



Winona City Council Agenda

Monday, January 6, 2020

6:30 P.M., Meeting No. 1

City Council Chambers – City Hall

3rd Floor - 207 Lafayette Street

Mayor Mark Peterson

1st Ward Al Thurley

2nd Ward Eileen Moeller

3rd Ward Pamela Eyden

4th Ward George Borzyskowski

At-Large Michelle Alexander

At-Large Paul Schollmeier

1.	Call to Order – Mayor & City Manager’s Comments – Roll Call
2.	Required Public Hearings
<i>Planning</i>	1. Wetland Application Decision – 1275 Riverview Drive
3.	Petitions, Requests, Communications
<i>City Clerk</i>	1. Walk to End Alzheimer’s Request
4.	Unfinished Business
5.	New Business
<i>Planning</i>	1. Right of First Refusal: Cobblestone Land Purchase
<i>Fire</i>	2. Joint & Cooperative Agreement for Public Safety Purchasing
<i>City Manager</i>	3. Amendment to GreenMark Community Solar Garden Agreement
6.	Reports of Committees
7.	Council Concerns
<i>City Clerk</i>	1. Council Concerns
8.	Consent Agenda
<i>City Clerk</i>	1. Approval of Minutes – December 16, 2019
9.	Adjournment

REQUEST FOR COUNCIL ACTION

<i>Agenda Section:</i> Required Public Hearings	<i>Originating Department:</i>	<i>Date:</i>
<i>No:</i> 2	Planning	1/6/2020

Item: **Wetland Application Decision – 1275 Riverview Drive**

No. 2.1

SUMMARY OF REQUESTED ACTION:

The City of Winona's Wetland Policy requires Council approval of wetland replacement plans.

On October 1, 2019 WSB & Associates (consultant) submitted a wetland delineation, sequencing and replacement application for a future building project at 1275 Riverview Drive. The project will impact .17 acres of wetlands onsite. The wetlands are proposed to be replaced with .34 acres of wetlands from the Graner Wetland Bank in Wabasha County.

On October 25, 2019 City staff met on-site with the consultant and Winona's Technical Evaluation Panel (TEP). The function of the TEP is to review and provide professional recommendations on wetlands impacts in the City of Winona. The TEP consists of representatives from the US Army Corps of Engineers, the Minnesota Board of Water and Soil Resources, the Minnesota Department of Natural Resources, the Winona County Soil and Water District, and the Wetland Coordinator for Winona County.

Following the meeting, the TEP recommended approval of the application. In accordance, staff also recommends approval.

Should Council concur, a motion to adopt the attached resolution would be in order.

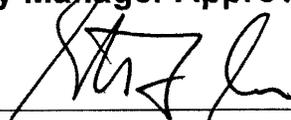
Attachments:

- A) Resolution
- B) Wetland Application with Select Attachments
- C) Staff Report

Department Approval:



City Manager Approval:



RESOLUTION

WHEREAS, Fastenal is proposing a future building project at 1275 Riverview Drive; and

WHEREAS, the project is proposed to impact .17 acres of wetland on-site; and

WHEREAS, WSB & Associates, on behalf of Fastenal submitted a wetland delineation, sequencing, and replacement application for the project; and

WHEREAS, following requisite sequencing and alternatives analyses, the application seeks approval to impact .17 acres of site wetlands, and to replace lost wetlands by acquiring .34 acres of credits from the Graner Wetland Bank in Wabasha County (Bank Service Area 8); and

WHEREAS, said application has, in accordance with MN Rules Chapter 8420, been reviewed by the Winona Technical Evaluation Panel, who has recommended approval; and

WHEREAS, the Winona City Council has, in accordance with the City Wetland Administration Policy, held a public hearing to consider the application and the full record pertaining to it.

NOW, THEREFORE, BE IT RESOLVED that the City Council of Winona, Minnesota hereby approves the wetland application for 1275 Riverview Drive, submitted by WSB & Associates on behalf of Fastenal, on the basis of the following findings:

1. The application provides a suitable sequencing and alternative analyses, and replacement plan to support approval of the project.
2. The application has, in accordance with the MN rules 8420, been reviewed by the Winona Technical Evaluation Panel, who has recommended approval of it.
3. All impacted wetlands will be replaced in accordance with standards of MN Rules, Chapter 8420. Impacted wetlands will be replaced through the acquisition of credits from the Graner Wetland Bank in Wabasha County.

