Chapter 2 – Eligibility Criteria

2.01 Eligible Recipient

An Eligible Recipient is one of the following Eligible Project Areas:

- A home rule charter or statutory city with a population exceeding 500 located outside of a Metropolitan County.
- A community that has a combined population of 1,500 residents located within 15 miles of a home rule charter or statutory city located outside a Metropolitan County.
- An area located outside of a Metropolitan County that serves a federally recognized Indian Tribe in Minnesota, or their associated Tribally Designated Housing Entity as defined by [United States Code, title 25, section 4103\(22\)](#), as approved in writing by Minnesota Housing.
- An area served by a Joint County-City Economic Development Authority.

The application must be submitted by an Eligible Recipient.

Eligible Project Areas with fewer than 30,000 people will be given preference. Refer to [Minnesota Statute 462A.39](#) for additional information.

2.02 Eligible Housing Types

Eligible housing types must meet the definition of a Market Rate Residential Rental Property to serve employees of businesses located in an Eligible Project Area or surrounding area. A portion of the units can have rent restrictions or income restrictions.

2.03 Eligible Activities

Eligible activities include the following or a combination of the following:

- New construction
- Acquisition and rehabilitation of a property that creates new housing units. This Program would only fund those new units of housing.
- Adaptive reuse of an existing property that is not currently used for housing.

2.04 Qualified Expenditures

Program funds must be used for the following Qualified Expenditures for Market Rate Residential Rental Properties:

- Acquisition of property
- Construction of improvements

- Provisions of loans or subsidies, grants, interest rate subsidies, public infrastructure, and related financing costs.

Reserves, commercial spaces and related infrastructure, and community spaces that may be rented for public use are ineligible expenses for this Program.

2.05 Maximum Funding Amount per Project

The Program funds shall not exceed 50% of the total development costs to complete the Market Rate Residential Rental Property.

2.06 Funding Match Required

For every \$2 of the Program funding, the project shall secure at least \$1 of matching funds from a local unit of government, business, nonprofit organization, or federally recognized Indian Tribes in Minnesota. The match may be provided by one or more of the listed organizational types. The developer or an entity affiliated with the developer will not qualify as a source for the match unless they are an Eligible Recipient, and the match is approved in writing by Minnesota Housing. Minnesota Housing's approval of an eligible source of a match is at its sole discretion.

NOTE: The matching funds can be a below market deferred loan. However, Minnesota Housing reserves the right to determine, at its sole discretion, that the loan does not qualify as a matching contribution based on the loan terms or source of funds.

2.07 Subrecipients

A Recipient may lend or grant Program funds to a Subrecipient. In such cases, the Subrecipient shall conform to all Program requirements. Program funds received by a Subrecipient may only be awarded or loaned to another entity that owns the project and in which the Subrecipient also possesses an ownership interest. Any funds awarded or loaned by a Subrecipient must obtain the prior written consent of Minnesota Housing, which consent may be withheld at its sole discretion. If Recipients or Subrecipients award funds as a loan, then the loan terms must be as set forth in Section 3.02 of this Program Guide.

Chapter 3 – Funding Information

3.01 Funding Source

Funds for the Program are appropriated by the Minnesota Legislature.

3.02 Funding Type and Terms

Funds will be awarded to Recipients as a deferred loan. Recipients or Subrecipients can then award funds in the form of a grant or a deferred loan directly to the project.

If Recipients or Subrecipients award funds as a loan, then the loan must:

- (i) Be unsecured;
- (ii) Be deferred;
- (iii) Have a 0% interest rate; and
- (iv) Will be forgiven after three years provided the project has been completed and there is no default or noncompliance under the loan documents and Deferred Loan Agreement

The term of the Deferred Loan Agreement will be three years from the effective date of the Deferred Loan Agreement after which the Recipient will have no obligation to repay the deferred loan provided construction of the project has been completed and there is no default or noncompliance under the Deferred Loan Agreement.

3.03 Return of Funding

Any awarded Program funds that are disbursed to the Recipient and not used to pay for Qualified Expenditures within a reasonable timeframe, as determined at the sole discretion of Minnesota Housing, must be immediately returned to Minnesota Housing upon request. Any awarded Program funds returned or repaid to the Recipient or Subrecipient must be immediately returned to Minnesota Housing.

3.04 Disbursement Schedule

Minnesota Housing will disburse up to one-third of the total awarded funds upon Deferred Loan Agreement execution. An additional amount, up to one-third of the total awarded funds, will be disbursed no sooner than commencement of project construction. The remaining balance will be disbursed upon completion, as determined by Minnesota Housing. Recipients will submit supporting documentation to determine eligibility prior to each disbursement. Notwithstanding the foregoing, Minnesota Housing reserves the right to require that any awarded Program funds disbursed are used

by the Recipient to pay for Qualified Expenditures within a set timeframe, as determined by Minnesota Housing at its sole discretion.

Chapter 4 – Application Requirements and Responsibilities

Minnesota Housing encourages sustainable, healthy housing that optimizes the use of cost-effective, durable building materials and systems that minimize the consumption of natural resources both during construction or rehabilitation and in the long-term maintenance and operations. Minnesota Housing encourages optimizing the use of renewable resources and energy, minimizing damages and impact to the environment, and maximizing the use of natural amenities such as solar, wind, climate, and orientation of the development site.

Minnesota Housing is committed to creating equitable, affordable, and accessible housing for all Minnesotans. Tenant selection plans (TSP) and tenant screening criteria that reduce barriers to housing access are critical to these efforts. It is recommended that all Recipients awarded Program funds follow Minnesota Housing's [Tenant Selection Plan Guidelines](#).

4.01 Applicant Responsibilities

The applicant is responsible for understanding the submission requirements necessary for a complete application. Applicants can access the Workforce Housing Development Program RFP Instructions, supplemental materials, and resources on Minnesota Housing's [Workforce Housing](#) webpage.

4.02 Application Content

Required application materials are available on Minnesota Housing's [Workforce Housing](#) webpage. The Workforce Housing Development Program RFP Instructions provide comprehensive resources for these application materials and submittal instructions. The application package must include, at a minimum, all items listed on the Application Checklist. Upon review of the application materials, applicants must be willing to provide additional documentation, if requested, to help ensure a viable project. Denial of an application for funding may result from incomplete or insufficient documentation.

4.03 Design and Construction Requirements

Recipients are responsible for complying with all applicable state and local requirements.

4.04 Visitability

Recipients and Subrecipients must comply with visitability requirements contained in [Minnesota Statute 462A.34](#).

4.05 Building Standards

Recipients and Subrecipients and all third parties involved must adhere to the local building code. If a project area does not have a local building code, adherence to the state of Minnesota building code is required.

4.06 Federal, State, and Local Laws

Recipients and Subrecipients receiving financial assistance from Minnesota Housing under the Program must comply with the requirements of all applicable federal, state, and local laws.

Chapter 5 – Selection and Award Process

5.01 Statutory Requirements and Threshold Criteria

Program applications must meet all statutory requirements and threshold criteria in order to remain eligible for funding.

Statutory Application Review Requirements

- **Eligible Project Area:** Small-to medium-sized cities in Greater Minnesota (refer to Eligibility Criteria above)
- **Project Area Rental Vacancy Rate:** The average vacancy rate for rental housing located in the eligible project area, and in any other city located within 15 miles or less of the boundaries of the area, has been five percent or less for at least the prior two-year period
- **Eligible Uses:** Funds will be used on Qualified Expenditures (refer to Eligibility Criteria above)
- **Match:** Secured matching funds of one dollar for every two dollars requested in funding
- **Community Need:** One or more letters of support from one or more businesses located in the eligible project area, or within 25 miles of the area that employ a minimum of 20 full-time employees in aggregate.
- **Maximum Award Amount:** Funding request cannot exceed 50% of the project's total development costs

Matching funds can come from a local government, a business, a nonprofit organization, or a federally recognized Indian Tribe in Minnesota. The developer or an entity affiliated with the developer will not qualify as a source for the match unless they are an Eligible Recipient.

Threshold Criteria

- The application must be complete and include all required items listed in the Application Checklist
- The application must be submitted by the deadline. Refer to the Workforce Housing Development Program RFP Instructions for more detailed information.

5.02 Review of the Application

This is a competitive application process. Program applications that meet threshold criteria and statutory requirements will be scored on the selection criteria. Refer to the Workforce Housing Development Program RFP Instructions for detailed information on the selection criteria.

Program applications will be reviewed and scored by Minnesota Housing staff determine selection and funding recommendations. Final selection and funding recommendations are subject to approval by the Minnesota Housing board.

In addition to the competitive selection criteria and final project score, Minnesota Housing considers the following when reviewing applications and making selection recommendations:

A. Project Feasibility

Projects must demonstrate and satisfy the following feasibility requirements in their application:

- The proposed site is appropriate for the proposed housing and the target population
- The proposed housing is needed in the intended market based upon population, job growth, and vacancy rates
- The costs of developing the housing are reasonable based on market conditions and/or justifiable as determined by Minnesota Housing at its sole discretion
- The housing is economically viable and sustainable when the Program underwriting standards are applied

Projects determined not to be feasible will not be processed further in the applicable funding cycle. An application's financial structuring may be revised by Minnesota Housing during this review to help ensure financial feasibility and/or to meet required components of the Program underwriting standards, as applicable, and a reduction to the application's scoring may occur as a result of these revisions.

B. Geographic Distribution

Minnesota Housing considers geographic distribution of resources and the resulting amount and type of anticipated housing production throughout the state when making the Program selection decisions.

C. Underwriting Standards

The Program underwriting standards are used by Minnesota Housing for underwriting and sizing of all the Program funding awards and can be found in the Workforce Housing Development Program RFP Instructions.

D. Amount of Funding Requested

Minnesota Housing considers the amount of funding requested in comparison to available resources in order to fully fund or nearly fully fund as many projects as reasonably feasible, which may result in not selecting higher scoring projects, including instances where insufficient resources are available to fully fund or nearly fully fund a project.

E. Development Cost Review

Minnesota Housing will review project costs based on comparability and reasonableness. Minnesota Housing may, at its sole discretion, reject applications that have excessive project costs.

F. Statutory Preference

Preference will be given to applicants located in an Eligible Project Area with a population of fewer than 30,000. Preference will also be given to projects with a higher proportion of units that are not income or rent restricted.

5.03 Selection Notification

Applications recommended for acceptance will be presented to the Minnesota Housing board. All applicants will be notified of their status after Minnesota Housing's board has acted upon selection recommendations.

5.04 Workforce Housing Development Program Fees

Please review the [Multifamily Loan Programs and Housing Tax Credit Fee Schedule](#) for applicable fees associated with the loan products in this Program Guide.

Chapter 6 – Compliance Monitoring and Reporting

6.01 Compliance Reporting Requirements

For the length of the Deferred Loan Agreement, Recipients must submit an annual report that includes, at a minimum, the name of the developer, the amount of award, the amount of award received to date, the number of units in the project, the purpose of Program funding, the share of the project costs in relation to the total development costs and information about Qualified Expenditures. Minnesota Housing reserves the right to ask for additional information. Minnesota Housing will provide a reporting template to Recipients.

6.02 Compliance Monitoring Requirements

Prior to final disbursement of Program funds, all disbursement records are subject to Minnesota Housing's review. This will include a reconciled account balance showing when Program funds were received by the Recipient and disbursed. Minnesota Housing reserves the right to ask for additional information.

6.03 Compliance Term

All Recipients awarded Program funds are required to comply with all monitoring and reporting requirements for the term of the Deferred Loan Agreement. Recipients must retain files for six years after the expiration or termination of the Deferred Loan Agreement. Additionally, Recipients must ensure compliance of Subrecipients with all monitoring, reporting, and records retention requirements.

Appendix A – Terms

Term	Definition
Deferred Loan Agreement	The Deferred Loan Agreement between Minnesota Housing and Recipient and any related documents evidencing a deferred loan.
Eligible Project Area	A home rule charter or statutory city located outside of a Metropolitan County with a population exceeding 500; a community that has a combined population of 1,500 residents located within 15 miles of a home rule charter or statutory city located outside a Metropolitan County; an area located outside of a Metropolitan County that serves a federally recognized Indian Tribe in Minnesota, or their associated Tribally Designated Housing Entity as defined by United States Code, title 25, section 4103(22) , as approved in writing by Minnesota Housing; or an area served by a Joint County-City Economic Development Authority.
Eligible Recipient	Those entities described in Section 2.01 of this Program Guide.
Greater Minnesota	The areas outside of a Metropolitan County as defined in Minnesota Statute 473.121, subdivision 4.
Joint County-City Economic Development Authority	An economic development authority formed under Laws 1988, chapter 516, section 1, as a joint partnership between a city and county and excluding those established by the county only.
Market Rate Residential Rental Property	A property that is rented at market value, including new modular homes, new manufactured homes, and new manufactured homes on leased land or in a manufactured home park.
Metropolitan County	Any one of the following counties: Anoka, Carver, Dakota, Hennepin, Ramsey, Scott or Washington as defined in Minn. Stat. §473.121, subdivision 4 .
Minnesota Housing Program	The Minnesota Housing Finance Agency The Workforce Housing Development Program established by Minn. Stat. 5462A.39 to award deferred loans to an Eligible Project Areas for Qualified Expenditures.

Term	Definition
Qualified Expenditures	An expenditure for Market Rate Residential Rental Properties including acquisition of property; construction of improvements; and provisions of loans or subsidies, grants, interest rate subsidies, public infrastructure and related financing costs.
Recipient	An Eligible Project Area that has been selected for funding by Minnesota Housing.
Request for Proposals (RFP)	The competitive process of applying for Program funds.
Subrecipient	An entity awarded Program funds by a Recipient that awards or loans the funds to a related entity to be used for Qualified Expenditures related to a Market Rate Residential Rental Property.

Appendix B – Legal Addendum

1.01 Conflict and Control

In the event of any conflict between the terms of this Addendum and the document to which it is attached, the terms of this Addendum will govern and control.

1.02 Fraud

Fraud is any intentionally deceptive action, statement or omission made for personal gain or to damage another.

Any person or entity (including its employees and affiliates) that enters into a contract with Minnesota Housing and witnesses, discovers evidence of, receives a report from another source or has other reasonable basis to suspect that fraud or embezzlement has occurred must immediately make a report through one of the communication channels described in section 1.07.

1.03 Misuse of Funds

A contracting party that receives funding from Minnesota Housing promises to use the funds to engage in certain activities or procure certain goods or services while Minnesota Housing agrees to provide funds to the recipient to pay for those activities, goods or services. Regardless of the Minnesota Housing program or funding source, the recipient must use Minnesota Housing funds as agreed, and the recipient must maintain appropriate documentation to prove that funds were used for the intended purpose(s).