The City of Winona Wetland Coordinator is hereby authorized to fully process this approval in accordance with applicable requirements of the Minnesota Wetland Conservation Act.

Dated this _____ day of _____, 2020.

Mark F. Peterson
Mayor

Attest:

Monica Hennessy Mohan
City Clerk

B)

Wetland Delineation, Sequencing &
Replacement Plan Report

Fastenal
Winona, Minnesota

Prepared For:

Fastenal
Dana Johnson
2001 Theurer Boulevard
Winona, MN 55987

Prepared By:

WSB & Associates Inc.
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Rochester, MN 55901



Joseph R. Tenley
Senior Environmental Scientist

WSB Project No: 011039-000

September 18, 2019

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INTRODUCTION

WSB and Associates Inc. was authorized by Fastenal to conduct a wetland delineation, sequencing and replacement plan for permanent wetland impacts proposed with construction of the Fastenal Property (site, project area) located in the NW 1/4 of Section 21, Winona Township (T107N, R7W) Winona County, MN (**Figure 1**). The site is approximately 8.67-acres of developed land, woodlands and wetlands. The wetland boundaries were verified in the field by Winona County Soil and Water Conservation District Representative Darrel Buck on October 9, 2008. The existing wetland was re-delineated by WSB & Associates, Inc. (WSB) in November of 2017.

Wetland delineations completed identified one Forested Type I wetland complex measuring 0.17 acres and is associated with a depressional wetland located in the northwest of the property (**Figure 2**). The wetland is a low-quality Type I wetland consisting of invasive hydrophytic vegetation primarily including reed canarygrass (*Phalaris arundinacea*) and Boxelder (*Acer negundo*) (**Appendix B**). The proposed construction of the Fastenal Building Project will result in unavoidable impacts totaling 0.17-acres of the wetland on-site (**Appendix G, H**). The proposed impacts are planned to be replaced at a 2:1 ratio in the Graner Wetland Bank (acct no. 1580) located within the same wetland bank service area (8) through the purchase of 0.34-acres of approved wetland bank credits.

SCOPE OF SERVICES

- Complete a general on-site evaluation; preparing the necessary information relating to soils, hydrology and vegetation that identify the wetlands and its boundary.
- Preparing a proposal to be submitted to the Local Government Unit (LGU) responsible for wetland regulation in this jurisdiction;
- To provide information regarding the 2009 Wetland Conservation Act (WCA) and its sequencing;
- To provide information to the site owner to be used in planning and development; and to develop recommendations for submittal to the Local Unit of Government (LGU) responsible for the regulation of wetlands within this jurisdiction.
- To purchase wetland credits at a 2:1 ratio for any wetland impact areas.

WETLAND IDENTIFICATION AND DETERMINATION:

The identification and delineation of jurisdictional wetlands begins in the office with an assessment of the site to determine if the area is subject to the 1991 Wetland Conservation Act (amended in 2009) and the Clean Water Act. The 1987 (revised 2010) Corp of Engineers manual is used and the necessary information for that process is recorded on their COE Routine Reporting Forms. The added information gathered is from historical aerial photos and published maps and data relating to soils, climate, geology, topography, hydrology, physiography, ecology, plant communities, history of human impact including cropping, forestry, filling, draining or development.

Reviewing of all information is aimed at addressing where wetlands and other aquatic resources are likely to occur. The following resources were reviewed and the information was used to plan field investigations and compile this report:

1. LiDAR derived Topography (**Appendix A - Figure 3**).
2. Winona County Soil Survey: USDA NRCS, (**Appendix A - Figure 4**).
3. National Wetlands Inventory, MN Department of Natural Resources (**Appendix A - Figure 5**).
4. MN Department of Natural Resources listing of Public Waters (**Appendix A - Figure 6**).
5. National Hydrography Dataset, US Geological Survey (**Appendix A – Figure 6**)
6. Aerial photos provided by MN Geospatial Information Office (**Appendix A – Figures 9-10**).

SITE CHARACTERISTICS AND HISTORY:

The site is approximately 8.67-acres of developed land, woodlands and wetlands since at least 1991 (**Figure 9**). The site is currently utilized by Fastenal (**Figure 10**). The site lies on undulating land consisting of elevations between 650 and 670 feet above mean sea level that generally slopes to the northwest. The proposed commercial property is bordered to the north by Riverview Drive, on the south by Canadian Pacific Railroad, on the east by Prairie Island road to the west by commercial property.

Soils and Geology:

The soils at this Site are comprised mainly of soils formed in alluvium on flood plains. According to the Winona County Minnesota Geological Surficial Geology Map the site consists of alluvium-Floodplain sediment. According to the Minnesota Geological Survey Depth to Bedrock Map the first encountered bedrock on site is the Mt. Simon Sandstone formation 290-350 feet deep.

The soils on this Site as indicated in the National Resource Conservation Service 1994 Soil Survey of Winona County, MN (**Figure 4**) are those formed in alluvium. The following soils listed in the table are the soil-mapping units delineated at the site by the Winona County Soil Survey:

Soil Mapping Unit	Taxonomic Name	Drainage Class	Hydric or Non-Hydric Soil
606 Shiloh Silt Loam, Pondered	Cumulic Haplaquoll	Very Poorly Drained	Hydric
1015 Psammments, Fill	Mixed Mesic Psammments	N/A	Non-Hydric

The Psammments, fill soil series does not have a drainage class listed due to the soil series consisting of mechanically altered soil from human disturbance. This soil series is the dominant soil series present in the uplands and the Shiloh soil series is listed as a very poorly drained soil series that dominates the wetland present on site. Transects T1-T2 are located within the wetland boundary encountered within the property and uplands adjacent to wetland boundaries.

Hydrology:

The hydrology for this area is primarily supplied by subsurface water flow due to the rise and fall of water levels within the Mississippi river. A small amount of surface water runoff from the up-gradient sub watershed flows within the existing drainageways into the wetland in the northwest portion of the property.

National Wetlands Inventory:

The National Wetlands Inventory (2015) mapped two wetland types on the site in accordance with the Classification of Wetlands and Deepwater Habitats of the United States, Cowardin et al., FWS Circular 39 (Figure 5). These mapped wetlands were classified as **PEM1Cx**: Palustrine, Emergent, Persistent, Seasonally Flooded, Excavated and **PFO1CX**: Palustrine, Forested, Broad-leaved Deciduous, Seasonally Flooded, Excavated.

Public Waters Inventory / National Hydrography Dataset:

Review of DNR Public Waters Inventory scanned paper maps and GIS-based DNR public water basins and watercourse shapefiles revealed many public water body within 1 mile, but none in the defined project area (Figure 6). Several Public watercourses and basins are mapped within 1 mile of the site including the Mississippi River and its backchannels and potholes.

DELINEATED WETLANDS:

Wetland 1:

Wetland 1 is 0.17-acre Forested Type I wetland located in the northwest portion of the project limits and was transected by T1-1/T1-2 and T2-1/T2-2 (Appendix B, Figure 2). This wetland was identified as a Type I (Forested) wetland and was classified as a PFO1C wetland: Palustrine, Forested, Broad-leaved Deciduous, Seasonally Flooded.

Vegetation

The wetland delineated on the Fastenal property is a floodplain forest (type I) wetland. We identified low diversity wetland vegetation. Dominant vegetation for wetland #1 includes Boxelder, Eastern Cottonwood, Buckthorn and Silver Maple. The following table lists the vegetative plant species identified on the Wetland Delineation Data Forms (See Appendix B). These plant species comprise >50% of the vegetative cover within the area, these plant species also meet hydrophytic vegetative requirements for formation of wetlands.