A misuse of funds shall be deemed to have occurred when: (1) Minnesota Housing funds are not used as agreed by a recipient; or (2) a recipient cannot provide adequate documentation to establish that Minnesota Housing funds were used in accordance with the terms and conditions of the contract.

Any recipient (including its employees and affiliates) of Minnesota Housing funds that discovers evidence, receives a report from another source or has other reasonable basis to suspect that a misuse of funds has occurred must immediately make a report through one of the communication channels described in section 1.07.

1.04 Conflict of Interest

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

- **Actual Conflict of Interest:** An Actual Conflict of Interest occurs when a person's decision or action would compromise a duty to a party without taking immediate appropriate action to eliminate the conflict.
- **Potential Conflict of Interest:** A Potential Conflict of Interest may exist if a person has a relationship, affiliation or other interest that could create an inappropriate influence if the person is called on to make a decision or recommendation that would affect one or more of those relationships, affiliations or interests.
- **Appearance of a Conflict of Interest:** The Appearance of a Conflict of Interest means any situation that would cause a reasonable person, with knowledge of the relevant facts, to question whether another person's personal interest, affiliation or relationship inappropriately influenced that person's action, even though there may be no Actual Conflict of Interest.

A conflict of interest includes any situation in which one's judgment, actions or non-action could be interpreted to be influenced by something that would benefit them directly or through indirect gain to a Partner, Family Member, Relative, Friend, Business or other Outside Interest with which they are involved. Such terms are defined below.

- **Business:** Any company, corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual or any other legal entity which engages either in nonprofit or profit-making activities.
- **Family Member:** A person's current and former spouse; children, parents, and siblings; current and former children-in-law, parents-in-law, and siblings-in-law; current and former stepchildren and stepparents; grandchildren and grandparents; and members of the person's household.
- **Friend:** A person with whom the individual has an ongoing personal social relationship. "Friend" does not generally include a person with whom the relationship is primarily professional or primarily based on the person being a current or former colleague. "Friend" does not include mere acquaintances (i.e., interactions are coincidental or relatively superficial). Social media friendships, connections, or links, by themselves, do not constitute friendship.
- **Outside Interest:** An Outside Interest may occur when an individual, their Family Member or their Partner has a connection to an organization via employment (current or prospective), has a financial interest or is an active participant.
- **Partner:** A person's romantic and domestic partners and outside Business partners.
- **Relative:** Uncle or aunt; first or second cousin; godparent; godchild; other person related by blood, marriage or legal action with whom the individual has a close personal relationship.

Once made aware of a conflict of interest, Minnesota Housing will make a determination before disbursing any further funds or processing an award. Determinations could include:

- Revising the contracting party's responsibilities to mitigate the conflict

- Allowing the contracting party to create firewalls that mitigate the conflict
- Asking the contracting party to submit an organizational conflict of interest mitigation plan
- Terminating the contracting party's participation

Any person or entity (including its employees and affiliates) that enters into a contract with Minnesota Housing must avoid and immediately disclose to Minnesota Housing any and all conflicts of interest through one of the communication channels described in section 1.07.

A contracting party should review its contract and request for proposals (RFP) material, if applicable, for further requirements.

1.05 Assistance to Employees and Affiliated Parties

Any party entering into a contract with Minnesota Housing for the purpose of receiving an award or benefit in the form of a loan, grant, combination of loan and grant or other funding is restricted in issuing a loan, grant, combination of loan and grant or other funding to a recipient ("Affiliated Assistance") who is also: (1) a director, officer, agent, consultant, employee or Family Member of an employee of the contracting party; (2) an elected or appointed official of the State of Minnesota; or (3) an employee of Minnesota Housing, unless each of the following provisions are met:

- The recipient meets all eligibility criteria for the program;
- The assistance does not result in a violation of the contracting party's internal conflict of interest policy, if applicable;
- The assistance does not result in a conflict of interest as outlined in section 1.04;
- The assistance is awarded utilizing the same costs, terms and conditions as compared to a similarly situated unaffiliated recipient and the recipient receives no special consideration or access as compared to a similarly situated unaffiliated recipient; and
- The assistance is processed, underwritten and/or approved by staff/managers who are independent of the recipient and independent of any Family Member of the recipient. Family Member is defined in section 1.04.

A contracting party need not disclose Affiliated Assistance to Minnesota Housing. However, the contracting party must document and certify, prior to the award, that the Affiliated Assistance meets each of the provisions outlined above. This documentation must be included in the Affiliated Assistance file and must be made available to Minnesota Housing upon request. Affiliated Assistance that does not meet each of the provisions outlined above will be considered a violation of Minnesota Housing conflict of interest standards and must be reported by the contracting party through one of the communication channels outlined in section 1.07.

1.06 Suspension

By entering into any contract with Minnesota Housing, a contracting party represents that the contracting party (including its employees or affiliates that will have direct control over the subject of the contract) has not been suspended from doing business with Minnesota Housing. Please refer to Minnesota Housing's website for a list of [suspended individuals and organizations](#) (Go to mnhousing.gov, scroll to the bottom of the screen and select Report Wrongdoing, then select Suspensions from the menu).

1.07 Disclosure and Reporting

Minnesota Housing promotes a "speak-up, see something, say something" culture whereby internal staff must immediately report instances of fraud, misuse of funds, conflicts of interest or other concerns without fear of retaliation through one of the communication channels listed below. External business partners (e.g., administrators, grantees or borrowers) and the general public are strongly encouraged to report instances of fraud, misuse of funds, conflicts of interest or other concerns without fear of retaliation using these same communication channels.

- Minnesota Housing's Chief Risk Officer at 651.296.7608 or 800.657.3769 or by email at MHFA.ReportWrongdoing@state.mn.us;
- Any member Minnesota Housing's [Servant Leadership Team](#), as denoted on Minnesota Housing's current organizational chart (Go to mnhousing.gov, scroll to the bottom of the screen and select About Us, select Servant Leadership Team); or
- [Report Wrongdoing or Concerns \(mnhousing.gov\)](#) (Go to mnhousing.gov, scroll to the bottom of the screen and select Report Wrongdoing).

1.08 Electronic Signatures

Minnesota Housing will use and accept e-signatures on eligible program documents subject to all requirements set forth by state and federal law and consistent with Minnesota Housing policies and procedures. The use of e-signatures for eligible program documents is voluntary. Questions regarding which documents Minnesota Housing permits to be e-signed should be directed to Minnesota Housing staff.

1.09 Fair Housing Policy

It is the policy of Minnesota Housing to affirmatively further fair housing in all its programs so that individuals of similar income levels have equal access to Minnesota Housing programs, regardless of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, familial status, gender identity or sexual orientation.

Minnesota Housing's fair housing policy incorporates the requirements of Title VI of the Civil Rights Act of 1968; the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendment Act of 1988; and the Minnesota Human Rights Act. Housing providers and other entities involved in real-estate related transactions are expected to comply with the applicable statutes, regulations and related policy guidance. Housing providers should ensure that admissions, occupancy, marketing and operating procedures comply with non-discrimination requirements. Housing providers and other entities involved in real-estate related transactions must comply with all non-discrimination requirements related to the provision of credit, as well as access to services.

In part, the Fair Housing Act and the Minnesota Human Rights Act make it unlawful, because of protected class status, to:

- Discriminate in the selection/acceptance of applicants in the rental of housing units;
- Discriminate in the making or purchasing of loans for purchasing, constructing or improving a dwelling, or in the terms and conditions of real-estate related transactions;
- Discriminate in the brokering or appraisal of residential property;
- Discriminate in terms, conditions or privileges of the rental of a dwelling unit or services or facilities;
- Discriminate in the extension of personal or commercial credit or in the requirements for obtaining credit;
- Engage in any conduct relating to the provision of housing that otherwise make unavailable or denies the rental of a dwelling unit;
- Make, print or publish (or cause to make, print or publish) notices, statements or advertisements that indicate preferences or limitations based on protected class status;
- Represent a dwelling is not available when it is in fact available;
- Refuse to grant a reasonable accommodation or a reasonable modification to a person with a disability;
- Deny access to, or membership or participation in, associations or other services organizations or facilities relating to the business of renting a dwelling or discriminate in the terms or conditions of membership or participation; or
- Engage in harassment or quid pro quo negotiations related to the rental of a dwelling unit.

Minnesota Housing has a commitment to affirmatively further fair housing for individuals with disabilities by promoting the accessibility requirements set out in the Fair Housing Act, which establish design and construction mandates for covered multifamily dwellings and requires those in the business of buying and selling dwellings to make reasonable accommodations and to allow persons with disabilities to make reasonable modifications.

Under certain circumstances, applicants will be required to submit an Affirmative Fair Housing Marketing Plan at the time of application, to update the plan regularly and to use affirmative fair housing marketing practices in soliciting renters, determining eligibility and concluding all transactions.

As a condition of funding through Minnesota Housing, housing providers are not permitted to refuse to lease a unit to, or discriminate against, a prospective resident solely because the prospective resident has a Housing Choice Voucher or other form of tenant-based rental assistance.

1.10 Minnesota Government Data Practices

Minnesota Housing, and any party entering into a contract with Minnesota Housing, must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by Minnesota Housing under the contract, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by the contracting party under the contract. The civil remedies of Minnesota Statutes Section 13.08 apply to the release of the data referred to in this section by either the contracting party or Minnesota Housing. If the contracting party receives a request to release the data referred to in this section, the contracting party must notify Minnesota Housing. Minnesota Housing will give the contracting party instructions concerning the release of the data to the requesting party before the data is released. The contracting party's response to the request shall comply with applicable law.

1.11 Prevailing Wage

Under certain circumstances, awards of Minnesota Housing funds may trigger state prevailing wage requirements under Minnesota Statutes Chapter 177 or [Minnesota Statutes Section 116J.871](#). In broad terms, Minnesota Statutes Chapter 177 applies to an award of \$25,000 or greater for housing that is publicly owned. [Minnesota Statutes Section 116J.871](#) applies to awards for non-publicly owned housing that meet the following conditions: (1) new housing construction (not rehabilitation); (2) a single entity receives from Minnesota Housing \$200,000 or more of grant proceeds or \$500,000 of loan proceeds.

Minnesota Statutes Section 116J.871 sets out several exceptions to the applicability of prevailing wage including (1) rehabilitation of existing housing; (2) new housing construction in which total financial assistance at a single project site is less than \$100,000; and (3) financial assistance for the new construction of fully detached single-family affordable homeownership units for which the financial assistance covers no more than ten fully detached single-family affordable homeownership units.

All determinations regarding prevailing wage are made by the Minnesota Department of Labor and Industry. All questions regarding state prevailing wages and compliance requirements should be directed to that agency as follows:

Division of Labor Standards and Apprenticeship
State Program Administrator
443 Lafayette Road N, St. Paul, MN 55155
651.284.5091 or dli.prewage@state.mn.us

If, after a determination by the Minnesota Department of Labor that prevailing wage does apply, a contractor or subcontractor fails to adhere to prevailing wage laws, then that contractor or subcontractor could face civil and/or criminal liability.



Agenda Report

Regular City Council – December 16, 2024
Item Number: 5.3

Title

Winona Transit ADA Policies

Originating Department: City Clerk
Presenter(s): Monica Hennessy Mohan, City Clerk

Action Requested

Approve the ADA policy.

Background

The Minnesota Department of Transportation - Office of Transportation recently updated the policy guidance to public transit systems in the state regarding ADA policies. Winona Transit had updated our local policies a year ago, but MNDot is requiring Council review as well.

Budget Impact

None.

Attachments

Winona Transit ADA Policy

Staff Contact: Monica Hennessy Mohan



AMERICANS WITH DISABILITIES ACT PLAN

Including Policies Regarding General ADA Requirements, Reasonable Modifications,
No Shows, and a Suspension Appeals Process

for the

Winona Transit Service

Approved by:

Winona City Council

Date Approved:

December 16, 2024

ADA Contact Information

Name & Title: **Transit Coordinator**

Mailing Address: **207 Lafayette Street, Winona, Minnesota 55987**

Phone Number: **(507) 457-8200**

Email Address: **cityclerk@winonamn.gov**

I. Introduction and Purpose

The Americans with Disabilities Act of 1990 (ADA) requires that individuals with disabilities receive the same level of service as non-disabled individuals. Services that are “separate but equal” are not acceptable. Section 504 prohibits discrimination based on disability in any program or activity receiving Federal financial assistance.

This ADA policy is written to establish operating and service guidelines and procedures for the implementation of the requirements of the Americans with Disabilities Act of 1990 (ADA), the U.S. Department of Transportation (U.S. DOT) regulations for implementing ADA (49 CFR Parts 27, 37 and 38), and any applicable state laws and regulations. The City of Winona operates a route deviation and demand-response service (Winona Transit) and complies with ADA requirements with respect to such services.

ADA Policy Statement

It is the policy of Winona Transit to comply with all the legal requirements of federal and state laws and regulations as they pertain to individuals with disabilities. If state laws and federal regulations are contradictory, the federal ADA regulations prevail. The transit system provides quality transportation services without discrimination to all persons including individuals with disabilities. Discrimination based on disability against any person by transit system employees will not be condoned or tolerated.

Goals: Service is provided in a manner that meets the following goals:

1. Provides safe, accessible, and dignified services to all persons, including individuals with disabilities.
2. Expedites the safe and efficient boarding, securing, transporting, and alighting of all passengers, regardless of mobility status.
3. Accommodates a wide range of mobility aids within the confines of available vehicles and commercial standard equipment.

Applicability: This policy applies to all transit system employees, services, facilities, and vehicles. It applies equally to all persons needing and/or using the services provided by the system.

Definitions:

Disability: With respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

Fixed Route Service: Operates along a prescribed route according to a fixed (regular) schedule.

Mobility Device: A device that is designed to assist an individual with disabilities with locomotion. Examples include wheelchairs, canes, crutches, and walkers. Also called mobility aid.

Securement Area or Station: A designated location for riders using wheelchairs, equipped with a securement system.

Securement Device, Equipment or System: Equipment used for securing wheelchairs against uncontrolled movement during transport.

Service Animal: Any guide dog, signal dog, or other animal that has been individually trained to work or perform tasks for an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.

Wheelchair: A mobility aid belonging to any class of three- or more- wheeled devices, usable indoors, designed or modified for and used by individuals with mobility impairments, whether operated manually or powered.

II. General Guidance and Procedures for Implementing Policy

Recruitment and Employment

As stated in the transit system's personnel policies, the agency is an Equal Opportunity Employer (EOE) and fully complies with ADA in its recruitment, hiring, and continued employment practices.

Facility and Vehicle Accessibility

The transit system administrative facility, transit hubs, and vehicles shall meet or exceed the requirements of 49 CFR Parts 27, 37 and 38 and requirements of the State of Minnesota. If state requirements do not meet federal requirements, the federal ADA regulations prevail. All vehicles purchased for Winona Transit route deviation and demand responsive service will be accessible.

Vehicle and Route Assignment

All route deviation and demand response vehicles operated by the City of Winona are accessible and persons with disabilities, including wheelchair users, can board any vehicle.

Maintenance of Accessible Features

Accessibility features on vehicles, including lifts, ramps, and wheelchair securement devices, will be maintained in operative condition. The preventive maintenance program of Winona Transit provides for regular and frequent maintenance checks of these features as well as preventive maintenance as recommended by the equipment manufacturers. In addition, the lift must be cycled as part of each pre-trip inspection.

Inoperative Lifts and Ramps

Drivers are required to report lift failures immediately. Vehicles with inoperative lifts will be removed from service and replaced with an accessible vehicle until the inoperative lift is repaired.

Wheelchair Accommodation

All accessible vehicles meet or exceed the requirements of 49 CFR Part 38. Transportation providers are required to carry a wheelchair and its user, as long as the lift can accommodate the size and weight of the wheelchair and its user, and there is space in the securement area for the wheelchair on the vehicle without blocking the aisle. If a vehicle lift and securement area can accommodate a wheelchair (or other mobility device), Winona Transit will transport the device (and its user).

An individual who uses a wheelchair that, when occupied, exceeds the weight rating of the vehicle lift, will be offered the opportunity to board and disembark from the vehicle separately from the wheelchair. However, Winona Transit personnel are not permitted to operate a passenger's wheelchair (i.e. a motorized wheelchair). The individual may travel with another individual who can assist with operating the unoccupied wheelchair to maneuver it on and off the lift.

Boarding

Drivers and scheduling practices will provide adequate time for a passenger with a disability to board and/or disembark the vehicle, which includes adjusting the schedule if necessary and waiting for passengers to be seated before moving the vehicle. Only a properly trained transit system employee can operate the lift and secure the wheelchair in the securement station. Passengers may board facing toward or away from the vehicle.

Wheelchair Securement

Winona Transit requires that all wheelchairs be secured. Drivers should not allow a passenger to ride if they are not secured properly unless the securement system will not accommodate the wheelchair. Drivers cannot deny a passenger a ride based on the inability to secure the wheelchair unless legitimate safety requirements cannot be met. However, drivers must warn the passengers of the danger of riding in a non-secured wheelchair. Passengers who refuse to allow their wheelchairs to be secured may be denied service.

Securement of wheelchairs is the responsibility of the driver. Drivers are trained in the proper operation of all securement equipment based on the equipment manufacturer's specifications. Drivers will listen to and respect riders' instructions on how to secure their equipment. Drivers cannot be expected to be familiar with each wheelchair type that may come aboard, and securement attachment points may differ by wheelchair manufacturer. The rider may be in the best position to instruct the driver on how to properly secure their mobility device.

If the securement system is not compatible with the wheelchair the passenger is using, the driver will still make an attempt to safely secure the wheelchair. If the wheelchair cannot be secured because of the wheelchair design, the passenger still has the right to ride in the vehicle.

Drivers must secure wheelchairs in the designated securement area only, even if the passenger wants their mobility device to be secured in a non-designated area. The wheelchair is not allowed to block the aisle.

In cases where an individual using a wheelchair attempts to board and requires use of a securement location that is currently occupied by another passenger that is not using a wheelchair, the driver will ask that passenger to allow the individual using a wheelchair to use the securement position.

Seat Belt Usage

When riding in a Winona Transit vehicle, seat belts and shoulder harnesses are recommended but not required for passengers riding in their secured wheelchair.

Driver Assistance

Drivers will make themselves available to assist individuals with disabilities and will assist upon request of the passenger. Drivers will assist a passenger with using the vehicle ramp, lift and/or securement systems using the accessibility-related equipment and features on their vehicles. It

is the policy of Winona Transit that all wheelchairs be secured by the 4-point floor system to anchor the wheelchair to the floor.

Use of Lift by Individuals Not Using a Mobility Device

The driver will deploy the lift for any individual, with or without a disability, who is not using a mobility device to board or alight the vehicle upon request.

Accommodation of Other Mobility Devices

Mobility devices that are not wheelchairs, but which are primarily designed for use by individuals with mobility impairments, will be accommodated to the extent that the ADA-compliant lift and securement areas can safely do so. However, these devices are the responsibility of the individual passenger and must be secured in a manner that does not interfere with the safe operation of the vehicles and the transport of other passengers.

Transfer to Fixed Seating

All passengers using wheelchairs have an option of transferring to fixed seating once on board the vehicles. Drivers may recommend, but never require, wheelchair users to transfer to fixed seating. No waivers are allowed to be required.

Accommodation of Portable Oxygen

Individuals are allowed to travel with respirators and portable oxygen supplies on board, consistent with applicable U.S. DOT rules on the transportation of hazardous materials in 49 CFR Subtitle B, Chapter 1, Subchapter C.

Priority Seating

Apart from the wheelchair securement stations, the transit system does not require any passenger to sit in designated seating.

Priority seating for seniors and individuals with disabilities is to be designated by permanent signage in each vehicle. In cases where an individual with a disability requests priority seating that is currently occupied by another passenger, the driver will ask that passenger to move so as to allow the individual with a disability use of the priority seating. In cases where a wheelchair user requires the use of a securement location, the driver will ask any passenger (including other passengers with disabilities) to vacate the securement location.

Service Animals

In compliance with 49 CFR Part 37, the transit system allows trained service animals to accompany passengers with disabilities. The driver will not ask for proof of the qualifications of the animal but may ask only the following questions: if the animal is a service animal required because of a disability and what tasks the animal has been trained to perform. Winona Transit does not impose species or breed restrictions. However, any animal which is not under the passenger's control, or which becomes a direct threat to the health or safety of other passengers may be restricted from riding.

Emotional support animals or "comfort animals" are not service animals within the context of the US DOT ADA regulations.

Alighting

It is the responsibility of the driver to determine that the location for passenger alighting is safe. For drivers to determine safe locations for pick up and drop off, ramps and wheelchair paths must be clear of snow, ice, parked cars, trash and other obstructions. For Winona Transit

services, the driver will allow a passenger who uses the lift to alight at any stop, unless the lift cannot be deployed, will be damaged if deployed, or conditions at the stop would present unsafe conditions for all passengers. Only the driver will unsecure the wheelchair and operate the lift to return the passenger to the ground level.

Staff Training

All drivers and transit system staff are trained to proficiency in use of accessibility equipment, the operating policies related to each of the service requirements described, and in properly and respectfully assisting and treating individuals with disabilities with sensitivity. Mechanics are also trained to properly maintain lifts and other accessibility equipment.

Rider Information

All printed informational materials are made available in accessible formats upon request, for example, large print for individuals with low vision or audio for blind individuals, as well as accessible electronic formats. Alternative, accessible formats of City of Winona's policies, procedures and transit information are available on request. Riders can email or call the transit coordinator for custom solutions.

Personal Care Attendants

Under the ADA, an agency cannot require a passenger to have a personal care attendant (PCA). If a PCA accompanies a passenger, the PCA will ride free of charge. A family member or friend is not considered a PCA, unless that individual is acting in that capacity.

Stop Announcements

The City of Winona operates a deviated route service. As such, stop announcements and route identification announcements are made at transfer points, major intersections, destination points, intervals along the route sufficient to orient passengers to their location, and any stop request as is required.

Winona Transit drivers are trained to verbally make stop and route identification announcements in a clear and concise manner to adequately assist clients who may have a disability that prevents them from otherwise recognizing stops and/or routes.

Complaint Procedure

The City of Winona will investigate transit complaints received no more than 180 days after the alleged incident. The City of Winona will process complaints that are complete. Once the complaint is received, the City of Winona will review it to determine if our office has jurisdiction or if the complaint should be handled by the MnDOT ADA Compliance Coordinator and/or the MnDOT Office of Title II ADA Coordinator. The complainant will receive written acknowledgement informing her/him that the complaint has been received and who will be handling it.

The City of Winona and/or MnDOT has 30 days to investigate the transit complaint. If more information is needed to resolve the case, the City of Winona and/or MnDOT, may contact the complainant. The complainant has 15 business days from the date of the written notification to send the requested information to the investigator assigned to the case. If the investigator is not contacted by the complainant or does not receive the additional information within 10 business days, the City of Winona and/or MnDOT can administratively close the case. A case can be administratively closed also if the complainant no longer wishes to pursue their case.

After the investigator reviews the transit complaint, they will issue one of two written documentations to the complainant: a closure letter or a letter of finding (LOF). A closure letter summarizes the allegations and states that there was not an ADA violation and that the case will be closed. An LOF summarizes the allegations, the interviews regarding the alleged incident, and explains the outcomes of what actions will occur. If the complainant wishes to appeal the decision, they have 15 days after the date of the letter or the LOF to do so.

Documentation of each complaint will be kept on file for a minimum of one year, and a summary of all complaints will be kept for at least five years. This meets DOT regulations that require FTA grantees to maintain all complaints of noncompliance with 49 CFR Part 27 for one year, and a record of all such complaints, which is permitted to be in summary form, for five years.

Reasonable Modification Policy

The purpose of the reasonable modification policy is to ensure that the City of Winona offers equal and effective opportunities and access to public transportation services for persons with disabilities and full compliance with the provisions of the Title II of the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973.

This policy applies to all safety-sensitive transportation vehicle operators including full, part time, casual/substitutes/seasonal, and those staff that may be required to operate the vehicle. For the purposes of this section, the term reasonable accommodation shall be interpreted in a manner consistent with the term “reasonable modifications” as set forth in the Americans with Disabilities Act Title II regulations at 28 CFR 35.130(b)(7), and not as it is defined or interpreted for the purposes of employment discrimination under Title I of the ADA (42 U.S.C. 12111–12112) and its implementing regulations at 29 CFR part 1630.

The City of Winona is committed to providing equal access and opportunity to individuals with disabilities in all programs, services, and activities. The City of Winona recognizes that in order to have equally effective opportunities and benefits, individuals with disabilities may need reasonable modifications to policies and procedures. The City of Winona transit system will adhere to all applicable federal and state laws, regulations and guidelines with respect to providing reasonable modifications, as necessary, to afford equal access to programs for people with disabilities. The City of Winona does not discriminate based on disability in admission to, participation in, or receipt of services and benefits under any transit program or activity. The City of Winona will take appropriate steps to ensure that people with disabilities have an equal opportunity to participate.

No individual with a disability shall, because of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of Winona Transit or be subject to discrimination by Winona Transit.

A reasonable modification is a change or exception to a policy, practice, or procedure that allows people with disabilities to have equal access to programs, services, and activities. The City of Winona will make reasonable modifications to policies, practices, and procedures when necessary to ensure access to transit services for individuals with disabilities, unless:

- Making the accommodation would fundamentally alter the nature of the public transportation service.
- Making the accommodation would create a direct threat to the health or safety of other passengers.

- The individual with a disability is able to fully use the Winona Transit service without the accommodation being made.
- Making accommodation creates an undue financial burden on the transit system.

ELIGIBILITY CRITERIA

Winona Transit provides curb to curb service, an individual is eligible to be considered to receive a reasonable modification if that individual has:

- A physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- A record of such impairment; or
- Has been regarded as having such impairment.

REQUESTS FOR REASONABLE MODIFICATION

The City of Winona shall make information about how to contact Winona Transit to make requests for reasonable modifications readily available to the public through its website, brochures, and other rider policy guidelines. The City of Winona shall follow these procedures in making requests:

- Individuals requesting modifications shall describe the modification to the service needed in order to use the service. Door through Door services and/or the carrying or delivering of package(s) will not be considered a reasonable modification.
- Individuals requesting modifications are not required to use the term “reasonable modification” when making a request. Personnel at Winona Transit will determine if the request represents reasonable modification and proceed in accommodating the request accordingly.
- Whenever feasible, Winona Transit requests that individuals make such requests for modifications before Winona Transit is expected to provide the modified service.
- Where a request for modification cannot practicably be made and determined in advance (e.g., because of a condition or barrier at the destination of a route deviation or demand response trip of which the individual with a disability was unaware until arriving), operating personnel shall make a determination of whether the modification should be provided at the time of the request. Operating personnel may consult with Winona Transit’s management before making a determination to grant or deny the request.
- Requests for accommodation may be made either orally or in writing. The reasonable accommodation process begins as soon as the request for accommodation is made. The request can be submitted in any written format. Alternative means of filing a request, such as personal interviews, phone calls, or taped requests, will be made available for persons with disabilities if unable to communicate their request in writing or upon request.

INTERACTIVE PROCESS

When a request for accommodation is made, the City of Winona and the individual requesting accommodation must engage in a good faith interactive process to determine what, if any accommodation shall be provided. The individual and the City of Winona must communicate with each other about the request, the process for determining whether accommodation will be provided, and the potential accommodations. Communication is a priority throughout the entire process.

TIME FRAME FOR PROCESSING REQUESTS TO PROVIDE REASONABLE MODIFICATION

The City of Winona will process requests for reasonable accommodation and then provide accommodation, where appropriate, in as short a time frame as reasonably possible. The City of Winona recognizes, however, that the time necessary to process a request will depend on the nature of the accommodation(s) requested and whether it is necessary to obtain supporting information.

GRANTING A REASONABLE MODIFICATION REQUEST

As soon as the City of Winona determines that a reasonable accommodation will be provided, that decision shall be immediately communicated to the individual. When adequate time is provided, this notice must be in writing in order to maintain the required information for reporting purposes. When granting a request is communicated orally, the City of Winona will follow up in writing. Upon request, alternative means of response will be provided.

In choosing among alternatives for meeting nondiscrimination and accessibility requirements with respect to new, altered, or existing facilities, or designated or specified transportation services, the City of Winona shall give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate to the needs of individuals with disabilities.

DENIAL OF REASONABLE MODIFICATION REQUEST

As soon as the City of Winona determines that a request for reasonable accommodation will be denied, the City of Winona will communicate the basis for the decision immediately. When adequate time is provided, this notice will be in writing to the individual requesting the modification. Any denial communicated orally will be followed up in writing. The explanation for the denial will clearly state:

- The specific reasons for the denial.
- Any alternative accommodation that may create the same access to transit services as requested by the individual; and
- The opportunity to file a complaint relative to the City of Winona's decision on the request.

COMPLAINT PROCESS

The City of Winona has a process of investigating and tracking complaints from qualified individuals. These procedures shall be posted on the City's website and will be provided to any individual where Winona Transit has denied a request for accommodation. The process and any forms necessary to file a complaint are readily available from the website. Alternative means of filing complaints, such as personal interviews, phone calls, or taped requests, will be made available for people with disabilities if unable to communicate their request in writing or upon request.