Common Name	Scientific Name	Indicator Status
Boxelder	<i>Acer negundo</i>	FAC
Eastern Cottonwood	<i>Populus deltoides</i>	FAC
Silver Maple	<i>Acer saccharinum</i>	FACW
Buckthorn	<i>Rhamnus cathartica</i>	FACU
Diamond Black Willow	<i>Salix nigra</i>	OBL
Reed Canarygrass	<i>Phalaris arundinacea</i>	FACW

Soils

Wetland #1 is located within the Shiloh soil series and was transected by T1 and T2 (See Figure 2). T1-2 and T2-2 lie within the wetland boundary, a summary of the soil profile description includes a surface horizon with 10YR2/1 and 10YR3/1 colored silt loam or silty clay loam from 0 to 10 inches. The subsurface horizon was encountered at 4 to 24 inches; soil colors include 10YR4/1, 10YR2/1 and 10YR3/1 with loamy sand soil textures. 10YR5/6 iron concentrations are present and range 0 to 12 inches from the soil surface. The existing adjacent uplands are described at T1-1 and T2-1 locations and consist of mixed fill.

Hydrology

Wetland transects T1-2 and T2-2 met the A3 (Saturation), C3 (Oxidized Rhizospheres in Living Roots), D2 (Geomorphic Position) and D5 (FAC-Neutral Test) indicators for wetland hydrology. Primarily

sources of hydrology to this wetland are from surface water runoff and Mississippi River level fluctuations.

PROJECT ALTERNATIVES: SEQUENCING ANALYSIS

The proposed project includes developing approximately 8.67-acres of property consisting of portions currently utilized for commercial use as well as undeveloped land into a larger commercial facility that will include the addition of new buildings, road access and storm water ponds. Wetland impacts are proposed to allow for proper road access, storm water ponds, buildings, storm water conveyance and engineering requirements for site grading, drainage and installation of utilities as required by the City of Winona.

We have discussed the sequencing analysis in accordance with MR 8420.0520 for the avoidance alternative and minimization alternative. The following is the sequencing analysis for the site in accordance with the BWSR Wetland Conservation Act Rules Chapter 8420 (Extracted from the Minnesota Rules 2009):

Special Considerations (8420.0515):

Sub 2 Endangered and Threatened Species:

In accordance with the Minnesota County Biological Survey there are **no** known endangered or threatened species within the project boundary. We have found no indication of endangered or threatened species within the limits of the project.

Sub 3 Rare Natural Communities:

There are **no** known rare features within the project area. The Minnesota County Biological Survey does not note any native plant communities or areas of significant biodiversity within the limits of the project. We have found no indication of rare natural communities within the limits of the project.

Sub 4 Special Fish and Wildlife Resources:

The Type I wetland present within the project area does not support fish or allow fish passage and spawning, nor do we suspect deer wintering yards. It is not anticipated that the proposed use of the property will have a significant adverse effect on any special or locally significant fish or wildlife populations.

Sub 5 Archaeological:

There are **no** known or suspected cultural resource sites within the project area.

Sub 6 Groundwater Sensitivity:

The project will have **no** impact on groundwater quality. Due to the current and proposed land use of the site and specific design elements, no adverse effects to groundwater quality are anticipated.

Subp 7 Sensitive Surface Water:

There are **no** “Outstanding Resource Waters” or trout streams within the project area, however, the Mississippi River is located 350 feet to the northeast of the Site and Prairie Island Park is located adjacent to the north.

Subp 8 Education and Research Use:

There are **no** education or research programs being conducted on the site. The site is primarily vacant and commercial land and would provide minimal educational or research opportunities.

Subp 9 Waste Disposal Sites:

There are **no** known or suspected waste disposal sites on the property.

Subp 10 Consistency with Other Plans:

The proposed project is consistent with the City of Winona Land Use and Development Plans. The Preliminary and Final Grading Plans will be submitted to the City for review and approval.

Sequencing (8420.0520):

Subpart 3.

- B. Wetland Dependence Determination:** The project is not wetland dependent.
- C. Alternatives Analysis – Impact Avoidance:** We have analyzed the required two impact avoidance alternatives in addition to the proposed project.
- (1) a. No-Build Alternative:** The no-build alternative is not a prudent or feasible option for this project because it would not allow for construction of the commercial buildings, road access, storm water ponds and commercial facilities as required as part of the project site plan and meet the design requirements of by the City of Winona and the MPCA. If no construction occurs, the site would continue to be vacant or commercial land. The existing wetland on-site would continue to receive large amounts of erosional sediment from untreated storm water from adjacent vacant and commercial properties, significantly degrading the quality of the wetland. This alternative is not being considered.
- (1) b. Avoidance Alternative:** This alternative would be to construct the new commercial facilities and storm water pond avoiding all wetland impacts (**Figure 11**). The avoidance alternative would develop the storm water pond adjacent to the existing wetland and replace much needed square footage of the proposed building. This option would not allow for proper turn around distanced to utilize the new building. Engineered fill would be brought to within a few feet of the wetland boundary and planted with stabilizing vegetation, to maximize the development potential. While “protected” the wetlands would likely be severely degraded. The following describes why the avoidance alternative would not meet the project’s purpose and need, City of Winona Storm Water Management Plans, Land Use Plans, or other project specific design requirements:

1. If wetlands were avoided, the site would not have adequate turning distances to utilize the proposed building. This would not meet the project purpose and need.
2. Avoiding wetland impact would leave the existing wetland in a state of degradation. The wetland will continue to receive untreated stormwater and sediment from up-gradient vacant land and commercial developments.

This alternative was rejected because of the inability to comply with the project's purpose and need, MPCA water quality requirements, City of Winona Storm Water Management Plan, Land Use Plans, Transportation Plans and design requirements.

Subpart 4: Determination of Impact Minimization

Minimization analysis requires a review of seven criteria:

- (A) Spatial Requirements:** The project requires 8.67-acres of developable area.
- (B) Existing Structural or Natural Features:** The site is primarily undeveloped land and commercial land with one small type I wetland on the northwest portion of the Site adjacent to the road access. One wetland has been delineated within this depressional area and was identified as a 0.17-acre Type I Forested wetland.
- (C) Purpose of the Project:** The proposed project includes construction of 8.67-acre commercial facility which includes construction of public roadway access, new commercial buildings, storm water pond and installation of underground and/or overhead utilities in accordance with all applicable construction design requirements.
- (D) Sensitivity of Site Design:** A minimization plan was reviewed for proposed wetland impacts on site (**Figure 12**).

A Minimization plan is included as **Figure 12** and consisted of 0.085-acres of permanent wetland impact. This was scrapped due to the required storm water pond and grading plan for the project and conveyance to improve water quality of untreated stormwater runoff from the up-gradient golf course and commercial developed watershed which is significantly degrading the existing wetland onsite. The proposed wetland impacts are within an excavated manmade depression. Existing vegetation includes reed canary grass, buckthorn, boxelder, eastern cottonwood and silver maple. The wetland impacts are proposed in a low function and value wetland in accordance to the MNRAM data (Appendix D). The existing wetland is influenced by existing stormwater runoff.

Moderately incised drainage channel, low hydrophytic vegetation diversity and low wetland function and value are all observed within the wetland. Proposed filling or grading of this low functioning wetland area is necessary for the storm water pond to receive and effectively treat storm water runoff.

- E) Wetland Function, Value and Spatial Distribution:** The MNRAM functions and values evaluation shows that Wetland is a 0.17-acres of low quality Type I wetland with low levels of floristic integrity/diversity, habitat structure, amphibian habitat and aesthetics and medium levels for hydrology and water quality (**Appendix D**).
- (F) Individual and Cumulative Impacts:** The proposed project will have 0.17-acres of permanent impact with a 2:1 wetland replacement totaling 0.34-acres. There are no other wetland impacts proposed for this project.
- (G) Applicant Efforts to Modify Size, Scope, Configuration, Remove Constraints of Zoning, Infrastructure, Confine Impacts to Fringe and Otherwise Minimize Impacts:** The project requirements for road access, permanent stormwater management systems, and site grading and drainage cannot be obtained without grading or filling the wetland within the project limits. We evaluated other configurations but could not substantially reduce the amount of wetland impact and effectively meet the goals of the project. The project has grading constraints; most notably the placement of storm water pond to treat storm water on Site. The project has tried to confine the impacts to the wetlands located on-site and minimize the impacts to the maximum amount possible, however minimizing impacts to wetlands is not feasible due to project design requirements and stormwater management requirements.