Any person who believes she or he has been discriminated against in obtaining a reasonable modification may file a complaint by completing and submitting the City of Winona's Reasonable Modification Complaint Form. The City of Winona investigates complaints received no more than 30 days after receipt. The City of Winona will process complaints that are complete. The City of Winona will work with MnDOT OTAT to determine resolution in the process. Once the complaint is received, the complainant will receive an acknowledgement of receipt. If more information is needed to resolve the complaint, the City of Winona may contact the complainant. The complainant has 30 business days from the date of the letter to send requested information to the City of Winona.

If the City of Winona is not contacted by the complainant or does not receive additional information within 30 business days, the City of Winona may administratively close the complaint. In addition, a complaint may be administratively closed if the complainant no longer wishes to pursue their case.

After the City of Winona investigates the complaint and has consulted and received directions from MnDOT OTAT, a decision will be made in writing to the complainant. The City of Winona will issue either a Letter of Closure or a Letter of Finding.

- **Letter of Finding** – This letter will summarize the complaint; any interviews conducted regarding the complaint and explains what actions will be taken by Winona Transit to address the complaint.
- **Letter of Closure** – This letter will explain why the City of Winona has determined that the complaint does not merit accommodation under the Americans with Disabilities Act and that the complaint will be closed.

If the complainant disagrees with the decision of the City of Winona, an opportunity to appeal the decision may be pursued provided the complaint files notice of appeal within 21 days of the initial decision of the City of Winona. At any time, the complainant has the right to file a complaint directly with MnDOT, through their website complaint section, through the Motor Carrier website, or through the Ombudsman website.

In the event of appeal, the complainant will be granted all due process, including the ability to present additional evidence, present the case in person during an appeal hearing, and to be represented by counsel.

DESIGNATED EMPLOYEE

The City of Winona shall designate one official within the organization responsible for processing Winona Transit reasonable modification requests and handling Winona Transit complaints. This individual is:

Transit Coordinator

207 Lafayette Street, Winona, Minnesota 55987

RECORD RETENTION

The City of Winona will maintain all records related to reasonable modification requests and denials for at least three (3) years.

No Show Policy

This policy is intended to address the actions by habitual abusers of service scheduling and provide clear protocols for addressing passengers who fail to show for their scheduled trip without properly canceling the trip. This policy is intended to address those repeat offenders, and not the occasional incident that may occur with some passengers.

DEFINITIONS

No-show – Any passenger who is unavailable for pick-up of a scheduled trip that has not notified Winona Transit to cancel that trip. Trips in which passengers will not be picked up due to circumstances related to service will not be considered a no-show.

NO-SHOW PROCEDURE

No shows are costly to the transit system. Not only are they a waste of resources such as fuel, but another passenger may also have been able to utilize the transit service during the same time slot. In the case of continuous no-shows, a passenger's riding privileges may be suspended. After three no-shows (when the bus arrives to pick up a passenger and they do not come out to the bus or when a passenger cancels less than 15 minutes before their scheduled pickup), a letter will be sent to the passenger explaining that their riding privileges have been suspended for 30 days. Included in the letter are dates of suspension and the date in which riding privileges may resume.

Note: The City of Winona Transit Service is aware that certain disabilities may result in involuntary breach of our policies. As a result, drivers will evaluate any code breach on a case-by-case basis.

All penalties imposed under this policy are first subject to an appeals process (see Suspension Appeals Process).

Winona Transit will continue to serve passengers appealing pending suspensions until all appeals have been settled. For passengers who do not choose to appeal, suspensions will commence on the date specified in the written notice.

Subscription/Standing Order reservations may be denied upon a second suspension in any consecutive 12-month period. Privileges may be reinstated without guarantee of the original subscription/standing order.

Suspension Due to Direct Threat to the Health or Safety of Others

Americans with Disabilities Act (ADA): FTA C 4710.1 Circular Section 2.2.7, § 37.5(h) permits agencies to refuse service to individuals with disabilities if they engage in violent, seriously disruptive, or illegal conduct, or if they pose a direct threat to the health or safety of others.

SERVICE DENIAL DUE TO RIDER CONDUCT

"It is not discrimination under this part for an entity to refuse to provide service to an individual with disabilities because that individual engages in violent, seriously disruptive, or illegal conduct, or represents a direct threat to the health or safety of others. However, an entity shall not refuse to provide service to an individual with disabilities solely because the individual's disability results in appearance or involuntary behavior that may offend, annoy, or inconvenience employees of the entity or other persons" (§ 37.5(h)).

DETERMINING A DIRECT THREAT

The City of Winona may refuse to transport individuals who pose a significant risk to the health or safety of others. The definition of "direct threat" is intended to be interpreted consistently with the parallel definition in the Department of Justice regulations. That is, Part 37 does not require a public entity to permit an individual to participate in or benefit from the services, programs, or activities of that public entity when that individual poses a direct threat to the health or safety of others. In determining whether an individual poses a direct threat to the health or safety of

others, the City of Winona must make an individualized assessment, based on reasonable judgment, that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk, the probability that the potential injury will actually occur, and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk. Presuming certain conduct will occur based on specific disabilities is not appropriate. For example, it is incorrect to presume all riders with particular psychiatric disabilities will behave in a violent manner that constitutes a direct threat to others. The definition of direct threat refers to a direct threat to other individuals and not to the person with the disability.

STEPS TO TAKE BEFORE REFUSING SERVICE

Before refusing service to an individual with a disability, the City of Winona will make reasonable attempts to resolve issues with riders or, if appropriate, caregivers or guardians. The City of Winona will document the incident or incidents leading to the service denial, substantiating how such an incident rises to the level of seriously disruptive or a direct threat. The City of Winona will provide the rider with a written warning before denying service.

RIGHT OF INDIVIDUALS TO CONTEST SERVICE DENIALS

Access to public transit is a civil right and inherent in any civil right is the opportunity for due process. This means providing an individual who is denied service the opportunity to contest that decision, correct the situation, and resume service. Service refusals cannot be permanent unless an individual continues to pose a direct threat to the health or safety of others. Riders must have the opportunity to subsequently present information to the City of Winona, demonstrating that issues have been resolved or presenting options to mitigate any problems, to have service reinstated. This also means providing a rider required to travel with an attendant the opportunity to appeal such a requirement. As with service refusals, riders have the right to subsequently provide information demonstrating they have addressed Winona Transit's concerns and can now travel without an attendant or propose other solutions that permit them to travel on their own. The City of Winona will follow the approved Suspension Appeals Process provided in this policy.

Suspension Appeals Process

A suspension may result from violations of passenger behavior rules, violation of the no-show policy, or for other inappropriate or disruptive behavior. Regardless of the reason for suspension, each passenger has a right to appeal the decision through an appeals process.

Appeals must be submitted in writing to the Transit Coordinator City of Winona, by mail at 207 Lafayette Street, Winona, Minnesota 55987, or by email at cityclerk@winonamn.gov within 14 days of issuance/receipt of the determination letter. Written appeals must provide for the date of issue/incident and service suspension, circumstances involved in the issue/incident, passengers understanding of the suspension, suggested remedies passenger is offering in response to reinstatement of ridership. All passengers will be permitted to continue using service during the appeals process, unless it is established that the rider engaged in a violent, seriously disruptive, or illegal conduct, or if the rider poses a direct threat to the health or safety of others. Winona Transit management will inform all schedulers/dispatchers that the suspension is pending an appeal and to allow service to continue for the affected passenger. The City of Winona will provide all information to the MnDOT OTAT Compliance Coordinator for review and approval during the appeals process.

An Appeals Committee will review all applicable information from the City of Winona and the involved passenger. To maintain separation of function, the individual(s) who made initial determination will not be involved in hearing/determining appeals outcome. All passengers will be offered the opportunity to speak directly with the committee members and/or the Transit Coordinator regarding the submitted appeal and/or circumstances that led the suspension and subsequent appeal.

After a thorough review of all available information and testimony, the Appeals Committee will have 72 hours in which to issue a recommendation to sustain or reverse the suspension. The committee recommendation will be forwarded to the Transit Coordinator and/or the assigned personnel for final review and implementation.

The City of Winona will have three (3) days to issue a final suspension decision in writing to the passenger involved. The appeal process will be resolved within 30 days of receipt of appeal request.

All communications will be made available in alternate format upon request.

ADA Complaint Form Procedure

The Americans with Disabilities Act of 1990 (ADA), provides protection that no individual with a disability shall on the basis of disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any federally funded program, service, or activity.

The City of Winona is committed to providing non-discriminatory service to ensure that no person is excluded from participation in, or denied the benefits of, or subjected to discrimination in the receipt of its services by providing protection that no individual with a disability shall on the basis of disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination as stated in the Americans with Disabilities Act of 1990 (ADA).

If you feel that you have been discriminated against, please provide the following necessary information to facilitate the processing of your complaint. If assistance is required to complete the form, or if you have questions, please do not hesitate to call the Transit Coordinator at (507) 457-8200. **Once completed, return a signed and dated copy to:**

**Transit Coordinator
207 Lafayette Street, Winona, Minnesota 55987
Or cityclerk@winonamn.gov**

Note: The following information is necessary to assist us in processing your complaint. Should you require any assistance in completing this form, please call (507) 457-8200.



ADA Transit Complaint Form



CUSTOMER REPORTING INCIDENT:

Name: _____
 Address: _____
 Email: _____ Phone: _____

ALLEGED OFFENDING INDIVIDUAL(S):

Date of Incident: _____ Bus#: _____ Route: _____
 Time of Incident: _____ Name of Transit Employee/Contractor: _____

INCIDENT DESCRIPTION:

WHAT IS YOUR DESIRED OUTCOME?

VERIFICATION AND SIGNATURE:

In signing this complaint, I verify that, to the best of my knowledge, everything that I have stated in this form is true and accurate.

Signature of Customer: _____ Date: _____

MAIL, DELIVER OR EMAIL TO:

Transit Coordinator, City Clerk Office, 3rd Floor, 207 Lafayette Street, Winona, MN 55987
 Winona City Clerk Office, PO Box 378, Winona, MN 55987 | cityclerk@winonamn.gov

Reasonable Modification Complaint Process

The City of Winona investigates complaints received no more than 30 days after receipt. The City of Winona will process complaints that are complete. Once the complaint is received, the complainant will receive an acknowledgement of receipt. If more information is needed to resolve the complaint, the City of Winona may contact the complainant. The complainant has 30 business days from the date of the letter to send requested information to the City of Winona.

If the City of Winona is not contacted by the complainant or does not receive the additional information within 30 business days, the City of Winona may administratively close the complaint. In addition, a complaint may be administratively closed if the complainant no longer wishes to pursue their case.

After the City of Winona investigates the complaint and has consulted and received directive from MnDOT OTAT, a decision will be rendered in writing to the complainant. The City of Winona will issue either a Letter of Closure or Letter of Finding.

- **Letter of Finding** – This letter will summarize the complaint, any interviews conducted regarding the complaint, and explains what actions will be taken by inona Transit Ser to address the complaint.
- **Letter of Closure** – This letter will explain why inona Transit Ser has determined that the complaint does not merit accommodation under the Americans with Disabilities Act and that the complaint will be closed.

If the complainant disagrees with the decision of the City of Winona, an opportunity to appeal the decision may be pursued provided the complaint files notice of appeal within 21 days of the initial decision of the City of Winona.

In the event of appeal, the complainant will be granted all due process, including the ability to present additional evidence, present the case in person during an appeal hearing, and to be represented by counsel.



Request for Reasonable Accommodation/Modification

Winona Transit is committed to complying with the Americans with Disabilities Act (“ADA”) and the Minnesota Human Rights Act (“MHRA”). The ADA Coordinator/Designee will review each request on an individualized, case-by-case, basis to determine whether accommodation or modification can be made.

General Information:

Date of Request: _____

Person needing accommodation/modification:

Name: _____

Address: _____

Email: _____ Phone: _____

Person making request (if different from person needing accommodation/modification):

Name: _____

Email: _____ Phone: _____

Relationship to person needing accommodation/modification: _____

Accommodation Information

Date accommodation/modification is needed: _____

Type of accommodation/modification requested (please be specific):

How would you like to be notified of the status of your request?:

Phone Email Writing Other (specify): _____

If someone else has completed this form on your behalf and you want that person to be notified of the status of your request, please initial here: _____

All requests for accommodation/modification will be evaluated individually and a response to your request will be provided within one week of receipt.

Signature of Requestor _____ Date _____

This form can be delivered, mailed or emailed to the following:
Transit Coordinator, City Clerk’s Office, 3rd Floor, 207 Lafayette Street, Winona, MN 55987
Winona City Clerk’s Office, PO Box 378, Winona, MN 55987 | cityclerk@winonamn.gov

OFFICE USE ONLY

RESPONSE TO REQUEST FOR ACCOMMODATION/MODIFICATION

Date request received: _____

The request for accommodation/modification is **GRANTED**. Below is a description of the accommodation/modification:

The request for accommodation/modification is **DENIED** because:

The requester does not meet the essential eligibility requirements or qualifications for the program, service, or activity, without regard to disability.

The requested accommodation/modification would impose an undue burden on the agency; and/or

The requested accommodation/modification would fundamentally alter the nature of the service, program, or activity.

Requester notified on: (date) _____ via: _____

Additional notes:

City Clerk:

Name:

Signature _____ Date _____



Agenda Report

Regular City Council – December 16, 2024
Item Number: 5.4

Title

Designation of Official Newspaper for 2025

Originating Department: City Clerk
Presenter(s): Monica Hennessy Mohan, City Clerk

Action Requested

Adopt the attached resolution.

Background

A proposal form was sent to the Winona Daily News and the Winona Post for the publication of the City of Winona legal advertisements for 2025. The quotes received were as follows:

Bidder	Bid (Index Number)
Winona Post	\$0.171
Winona Daily News	\$0.1927

The current index number for the Winona Daily News is \$0.1779.

Budget Impact

None.

Attachments

Resolution

Staff Contact: Monica Hennessy Mohan

RESOLUTION

BE IT RESOLVED by the City Council of the City of Winona, Minnesota, that it hereby designates the Winona Post as the official newspaper for the City of Winona for 2025 for the purpose of publishing legal advertisements per requirements set forth in the City Charter.

Dated this _____ day of _____, 2024.

Scott Sherman
Mayor

Attest:

Monica Hennessy Mohan
City Clerk

Agenda Report

Regular City Council – December 16, 2024
Item Number: 5.5



Title

Governmental Accounting Standards

Originating Department: Finance Department
Presenter(s): Jessica Wojahn, Finance Director

Action Requested

Approve the two attached resolutions.