Subpart 5: Determination of Impact Rectification

No other wetland impacts are proposed.

Subpart 6: Reduction or Elimination of Impacts over Time

No additional wetland impact on-site is proposed. The project will require a NPDES Construction Stormwater Permit in which erosion and sediment control BMPs will be installed to protect downgradient surface waters. After final stabilization of the site will further enhance the quality of wetlands downgradient of the site.

Subpart 7: Unavoidable Impacts

Due to slope gradient, hydrologic influences to the site and soil types, there is not enough available area for wetland credit on-site. We are proposing to replace the 0.17-acres of unavoidable impact with 0.34-acres of wetland replacement by purchasing approved wetland bank credits from the Graner Wetland Bank.

Off-Site Alternatives Analysis

One off-site location has been evaluated to determine if the project's purpose and need can be achieved that may further minimize environmental impacts. The alternative location chosen is both within similar locations and in close proximity to the proposed project (**Figure 13**). The table below summarizes the

Practicability Factors to determine if the proposed project is the Least Damaging Practicable Alternative (LEDPA).

Practicability Category	Factor	Applicants Preferred Site (Fastenal)	Off Site Alternative Site #1
Location	Location	S21, T107N-R7W South of Riverview Drive and west of Prairie Island Rd.	S25, T107N-R7W East of East 8 th Street
Availability	Land Available for Acquisition	Yes Applicant owns parcel	Possible Peerless Chain owns parcel. Land is utilized as commercial and wetlands.
Logistics	Sufficient Parcel Size	Yes Parcel (8.67-ac)	Yes Parcel (4-ac)
	Land Use Plan	Commercial	Commercial
	Zoning Appropriate for Development	Possible	Possible
	Utilities Available to Parcel	Yes Riverview Drive	Yes East 8 th Street
	Access Available to Parcel	Yes Riverview Drive	Yes East 8 th Street
	Site Visibility and Traffic Counts for Commercial Business	Yes moderate Visibility, Low Traffic Counts	Yes Moderate Visibility, Low Traffic Counts
Existing Technology	Topography and soil conditions feasible for construction of project	Yes No significant soils, topography or floodplain concerns	Possible Permits and extensive amounts of fill material would need to be imported to the site to the elevation of East 8 th Street. Also, this property has over 10 times more wetland acreage with higher quality wetlands.
Cost (No Cost Threshold Established)	Reasonable Acquisition Costs	Yes Applicant owns the land	Possible Applicant does not currently own the land

Environmental Factors	Applicants Preferred Site (Cascade Pass Second Subdivision)	Offsite Alternative Site #1
Wetland Impacts	0.17 acres	2 acres
Floodplain Impacts	0 acres	0 acres
Other Aquatic Resource Impacts	None	Medium to High Quality Wetlands
Impacts to Federally Listed T & E Upland Species	None known	Rare species marked in the vicinity
Forested Land Impacts	0.17 acres	2 acres
LEDPA	Yes	No

Off-Site Alternative Site #1

This alternative would be to construct the proposed buildings west of East 8th Street in Winona, MN. The property is currently owned by Peerless Chain. Although alternative Site #1 meets the project objective this alternative was rejected as the cumulative impacts to wetlands and other aquatic resources are greater than impacts proposed with the development of the Fastenal Site. This alternative doesnotmeet the requirements of LEDPA.

Practicability Factors

- The parcel location would meet development requirements.
- The parcel is not owned by the applicant but can possible be purchased.
- The parcel size is adequate for development.
- The parcel would meet future land use requirements.
- The parcel is not currently zoned for the proposed project, but could be obtained.
- Utilities would be available on-site.
- Accessibility to the site would be similar to the proposed location.
- Visibility of the site would be similar to the proposed location.
- The parcel would require large amounts of fill to develop the project due to existing topography.
- The value of the land is comparable to the proposed location.
- The parcel has more wetlands and would result in more impacts.