Background

The Governmental Accounting Standards Board (GASB) issued Statement 54, Fund Balance Reporting and Governmental Fund Type Definitions in 2009. This statement classified fund balance into five categories separated by the extent the City is bound to honor the constraints on which amounts can be spent. These categories include:

- Nonspendable – amounts that are not in spendable form or legally or contractually required to remain intact
- Restricted – externally imposed constraints by grantor or debt covenants
- Committed – internally imposed constraints by formal action of the City Council
- Assigned – limitation resulting from intended use
- Unassigned – no restrictions

Committed Fund Balance:

The Winona City Council, as the highest level of decision-making authority, may commit fund balance for specific purposes pursuant to constraints imposed by formal actions taken by resolution. Equal action must be enacted to rescind the commitment. Action to commit fund balance must occur within the fiscal reporting period; however, the amount can be determined subsequently.

Assigned Fund Balance:

The Winona City Council delegates the authority to assign fund balance for cash flows in accordance with the City Financial Policy.

Unassigned Fund Balance:

The residual classification of fund balance. By definition, the general fund is the only fund that reports a positive unassigned fund balance. The general fund is the only fund that reports a positive unassigned fund balance.

Budget Impact

No impact to budget.

Attachments

- Resolution to Commit Specific Revenue Sources in Special Revenue Funds Per Exhibit 1
 - Exhibit 1
 - Exhibit 2
- Resolution to Assign Fund Balance

Staff Contact: Jessica Wojahn, Finance Director

RESOLUTION

WHEREAS, the Governmental Accounting Standards Board’s Statement 54 definition of special revenue funds states that special revenue funds are used to account for and report the proceeds of specific revenue sources that are restricted or committed to expenditures for specified purposes other than debt service or capital projects; and,

WHEREAS, the term “proceeds of specific revenue sources” establishes that one or more specific restricted or committed revenues should be the foundation for a special revenue fund and comprise a substantial portion of the fund’s revenue; and,

WHEREAS, council action is required to formalize the commitment of the specific revenue sources to specified purposes; and,

WHEREAS, council action is required to formalize the commitment of fund balance.

NOW THEREFORE LET IT BE RESOLVED that the City Council of the City of Minnesota, that effective December 31, 2024, the specific revenue sources of each special revenue fund and the specific purposes for which they are committed as listed on the attached exhibit (EXHIBIT 1).

AND BE IT ALSO RESOLVED that the City Council of the City of Minnesota, that effective December 31, 2024, the fund balance is committed as listed in the attached exhibit (EXHIBIT 2).

Dated this _____ day of _____, 2024.

Scott Sherman
Mayor

Attest:

Monica Hennessy Mohan
City Clerk

**CITY OF WINONA (Including the Port Authority)
 COMMITTING SPECIFIC REVENUE SOURCES IN SPECIAL REVENUE FUNDS (GASB 54)**

Fund	Specific Revenue Source	Restricted For	Committed For
Downtown-1990 C.D. Loan	Loan repayment		Economic development projects
Downtown-1994 C.D. Loan	Loan repayment		Economic development projects
Senior Advocacy Program	Federal grant, county payment, tax levy	Recreation - Senior programs	Recreation - Senior programs
Central City Rehab	Federal and state grants, loan repayment	Affordable housing	Economic development projects
Library Memorials	Donations	Library projects	Library capital projects
Abatement Waters Edge	Abatement levy	Abatement projects	Abatement projects
Emergency	Donations or outside contributions, loan repayment	Extraordinary emergency specific needs	Extraordinary emergency specific needs
Athletic (separate board)	Golf course payment		Golf course capital
West Central Revitalization	Federal and state grants, loan repayment	Economic development projects	Economic development projects
Recovery Grant	Federal and state grants	COVID-19 response	
Public Safety Aid	State grants	Public safety projects	
Port Authority-General Fund	Sale of property and specific tax levy		Economic development projects
Port-Federal Revolving Loan	Federal grants, loan repayment	Economic development projects	Economic development projects
Port-Revolving Loan (Non Federal)	State grants, loan repayment	Economic development projects	Economic development projects
Port-Local Economic Development	Donations, loan repayment	Economic development projects	Economic development projects

CITY OF WINONA (Including the Port Authority)			
<u>RESTRICTED AND COMMITTED FUND BALANCE</u>			
<u>Item</u>	<u>Restricted</u>	<u>Committed</u>	
Police-Drug Force Use	X		
CMH Property Transfer (Park Improvement)	X		
Japanese Garden (Grant Win Foundation)	X		
Snow Removal	X		
Trail Maintenance and Development	X		
Campground		X	
Encumbrances		X	
Boat Harbor		X	
Bandshell		X	
Municipal Band		X	
Holiday Lights		X	
Flood Control		X	
Ice Arena		X	
Recreation - Park Projects		X	
Recreation - Art Projects		X	
Fund Balance Committed for Future Year		X	
Senior Advocacy (Federal Amount)	X		
Affordable Housing	X		
Library Memorials Donations	X		
Public Safety	X		
Debt Service (City and Port)	X		
Capital Projects (City and Port)	X		
Permanent Funds	X		
Health Insurance - Internal Service Fund	X		
Risk Management - Internal Service Fund	X	X	
Equipment Replacement - Internal Service Fund	X	X	
Facilities - Internal Service Fund		X	
Parks - Internal Service Fund		X	
Infrastructure Replacement - Internal Service Fund		X	
Lion's Club Contribution - Specific Use	X		
Lake Park Bike Path (donated)	X		
Opportunity Winona (Port)		X	
Port-Properties Held for Development	X		
Port-Programs		X	
Port-Federal Revolving Loans	X		
Port: Non-Federal & Econ Dev Revolving Loans	X		

RESOLUTION

WHEREAS, the Governmental Accounting Standards Board’s Statement 54 definition of the classification of “Assigned Fund Balance” as amounts that are constrained by the government’s intent to be used for specific purposes, but are neither restricted nor committed, should be reported as assigned fund balance. Intent should be expressed by the official, or body, to which the governing body has delegated the authority to assign amounts to be used for specific purposes; and,

WHEREAS, Council action is required to delegate the authority to assign amount to be used for specific purposes;

NOW THEREFORE LET IT BE RESOLVED that the City Council of the City of Minnesota, that effective December 31, 2024, the delegation of the authority to assign and remove the assignment of the Fund Balance amounts for specified purposes is given to the Finance Director.

Dated this _____ day of _____, 2024.

Scott Sherman
Mayor

Attest:

Monica Hennessy Mohan
City Clerk



Agenda Report

Regular City Council – December 16, 2024

Item Number: 5.6

Title

American Rescue Plan Act Masonic Temple HVAC Reallocation

Originating Department: Finance Department
Presenter(s): Jessica Wojahn, Finance Director

Action Requested

A motion to reallocate the use of the American Rescue Plan Act Federal Grant for the Masonic Temple HVAC System Upgrades in an amount not to exceed \$55,000.

Background

The City received \$2,906,251.83 a grant from the Federal Government for the American Rescue Plan Act (ARPA). On October 3, 2022, City Council approved an allocation of the ARPA Grant. The balance of this grant that is unspent and unobligated was previously allocated as follows:

\$34,348.88 for City Hall Security
\$14,160.22 for Beatification of Third Street
\$48,509.10 Total

The City has through December 31, 2024 to obligate the funds which must then be spent by December 31, 2026.

In July 2023, City Council approved the use of \$150,000 from the Facilities Fund towards the cost of the Masonic Temple HVAC System Upgrades.

Staff recommends allocating an amount not to exceed \$55,000 of the unspent and unobligated balance of the ARPA grant to reduce the Facility Fund portion of the Masonic Temple HVAC System Upgrades.

Budget Impact

With this action, the use of the American Rescue Plan Act Federal Grant will be reallocated within the Special Revenue Fund 241 – Recovery Grants.

Attachments

None

Staff Contact: Chad Ubl, City Manager

Agenda Report

Regular City Council – December 16, 2024
Item Number: 5.7



Title

Goodview Sanitary Sewer Agreement Renewal

Originating Department: Public Works

Presenter(s): Brian DeFrang, Public Works Director/City Engineer

Action Requested

Approve the agreement and authorize the Mayor and City Clerk execute the same.

Background

The current Sanitary Sewer Agreement with the City of Goodview expires December 31, 2024. Attached is a sewer agreement with the City of Goodview that would last for 2 years due to uncertainties and unknowns of potential rules and regulations coming from the Minnesota Pollution Control Agency (MPCA). Generally, this would be a 10 year agreement. The agreement will be looked at in depth within the next 2 years to ensure that it encompasses all rules and regulations from the MPCA.

Budget Impact

None

Attachments

Sewer Agreement with the City of Goodview

Staff Contact: Brian DeFrang, Public Works Director/City Engineer

CONTRACT FOR THE
INTERCONNECTION OF SANITARY SEWER SYSTEMS

BY AND BETWEEN

THE CITY OF WINONA AND CITY OF GOODVIEW
WINONA COUNTY, MINNESOTA

THIS AGREEMENT is made pursuant to Minnesota Statutes, Section 471.59 and is entered into this 1st day of January 2025, by and between the City of Winona, a municipal corporation, hereinafter referred to as "Winona," and the City of Goodview, a municipal corporation, hereinafter referred to as "Goodview," both municipalities being in the County of Winona, State of Minnesota.

WITNESSETH:

SECTION 1. PURPOSE

It is the intention of the parties hereto that permission be hereby granted by Winona to Goodview to operate and maintain the existing connection to the sewage system of Winona, which connection shall be operated and maintained in accordance with conventional engineering practice and in a manner approved by Winona and the Minnesota Pollution Control Agency pursuant to the provisions of this Agreement and subject to all the terms, covenants and conditions hereinafter expressed.

SECTION 2. DEFINITION OF TERMS

1. "Average Daily Flow" of sewage means the total measured volume in gallons recorded by a properly operating and calibrated sewage meter in a quarterly period divided by the number of days in that quarter.

2. "Winona conveyance system" is defined as those sewers, force mains, lift stations and appurtenances located within and constructed by Winona.

3. "Jointly-used conveyance system" or "Jointly-used facilities" means those facilities which are a part of Winona's sewage system, and which receive or convey sewage from the public sewage system of Goodview.

SECTION 3. GENERAL CONDITIONS

1. In consideration of the covenants and agreements herein set forth, Winona hereby grants to Goodview permission to maintain and operate the existing sanitary sewer connection to the public sewer system of Winona, and Winona hereby agrees to convey and treat the discharges into the system, both being subject to all terms, conditions and provisions of this Agreement as hereinafter expressed.

2. The sewer system of Goodview shall be constructed, operated and maintained by Goodview as a sanitary sewer system and shall convey only wastewater, consisting of waterborne wastes from residences, institutions, industrial and commercial establishments. Goodview shall, by the adoption and enforcement of ordinances and regulations, and by employing such other action as is necessary, effect an exclusion of stormwater runoff from roofs, yards, lawns, foundation drains, parking lots, streets and alleys from its sewer system, and the sewer system shall be constructed, operated and maintained to be as nearly impervious to ground and surface water as is practically possible.

3. Goodview and Winona recognize that each are subject to regulations promulgated by the U.S. Environmental Protection Agency (EPA) and the Minnesota Pollution Control Agency (MPCA). Goodview agrees to adopt and enforce sewer use rules, local limits, categorical limits, regulations and ordinances for the regulation of commercial, industrial and non-domestic discharges within Goodview. Goodview shall incorporate by reference the Winona Sewer Use Ordinance, as it is amended from time to time, into its existing code of ordinances. If amendments to the Winona Sewer Use Ordinance are adopted, Goodview agrees to modify its sewer use ordinance to reflect

such amendments. Goodview shall, by adoption of ordinances and employment of suitable methods, effectively prohibit from its sanitary sewer system any wastes which may directly or indirectly impair the structural durability of Winona's conveyance system, or its hydraulic functioning, and wastes which may have a deleterious effect on Winona's wastewater treatment plant structures or processes, and wastes whose pollutional effects are not effectively altered by ordinary treatment processes and whose presence in the receiving stream would violate state and interstate water quality standards, and wastes whose presence in the sewers would create a hazard to public health and safety, and waste which fall into the categories of septic tank contents, privy vault contents, and sewage holding tank contents except as provided herein. In determining Goodview's responsibility under this Agreement, Goodview shall be subject to the same laws, ordinances and regulations regarding unacceptable waste discharges as Winona now imposes, or may in the future impose, upon the users of Winona's system. Goodview shall, by adoption of ordinances and employment of suitable methods, effectively require Industries within Goodview to meet both the City of Winona Pretreatment Ordinance provisions and the EPA Categorical Standards which apply to particular industries, and Goodview shall work cooperatively on all pretreatment program requirements to ensure wastewater treatment plant performance and NPDES permit regulatory compliance. Notwithstanding anything herein to the contrary; however, waste generated from septic tank contents, privy vault contents, and sewage holding tanks generated from within the corporate limits of the City of Goodview may be discharged to the sanitary sewer system in Goodview. Waste generated from outside the corporate limits of Goodview from septic tank contents, privy vault contents, and sewage holding tanks shall not be discharged to the sanitary sewer system in Goodview.

4. The designated place of connection of the sanitary sewer of Goodview with the public sewer system of Winona is designated and described in Exhibit A which is attached hereto and incorporated herein by reference. The maximum average daily discharge from Goodview's sanitary sewer system into Winona's system at the designated point is 500,000 gallons based on a calendar quarterly average. Average daily flow over 500,000 gallons per day shall be charged at the rate of 1.5 times the rate in effect for that quarter. If the average daily flow of 500,000 gallons per day is exceeded by Goodview for any three consecutive quarters during the contract term, the contract, or any terms contained herein, shall be renegotiated, at the election of Winona.

5. The City Manager of Winona, his designated representative, or any employee authorized by the City Council of Winona, upon reasonable notice first given to Goodview, shall be permitted, at the expense of Winona, to inspect the construction, as well as the operation, of the sewer system in Goodview at any time to see that the same is being constructed and operated according to plans and specifications and operated in compliance with acceptable municipal practice and that the agreement herein contained is being complied with insofar as it is reasonably necessary to protect Winona. Goodview, upon reasonable notice first given to Winona, shall be permitted, at the expense of Goodview, to inspect the condition and operation of Winona's wastewater treatment plant and of any sewer within Winona used by Goodview at any time to see that the same are being operated in compliance with acceptable municipal practice and that the agreement herein contained is being complied with insofar as is reasonably necessary to protect Goodview.

6. Goodview shall exercise care to preclude gravel, sand, dirt, grit or heavy substances of any kind from being washed or dumped into its sewer system and carried into the sewers of Winona. When expense is incurred in cleaning the sewers of

Winona due to any such substance being carried into them from Goodview sewers, such expense shall be immediately paid for by Goodview.

7. In case any unreasonably obnoxious odors or gases shall develop in the jointly-used sewer system due to discharge into the sewers of Goodview of any substance causing obnoxious odors or gases, such nuisances shall be eliminated by Goodview at its own expense, upon notice and when required to do so by Winona. Failure to comply with such notice within a reasonable time shall constitute a cause of action under Section 7 of this Agreement.

8. The parties acknowledge and agree that the Industrial Pretreatment Program is operated as part of the Waste Water Treatment Plant operations and maintenance budget and shall continue to be operated in this manner in both Winona and Goodview unless otherwise ordered by the MPCA. Winona agrees not to subject Goodview industrial users to requirements Winona does not otherwise place upon Winona's own industrial users in connection with this program or any subsequent requirements. Goodview agrees to adopt the requirements of Winona's Industrial Pretreatment Program by ordinance (either verbatim or by reference) and delegates to the City of Winona and/or its designated agent/representative the authority to implement and enforce the Industrial Pretreatment Program. Goodview agrees to cooperate with Winona in the enforcement of the Industrial Pretreatment Program and the collection of fines and/or penalties imposed due to violations.

SECTION 4. MEASUREMENT OF GOODVIEW'S SEWAGE FLOW

1. To measure the volume of sewage discharged from the public sanitary sewer system of Goodview into the public sewer system of Winona, an accurate sewage metering device with automatic sampler shall be constructed and maintained at each connection point. The metering device shall be equipped with a remote registering and recording mechanism housed in a suitable structure which measures

and totalizes the quantity of sewage passing through the meter. The meter shall be calibrated annually by an approved company and a copy of the report shall be filed with the Winona City Manager or his designated representative. Winona shall also have its meter calibrated annually by an approved company and the report shall be kept on file in the office of the Director of Public Works for Winona and a copy shall be provided to Goodview.

2. The sewage metering device and automatic sampler shall be provided by Goodview at its own expense.

3. The type and location of the sewage meter and all plans, specifications, and details pertinent thereto shall be subject to the approval of the Winona City Manager or his/her designated representative.

4. The reading and recording of results of the metering device and automatic sampler shall be done by Goodview. Goodview shall, at its own expense, maintain and operate the metering device and automatic sampler. Goodview shall tabulate total daily flow. Goodview shall provide analyses of samples of sewage collected from the public sanitary sewer system of Goodview at the point or points of discharge into Winona's sewer system on a quarterly basis, or upon such parameters or frequency as required by law or the MPCA. Goodview shall test the samples for TBOD and TSS.

5. Goodview and Winona shall have the right of access to the metering device, automatic sampler and recording instruments and may make any accuracy test or other inspections that either may deem necessary or desirable. However, no changes or adjustments shall be made unless the Winona City Manager or his/her designated representative and the Director of Public Works of Goodview or his designated representative are present.

6. Winona or Goodview may make calibration or accuracy tests of the metering device and automatic sampler at such times as either may deem desirable. Any time it has been determined that the sewage metering device has not properly measured the volume of sewage contributed by Goodview, an adjustment of the measured sewage flow shall be made. If Winona and Goodview are unable to agree on the calibration of the metering device or on the adjustment of the measured sewage flow, an impartial registered professional engineer, mutually satisfactory to Winona and Goodview, shall be selected as an arbitrator to supervise the repairs and calibration of the metering device and to determine the proper adjustment of the measured sewage flow. If the parties cannot agree on the selection of a registered professional engineer to act as an arbitrator, a state district court judge in and for Winona County, Minnesota, shall select the arbitrator. The findings of said arbitrator shall be final. The services of the arbitrator shall be paid for by the losing party, or one-half by each party at the option of the arbitrator. Adjustments of measured sewage flow shall not be retroactive for a period of more than three (3) months.

SECTION 5. CHARGES

1. As consideration for connecting its public sanitary sewer system and discharging its sanitary sewage into and through the sewer system of Winona and through Winona's wastewater treatment plant, Goodview shall pay to Winona the charges hereinafter provided in this Agreement.

2. Allowable Discharge. Goodview's capacity needs during the term of this Agreement are as follows:

<u>Average Daily Flow</u>	500,000 gallons per day.
---------------------------	--------------------------

If this limit is exceeded for any three consecutive quarters during the contract term, the contract, or any terms herein, shall be renegotiated, at the election of Winona. If the average daily flow for a calendar quarter exceeds 500,000 gallons per day, the charges

hereinafter provided shall be 1.5 times the rates in effect for that quarter for the flow in excess of 500,000 gallons per day.

3. Charges. The charges to be paid by Goodview to Winona for services pursuant to this Agreement shall include two components, a sewer service volume charge and a sewer availability charge. The above-mentioned charge rates shall be the same rates as in Winona and shall be as set by the Winona City Council from time to time.

Sewer Service Volume Charge. The sewer service volume charge to be paid by Goodview as provided in this section shall be calculated based on the following formula:

$$\text{Volume of flow in 100 cubic feet} \times 90\% \times (A+B)/2$$

For purposes of the above formula:

A = the sanitary sewer service rate as set by the Winona City Council for users with water meters of less than two inches (2") in diameter.

B = the sanitary sewer service rate as set by the Winona City Council for users with water meters of two inches (2") or more in diameter.

Sewer Availability Charge. In addition to the above sewer service volume charge, Goodview shall also pay a sewer availability charge. The sewer availability charge to be paid by Goodview as provided in this section shall be calculated based on the following formula:

$$\# \text{ of Goodview sewer users} \times 90\% \times C$$

For purposes of the above formula:

C = the sewer availability charge rate for users of water service as set by the Winona City Council.

4. Notice. On or before December 1st of each year of this Agreement, Winona shall notify Goodview, in writing, of any changes to the above rates to be charged Goodview for the upcoming year. Goodview shall then begin paying any applicable rate increases in either the sewer service volume charge or the sewer availability effective for the next quarter commencing January 1.

SECTION 6. BILLING AND PAYMENT

Goodview shall pay Winona the charges provided in Section 5 of this Agreement. Such charges are ongoing from the prior agreement that this contract supersedes and shall commence under this new Agreement effective January 1, 2025. All payments for such charges, except as otherwise expressly provided in this Agreement, shall be due and payable on a quarterly basis within Thirty (30) days after the bill is rendered. It is further agreed by and between the parties hereto that after the effective date of this Agreement, every billing by Winona which shall become and remain the subject of delinquency in reference to the payment by Goodview shall bear interest at the rate of Eight (8%) percent per annum to the extent and for the period of subject delinquency.

SECTION 7. REMEDIES FOR VIOLATION

In the event of any substantial, continuing violation of the terms and conditions of this Agreement on the part of Winona or Goodview, the aggrieved party, after first giving reasonable written notice and affording reasonable opportunity to correct such violation, may submit said grievance to binding arbitration, or may institute such action or proceeding, at law or in equity, as may be considered by it upon advice of legal counsel to be most effective for the enforcement of this Agreement, whether in the nature of mandamus to compel the proper officers to perform duties imposed upon

the parties of this Agreement, or for such other relief, without limitation, as may be deemed necessary or proper by any Court of competent jurisdiction.

In the event that it is determined by either Winona or Goodview, based on samples collected, that an industrial user or other user located in Goodview has caused an exceedance(s) of applicable standards or limits in violation of applicable laws, permits or regulations resulting in a fine, penalty, or damages being assessed or levied against Winona by the MPCA or another regulatory agency or court of competent jurisdiction, Goodview agrees to cooperate fully with Winona to enforce, collect, and/or assess or levy all such fines, penalties or damages against the responsible party in order to reimburse Winona for all costs incurred by Winona, including but not limited to attorneys and engineering fees.

SECTION 8. TERM OF AGREEMENT/APPLICABLE LAW GOVERNING AGREEMENT

The term of this Agreement shall be from January 1, 2025, through December 31, 2026. This Agreement is made pursuant to and shall be construed in accordance with the provisions of the Minnesota Statutes.

SECTION 9. EFFECTIVE DATE OF AGREEMENT

This Agreement shall take effect and be in force on January 1, 2025, following its execution by the proper officers of Winona and Goodview, pursuant to a resolution of the governing bodies of the municipalities, accepting and agreeing to abide and be bound by the terms, covenants, and conditions hereof.

SECTION 10. RESPONSIBILITY FOR CLAIMS OR ACTIONS FOR DAMAGES

Except as otherwise provided in Section 7 of this Agreement, Goodview and Winona agree that each will save the other harmless against any damage, cost or expense and will fully indemnify the other against any liability or claim of liability

sustained by reason of the fault or neglect of such party, or the failure of such party to perform any duty imposed upon such party by the terms of this Agreement or by applicable laws, insofar as such damage, cost or expense or liability or claim of liability is related to the interconnection of sewer systems or the conversion and treatment of sewage pursuant to the terms of this Agreement.

SECTION 11. EXHIBITS

All exhibits and/or schedules attached to and referred to in this Agreement are hereby made a part hereof as fully and as completely as if set forth herein verbatim.

SECTION 12. TERMINATION AND OTHER RELIEF UPON TERMINATION

This Agreement may be terminated upon mutual agreement between Winona and Goodview.

In the event that Winona and Goodview are not in mutual agreement to seek such termination, either Winona or Goodview may unilaterally apply in writing, with a copy to the non-applying party, to the Minnesota Pollution Control Agency for an order of the Agency terminating this Agreement.

The applicant may, in its application for termination, seek other relief in addition to said order of termination, including, but not limited to, an order directing the refund by Winona of overpayments made by Goodview during the life of the Agreement, or the further payment by Goodview to Winona made necessary by the inadequacy of payments made by Goodview to Winona during the life of the Agreement. Any order of termination shall provide for termination of all payments under this Agreement except as provided in this Section 12.

In the event of such an application to the Agency, the Agency may, after Thirty (30) days' written notice, hold a public hearing for the purpose of hearing evidence relating to the application. Pursuant to the application and hearing, the

Agency may enter its order terminating this Agreement, ordering a refund of overpayment or payment of underpayment, as aforesaid, or granting any further relief that is reasonable under the circumstances. Any party aggrieved by the Agency's decision may thereafter assert such administrative, legal and equitable relief from the Agency's order as may be available to it.

SECTION 13. ADDITIONAL USERS PROHIBITED

Goodview shall not allow any other local government unit not a party to this agreement or any user located outside of its corporate limits to discharge wastewater into the sanitary sewer system of Winona or Goodview, unless Goodview first receives an appropriate order from the state of Minnesota accomplishing the requisite boundary adjustment necessary to include the area to be served within Goodview's jurisdictional corporate boundaries.

SECTION 14. GENERAL TERMS

1. Voluntary and Knowing Action. The parties, by executing this Agreement, state that they have carefully read this Agreement and understand fully the contents thereof; that in executing this Agreement they voluntarily accept all terms described in this Agreement without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound thereby.

2. Authorized Signatories. The parties each represent and warrant to the other that (1) the persons signing this Agreement are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Agreement against it; each party indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.

3. Assignment. This Agreement may not be assigned by either party without the written consent of the other party.

4. Modifications/Amendment. Any alterations, variations, modifications, amendments or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing, and signed by authorized representative of the Winona and Goodview.

5. Non-Discrimination. The provisions of any applicable law or ordinance relating to civil rights and discrimination shall be considered part of this Agreement as if fully set forth herein. Neither party shall discriminate in the hiring of labor for the performance of any work under this Agreement.

6. Interest by City Officials. No elected official, officer, or employee of Winona or Goodview shall during his or her tenure or employment and for one year thereafter, have any interest, direct or indirect, in this Agreement or the proceeds thereof.

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

8. Force Majeure. The parties shall each be excused from performance under this Agreement while and to the extent that either of them are unable to perform, for any cause beyond its reasonable control. Such causes shall include, but not be restricted to fire, storm, flood, earthquake, explosion, war, total or partial failure of transportation or delivery facilities, raw materials or supplies, interruption of utilities or power, and any act of government or military authority. In the event either party is rendered unable wholly or in part by force majeure to carry out its obligations under this

Agreement then the party affected by force majeure shall give written notice with explanation to the other party immediately.

9. Compliance with Laws. Both parties shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Agreement or to the facilities, programs and staff for which Winona or Goodview is responsible.

10. Governing Law. This Agreement shall be deemed to have been made and accepted in Winona County, Minnesota, and the laws of the State of Minnesota shall govern any interpretations or constructions of the Agreement without regard to its choice of law or conflict of laws principles.

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

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

13. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Agreement to the extent of its invalidity or unenforceability, and this Agreement shall be construed and enforced as if the Agreement did not contain that particular provision to the extent of its invalidity or unenforceability.

14. Entire Agreement. These terms and conditions constitute the entire Agreement between the parties regarding the subject matter hereof. All discussions and negotiations are deemed merged in this Agreement.

15. Headings and Captions. Headings and captions contained in this Agreement are for convenience only and are not intended to alter any of the provisions of this Agreement and shall not be used for the interpretation of the validity of the Agreement or any provision hereof.

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

Dated this _____ day of _____, 2025.

CITY OF WINONA, MINNESOTA

CITY OF GOODVIEW, MINNESOTA

By: _____
Scott D. Sherman
Its Mayor

By: _____
Ben Klinger
Its Mayor

By: _____
Monica Hennessy Mohan
Its City Clerk

By: _____
Dan Matejka
Its City Administrator

STATE OF MINNESOTA, COUNTY OF WINONA

On this _____ day of _____, 2025, before me, a Notary Public within and for said County and State, personally appeared Scott D. Sherman and Monica Hennessy Mohan, to me personally known, who being each by me duly sworn, did say that they are respectively the Mayor and City Clerk of the City of Winona, a municipal corporation under the laws of the State of Minnesota, named in the foregoing instrument and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its City Council and that said Scott D. Sherman and Monica Hennessy Mohan acknowledged that said instrument is the free act and deed of said corporation.

Notary Public

STATE OF MINNESOTA, COUNTY OF WINONA

On this _____ day of _____, 2025, before me, a Notary Public within and for said County and State. personally appeared Ben Klinger and Dan Matejka, to me personally known, who, being by me each duly sworn, did say that they are respectively the Mayor and the City Administrator of the City of Goodview, a municipal corporation under the laws of the State of Minnesota, named in the foregoing instrument, and that said instrument was signed and sealed on behalf of said corporation by authority of its City Council and said Ben Klinger and Dan Matejka acknowledged the said instrument to be the free act and deed of said corporation.

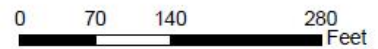
Notary Public

EXHIBIT A

Depiction of Designated Point of Interconnection



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





Agenda Report

Regular City Council – December 16, 2024
Item Number: 5.8

Title

King Jefferson Final Plat

Originating Department: Planning
Presenter(s): Luke Sims, Senior Planner

Action Requested

Approve the attached resolution.

Background

This final plat (subdivision) proposes to split the property addressed as 455 Jefferson Street into two lots. The applicant is seeking to sell the newly-created Block 1, Lot 1 as vacant property. In order to do this, a recorded final plat is required. Both Lot 1 and Lot 2 properties will retain existing I-1 Light Industrial zoning.

On December 9th, the Planning Commission unanimously recommended approval of this plat

Budget Impact

There are no budget impacts for this item.

Attachments

Final Plat Resolution
Planning Commission Report

Staff Contact: Luke Sims

RESOLUTION

WHEREAS, Winona Mall, LLC (the “Property Owner”) and Johnson and Scofield Inc. (collectively the Property Owner and Johnson and Scofield Inc. are referred to herein as the “Petitioner” or “Applicant”), have jointly submitted an application for Final Plat approval of the proposed King Jefferson Subdivision (the “Final Plat” or “Plat”), legally described in Exhibit A and depicted in Exhibit B, which exhibits are attached hereto and incorporated herein by reference, and,

WHEREAS, the Winona City Planning Commission (“Commission”) in accordance with provisions of the Winona City Code, Section 43.06.31 B) held a required public hearing to consider said Plat on December 9, 2024, and,

WHEREAS, following its full review and consideration of all information, the Commission found that the Plat for the proposed King Jefferson Subdivision was consistent and in compliance with Winona City Code, Chapter 43 (the “Unified Development Code”), and

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

WHEREAS, the City Council may hear requests for Minor Subdivision-Final Plat approval pursuant to Winona City Code, Section 43.06.31, and

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

NOW THEREFORE LET IT BE RESOLVED that the City Council of the City of Minnesota concurs with the recommendation of the Commission and hereby approves the Final Plat for the King Jefferson Subdivision, attached hereto as Exhibit B, subject to the following condition(s):

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

Dated this _____ day of _____, 2024.

Scott Sherman, Mayor

Attest:

Monica Hennessy Mohan, City Clerk

EXHIBIT A

Legal Description of Property Being Final Platted as King Jefferson Subdivision

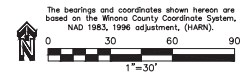
Lots 1 through 6, inclusive, of Block 11, in the PLAT OF E.C. HAMILTONS' ADDITION TO WINONA, according to the plats thereof on file in the office of the County Recorder, Winona County, Minnesota, together with the southeasterly half of vacated Adams Street that adjoins thereto.

EXHIBIT B

King Jefferson Subdivision

OFFICIAL PLAT

KING JEFFERSON SUBDIVISION



Legend:
○ Denotes a placed 1 inch by 16 inch iron pipe having a plastic cap bearing land surveyor license No. 46559.
● Denotes a found 1 inch iron pipe, unless otherwise noted.
(50.00) Denotes a distance of record.

SURVEYOR'S CERTIFICATE

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

Brian Wodele, Licensed Land Surveyor
Minnesota License Number 46559

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

Signature _____ Print Name _____
Notary Public, _____ County, Minnesota
My Commission Expires: _____

COUNTY SURVEYOR

I hereby certify that in accordance with Minnesota Statutes, Section 505.021, Subd. 11, this plat has been reviewed and approved this _____ day of _____, 2024.

Brian Wodele, Winona County Surveyor
Minnesota License No. 46559

COUNTY AUDITOR/TREASURER, WINONA COUNTY, MINNESOTA

Pursuant to Minnesota Statutes, Section 505.021, Subd. 9, taxes payable in the year 2024 on the land hereinbefore described have been paid. Also, pursuant to Minnesota Statutes, Section 272.12, there are no delinquent taxes and transfer entered this _____ day of _____, 2024.

Chelsea Wilbright, Winona County Auditor/Treasurer

COUNTY RECORDER, COUNTY OF WINONA, STATE OF MINNESOTA

I hereby certify that this plat of KING JEFFERSON SUBDIVISION was filed in the office of the County Recorder for public record on this _____ day of _____, 2024, at _____ o'clock _____ M., and was duly filed as Document No. _____

Robert J. Bambenek, Winona County Recorder

By _____ Deputy

KNOW ALL PERSONS BY THESE PRESENTS: That Winona Mall LLC, a Minnesota limited liability company, fee owner of the following described property located in the City of Winona, County of Winona, State of Minnesota, to wit: Lots 1 through 6, inclusive, of Block 11, in the PLAT OF E.C. HAMILTONS' ADDITION TO WINONA, according to the plats thereof on file in the office of the County Recorder, Winona County, Minnesota, together with the southeasterly half of vacated Adams Street that originates thereat.

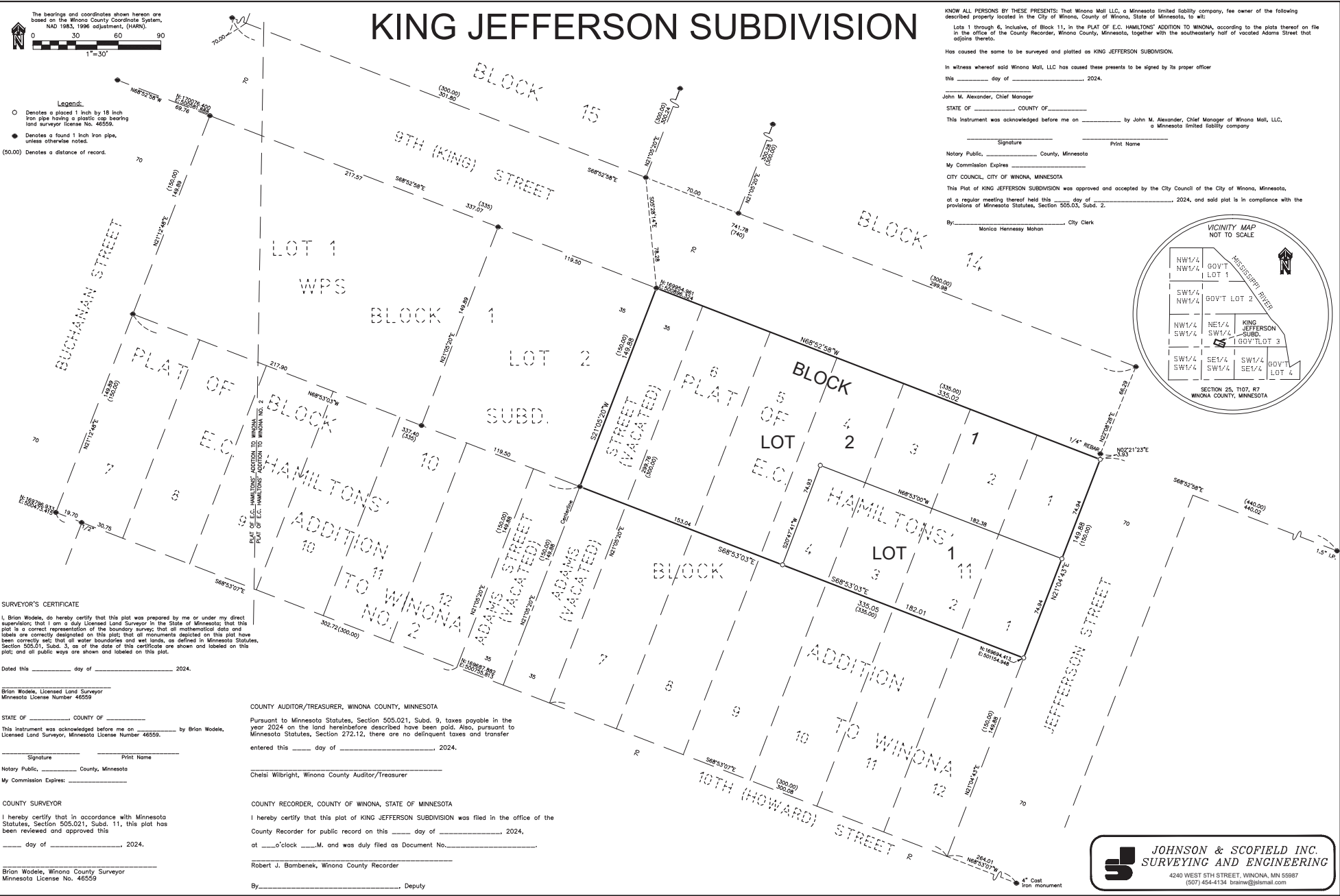
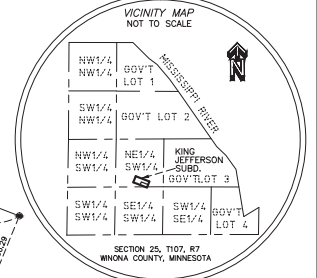
Has caused the same to be surveyed and plotted as KING JEFFERSON SUBDIVISION.
In witness whereof said Winona Mall, LLC has caused these presents to be signed by its proper officer this _____ day of _____, 2024.

John M. Alexander, Chief Manager
STATE OF _____ COUNTY OF _____
This instrument was acknowledged before me on _____ by John M. Alexander, Chief Manager of Winona Mall, LLC, a Minnesota limited liability company.

Notary Public, _____ County, Minnesota
My Commission Expires _____
CITY COUNCIL, CITY OF WINONA, MINNESOTA

This Plat of KING JEFFERSON SUBDIVISION was approved and accepted by the City Council of the City of Winona, Minnesota, at a regular meeting thereof held this _____ day of _____, 2024, and said plat is in compliance with the provisions of Minnesota Statutes, Section 505.03, Subd. 2.

By: _____ City Clerk
Monica Hennessy Mahan



JOHNSON & SCOFIELD INC. SURVEYING AND ENGINEERING
4240 WEST 5TH STREET, WINONA, MINN 55987
(507) 454-4134 brain@jlsmail.com

PLANNING COMMISSION

AGENDA ITEM: 3. Public Hearing – Final Plat King Jefferson Subdivision

PREPARED BY: Luke Sims

DATE: December 9, 2024

BASE DATA

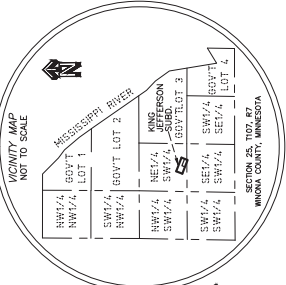
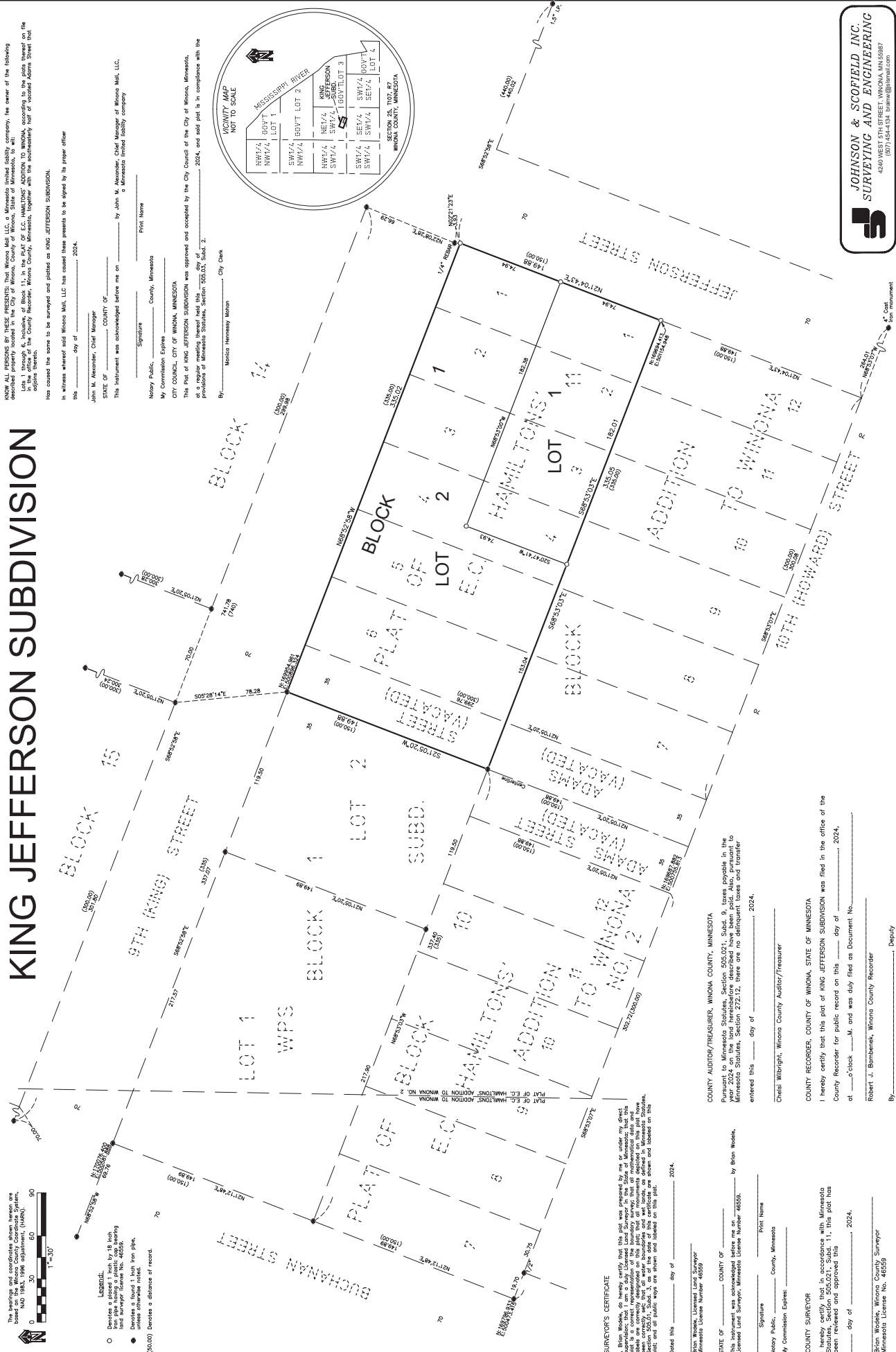
Petitioner:	Johnson and Scofield, Inc
Location:	455 Jefferson Street
Existing Parcels:	32.200.7122
Existing Zoning:	I-1, Light Industrial
Area:	Approximately 1.16 Acres (50,530 Sq. Ft.)
Lot Area Requirements:	None
Lot Frontage Requirements:	None
Yard Setback Requirements:	None
Existing Number of Lots:	One
Proposed Number of Lots:	Two
Proposed Lot Areas:	Lot 1 – approximately 13,640 square feet Lot 2 – approximately 36,890 square feet
Proposed Lot Frontage:	Lot 1 – 74.94 feet Lot 2 – 335.02

OFFICIAL PLAT

KING JEFFERSON SUBDIVISION

The bearings and distances shown hereon are based on NAD 1983, 1986 adjustment, (HARN) datum, unless otherwise noted.

Legend:
 ○ Denotes a point 1 inch by 18 inch land surveyor license No. 46558.
 ● Denotes a point 1 inch by 18 inch land surveyor license No. 46558.
 (60.00) Denotes a distance of record.



IN WITNESS WHEREOF, I, the undersigned, have caused this plat to be signed by its proper officer this _____ day of _____, 2024.

John M. Measler, Chief Manager
 STATE OF _____ COUNTY OF _____
 This instrument was acknowledged before me on _____ by John M. Measler, Chief Manager of Winona Mall, LLC. This instrument was acknowledged before me on _____ by _____, a Minnesota limited liability company.

Notary Public, _____ County, Minnesota
 Signature _____ Print Name _____
 My Commission Expires _____
 CITY COUNCIL, CITY OF WINONA, MINNESOTA
 This Plat of KING JEFFERSON SUBDIVISION was approved and accepted by the City Council of the City of Winona, Minnesota, at a regular meeting thereof held this _____ day of _____, 2024, and said plat is in compliance with the provisions of Minnesota Statutes, Section 505.021, Subd. 2.

By: _____, City Clerk
 Monica Hernandez Malin

SURVEYOR'S CERTIFICATE
 I, Brian Wokos, do hereby certify that this plat was prepared by me or under my direct supervision, that the survey was conducted in accordance with the laws and regulations of the State of Minnesota, and that the bearings and distances shown hereon are correct, and that the boundaries and well-towns, as defined in Minnesota Statutes, Section 505.021, Subd. 11, have been correctly measured and shown and labeled on this plat and all public ways are shown and labeled on this plat.

Dated this _____ day of _____, 2024.

Brian Wokos, Licensed Land Surveyor
 Minnesota License Number 46558

STATE OF _____ COUNTY OF _____
 This instrument was acknowledged before me on _____ by Brian Wokos, Licensed Land Surveyor, Minnesota License Number 46558.
 entered this _____ day of _____, 2024.

Notary Public, _____ County, Minnesota
 Signature _____ Print Name _____
 My Commission Expires _____

Notary Public, _____ County, Minnesota
 Signature _____ Print Name _____
 My Commission Expires _____

COUNTY RECORDER
 I hereby certify that in accordance with Minnesota Statutes, Section 560.021, Subd. 11, this plat has been reviewed and approved this _____ day of _____, 2024.

Brian Wokos, Winona County Surveyor
 Minnesota License No. 46558

COUNTY AUDITOR/TREASURER, WINONA COUNTY, MINNESOTA
 Pursuant to Minnesota Statutes, Section 505.021, Subd. 9, taxes payable in the year 2024 on the land hereinafter described have been paid. Also, pursuant to Minnesota Statutes, Section 272.12, there are no delinquent taxes and transfer entered this _____ day of _____, 2024.

Chabli Willbright, Winona County Auditor/Treasurer

COUNTY RECORDER, COUNTY OF WINONA, STATE OF MINNESOTA
 I hereby certify that this plat of KING JEFFERSON SUBDIVISION was filed in the office of the County Recorder for public record on this _____ day of _____, 2024, at _____ o'clock _____ M. and was duly filed as Document No. _____.

Robert J. Bamberak, Winona County Recorder
 By: _____, Deputy





455 Jefferson Street

DISCUSSION

The proposed final plat is to subdivide an existing parcel addressed as 455 Jefferson Street into two parcels. The proposed Lot 1 will be approximately 13,640 square feet and will be vacant. The proposed Lot 2 will be roughly 36,890 square feet in size and will contain the existing structure on the property.

The newly created Block 1, Lot 1 will facilitate future sale of vacant land. Any potential development is currently undetermined but would go through separate site plan review procedures.

RECOMMENDATION

Given the previous, the proposed plat has been found to be consistent with the intent and purposes of zoning and subdivision ordinances. Based on this, City staff recommends approval.

Attachments:

-Final Plat Copy



Agenda Report

Regular City Council – December 16, 2024

Item Number: 5.9

Title

MOU for Law Enforcement Labor Services, Local No. 75

Originating Department: City Manager

Presenter(s): Chad Ubl, City Manager

Action Requested

Approve the attached resolution.

Background

I am recommending to the City Council a Memorandum of Understanding (MOU) be approved between the City of Winona and LELS Local 75 (Police Officers). The purpose of this agreement is to allow for flexibility in staffing and foster growth and development of police officers on a limited basis.

The MOU will:

- Allow the Police Chief to assign a person in the job classification of Officer to the job classification of Sergeant.
- Pay a monthly stipend to the selected Officer for the duration of the assignment.

Budget Impact

No impact. This amount was factored into the 2025 budget.

Attachments

Resolution

MOU

Staff Contact: Chad Ubl, City Manager

RESOLUTION

WHEREAS, Law Enforcement Labor Services Local #75 (Police Officers) is the exclusive representative for certain City of Winona employees;

WHEREAS, Law Enforcement Labor Services Local #75 (Police Officers) and the City of Winona are parties to a Labor Agreement;

WHEREAS, the parties met and negotiated over language to assign a person in the job classification of Officer to be assigned to the job classification of Sergeant;

WHEREAS, the parties reached a tentative agreement on implementing certain components through a memorandum of understanding (“MOU”); and

WHEREAS, The City of Winona must execute the MOU and implement it in the form of a resolution under Minnesota Statutes, section 179A.20, subdivisions 1 and 5.

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

1. The MOU between the City of Winona and Law Enforcement Labor Services Local #75 (Police Officers) is approved.
2. The City of Winona’s management shall execute the MOU.
3. The City of Winona shall implement the MOU on January 1, 2025.

Dated this _____ day of _____, 2024.

Scott Sherman
Mayor

Attest:

Monica Hennessy Mohan
City Clerk

MEMORANDUM OF UNDERSTANDING

This Memorandum of Agreement (“MOA”) is made and entered into by and between the City of Winona (“Employer”) and Law Enforcement Labor Services, Inc., Local No. 75 (“Union”).

WHEREAS, Union is the exclusive representative for employees of Employer in an appropriate unit (“Bargaining Unit Employees”) described as follows: “all essential employees of the Winona Police Department who are public employees under Minn. Stat. 179A.03, Subd.14, excluding supervisory and confidential employees;”

WHEREAS, Employer and Union are parties to a labor contract expiring on December 31, 2025 (“2023-2025 Labor Agreement”); and

WHEREAS, Employer may exercise its management rights to temporarily assign a Bargaining Unit Employee employed in the job classification of Police Officer to be a Police Sergeant; and

WHEREAS, the City and Union desire to establish the assignment pay to be paid to a Bargaining Unit Employee employed in the job classification of Police Officer assigned to be a Police Sergeant.

NOW, THEREFORE, all parties hereto, in consideration of their mutual covenants and agreements to be performed, as hereinafter set forth, agree as follows:

Article 1. Assignment Pay

A Bargaining Unit Employee employed in the job classification of Police Officer shall be paid \$425 per month in addition to any other compensation owing to the employee for the months in which he or she is expressly assigned to be a Police Sergeant by the Chief of Police. This wage differential is wholly independent of and shall not be included in determining other compensation owing to the Bargaining Unit Employee assigned. For example, this differential pay does not affect the following: (1) the base pay rate, normal pay rate or similar pay for the Bargaining Unit Employee assigned; or (2) the pay rate used to calculate any payments made to Bargaining Unit Employee assigned pursuant to the 2023-2025 Labor Agreement. The assignment pay will be effective January 1, 2025.

Article 2. Limitations

This MOA is solely for the purposes of establishing assignment pay. The terms of this MOA do not have any precedential value beyond this Agreement nor establish any practice. Neither this MOA nor its terms can be introduced, referred to, or in any other way utilized in any subsequent negotiations, mediation, arbitration, litigation, or administrative hearing, except as may be necessary to enforce its provisions and terms or as otherwise required by law.

Article 3. Management Rights

This MOA and any related communications between City and Union or City employees in this matter are not nor can they be construed as an acknowledgment that the City waives, relinquishes or restricts any rights it can exercise unilaterally without meeting and negotiating with the Union. City does not waive, relinquish or restrict and expressly reserves its right, at its sole discretion, to: (1) establish, modify or eliminate the applicable assignment; (2) assign any individual(s) to the assignment; (3) not assign any individual to the assignment; and (4) exercise any rights it can exercise unilaterally without meeting and negotiating with Union.

Article 4. Entire MOA

This MOA constitutes the entire MOA among the parties hereto and no representations, warranties, covenants, or inducements have been made to any party concerning this MOA, other than the representations, covenants, or inducements contained and memorialized in this MOA.

Article 5. Amendment or Modification

This MOA or any of its terms may only be amended or modified by a written instrument signed by or on behalf of all of the parties hereto.

Article 6. Binding Effect

This MOA is binding upon, and inures, to the benefit of the successors, assigns and legal representatives of the parties hereto, provided, however, that no assignment by any party shall operate to relieve such party of its obligations hereunder.

Article 7. Governing Law

This MOA is made pursuant to, and shall be construed in accordance with the laws of the State of Minnesota.

Article 8. Headings and Captions

Headings and captions contained in this MOA are for convenience only and are not intended to alter any of the provisions of this MOA.

Article 9. Effective Date

This MOA is effective on January 1, 2025.

Article 10. Expiration Date

This MOA expires on December 31, 2025, but it shall continue in force and effect thereafter until the 2023-2025 Labor Agreement is no longer in force or effect.

IN WITNESS HEREOF, the parties hereto have caused this MOA to be executed on the latest date affixed to the signatures hereto.

For City of Winona

For Law Enforcement Labor Services, Inc.,
Local No. 75

City Manager

Business Agent/Representative

Dated: _____

Dated: _____

City Clerk

Union Steward/President

Dated: _____

Dated: _____



Agenda Report

Regular City Council – December 16, 2024

Item Number: 5.10

Title

No Child Left Inside Grant

Originating Department: Park and Recreation
Presenter(s): Alicia Lano & Ali Mayer, Recreation Coordinators

Action Requested

Approve the request and direct staff to submit the grant application.

Background

The Minnesota Department of Natural Resources (DNR), Division of Fish and Wildlife has announced the continuation of the No Child Left Inside (NCLI) grant program. With additional funding by the 2023 Minnesota Legislature, these grants are provided for “outdoor environmental, ecological, and other natural-resource-based education and recreation programs serving youth” (Minn. Stat. §84.976). Through these grants, the DNR is addressing growing concerns over declines in youth participation in outdoor recreation, natural resource education, hunting, and angling.

Staff are seeking to submit an application for a grant that will allow us to add summer youth programming in the following areas: fishing, paddling, and hiking/orienteering, with the potential to include a learn to ride program. Programs will be offered for youth ages 10-14 over 4 consecutive days during the summer.

Equipment and supplies for the programs are estimated to cost \$17,000 and would be covered by the grant. City will be providing an in-kind match of staff time.

Budget Impact

None

Attachments

None

Staff Contact: Laura Hoberg, Recreation Director of Services

Agenda Report
Regular City Council – December 16, 2024
Item Number: 7.1



Title

Council Concerns

Originating Department: City Clerk
Presenter(s): Monica Hennessy Mohan, City Clerk

Action Requested

None

Background

Time is reserved for Council Concerns.

Budget Impact

None

Attachments

None

Staff Contact: Monica Hennessy Mohan



Agenda Report

Regular City Council – December 16, 2024

Item Number: 8

Title

Consent Agenda

Originating Department: City Clerk
Presenter(s): Monica Hennessy Mohan, City Clerk

Action Requested

Approve the consent agenda, including publication of the Summary Ordinance.

Background

8.1 Approval of Minutes – December 2, 2024

Minutes of the December 2, 2024 City Council meeting have been distributed. If the minutes are satisfactory, a motion to approve same would be in order.

8.2 Ordinance to amend Chapter 43 – Unified Development Code

An ordinance to amend Chapter 43 – Unified Development Code to consider zoning ordinance amendments for new cannabis businesses was introduced at the December 2, 2024 Council meeting. The purpose and effect of the proposed ordinance has been published by law. Accordingly, the ordinance may now be considered for final adoption. In addition, the Council is requested to approve the attached Summary Ordinance to publish in the official newspaper.

8.3 Ordinance to Amend Chapter 55.12: Liquor – Consumption in Parks

An ordinance to amend Chapter 55.12: Liquor – Consumption in Parks to expand the list of City parks where consumption of liquor is prohibited was introduced at the December 2, 2024 Council meeting. The purpose and effect of the proposed ordinance has been published by law. Accordingly, the ordinance may now be considered for final adoption. In addition, the Council is requested to approve the attached Summary Ordinance to publish in the official newspaper.

8.3 Claim Against the City by David White

David White has filed a claim against the city for damage to his vehicle due to tree branch. The claim has been forwarded to the League of Minnesota Cities - Insurance Trust, and is on file in the City Clerk's Office.

Budget Impact

None

Attachments

None

Staff Contact: Monica Hennessy Mohan

SUMMARY PUBLICATION OF CITY OF WINONA ORDINANCE NO. 4271

**AN ORDINANCE AMENDING WINONA CITY CODE, CHAPTER 43 – UNIFIED
DEVELOPMENT CODE -ZONING FOR CANNABIS AND HEMP RETAIL
BUSINESSES**

SUMMARY: Ordinance No. 4271 amends Winona City Code, Chapter 43 – Unified Development Code, by establishing the zoning for Cannabis and Hemp Retail Businesses.

The complete text of Ordinance No. 4271 may be obtained at no charge from the City Clerk at City Hall, 207 Lafayette Street, Winona MN 55987, or from the City of Winona website www.cityofwinona.com.

Passed by the City Council of the City of Winona, Minnesota, this 16th day of December, 2024.

Scott Sherman
Mayor

Attested By:

Monica Hennessy Mohan
City Clerk

SUMMARY PUBLICATION OF CITY OF WINONA ORDINANCE NO. 4272

AN ORDINANCE AMENDING WINONA CITY CODE, CHAPTER 55 – LIQUOR

SUMMARY: Ordinance No. 4272 amends Winona City Code, Chapter 55 – Liquor, Section 55.12 Consumption in Parks by amending the park locations covered by said section.

The complete text of Ordinance No. 4272 may be obtained at no charge from the City Clerk at City Hall, 207 Lafayette Street, Winona MN 55987, or from the City of Winona website www.cityofwinona.com.

Passed by the City Council of the City of Winona, Minnesota, this ____ day of _____, 2024

Mayor

Attested By:

City Clerk