Environmental Factors

- It is estimated the project would require impact equal to or greater than 2 acres of higher quality Type II, III and IV wetlands due to grading requirements for the proposed buildings.
- Grading requirements for the proposed buildings would require large amounts of filling due to the topography on site.

Preferred Site (Fastenal Site)

This alternative would be to construct the buildings within the proposed location. The property is currently owned by the applicant. This site meets the proposed project's purpose and need. This alternative is also practicable and was accepted as the cumulative impacts to wetlands and other aquatic resources are less than potential impacts proposed with the former alternatives. This alternative meets the requirements of LEDPA.

Practicability Factors

- The parcel location would meet development requirements.
- The parcel is owned by the applicant.
- The parcel size is adequate for development.
- The parcel would meet future land use requirements.
- The parcel is currently zoned for the proposed project.
- Utilities would be available on-site.
- Accessibility to the site would be similar to the alternatives.
- Visibility of the site would be similar to the alternatives.
- The value of the land is comparable to the alternatives.

Environmental Factors

- It is estimated the project would require impact of a total of 0.17 acres of Type I wetlands due to grading, construction of new buildings, road access, storm water pond and utilities.

WETLAND IMPACTS AND REPLACEMENT PLAN

The total proposed permanent wetland impact on-site is 0.17-acres of existing wetlands. Impacts are proposed to allow for Fastenal to expand by construction new buildings, road access, storm water pond and utilities. The impact area will be replaced through direct wetland replacement by purchasing wetland credits from the Graner Wetland Bank.

The following table includes total wetland impact on-site:

Wetland Impact Areas	Wetland Impact (ac)	Replacement Ratio	Total Wetland Replacement
Wetland Impact 1	0.17	2:1	0.34 acres
Total	0.17	2:1	0.34 acres

1. Proposed Wetland Bank Replacement

The wetland impact is located within the limits of the City of Winona in Winona County, MN. The available option is to replace wetland impacts as direct wetland replacement at the Graner Wetland Bank located within the same wetland bank service area (8). A MNRAM assessment of the Graner Wetland Bank concludes that the wetland is a high-quality wetland with exceptional values (**Appendix E**). Fastenal is prepared to purchase 0.34-acres of Type II wetland credits needed for wetland replacement due to permanent wetland impacts proposed within the project (**Appendix F**).

SUMMARY

The proposed development of the Fastenal Property development has 0.17-acres of unavoidable wetland impact. Permanent wetland impacts are proposed to be replaced at a 2:1 ratio in accordance with the requirements of the Wetland Conservation Act. The wetland replacement is planned for completion by purchasing approved wetland bank credits of 0.34-acres of SWC credits from the Graner Wetland Bank (acct. no. 1580) located within the same wetland bank service area (8).

This report was prepared by Mr. Joseph R. Tenley and Mr. Luke W. Lunde. This report has been prepared in accordance with WCA requirements and the requirements of the local government unit and the Army Corps of Engineers. The results of the fieldwork and report reflect the conditions present at the time the work was completed.



Legend
 Project Area (8.67 ac)
 Transect Points
 Wetland Boundary 0.17 ac. (10/2017)

Figure 2: Wetland Exhibit
 Fastenal Wetland Exhibit
 Winona, MN
 WSB Project #011039-000

North arrow pointing up, labeled 'N'.
 Scale bar showing 0, 100, and 100 Feet.
 WSB logo.



Site Map - TEP Addendum
 Fastenal Wetland Exhibit
 Winona, MN
 WSB Project #011039-000



Legend

	Project Area (8.87 ac.)
	Proposed Wetland Impact (7280 Sq. Ft.)
	Storm Water Pond (23,165 Sq. Ft.)
	Increase to Stormwater Pond (8318 Sq. Ft.)

All stormwater to remain on site with increase to stormwater pond

MEMORANDUM

DEPARTMENT OF COMMUNITY DEVELOPMENT

TO: City Council

FROM: Carlos Espinosa

DATE: December 31, 2019

SUBJECT: Staff Report 1275 Riverview Drive Wetland Application

Staff has reviewed the Fastenal Wetland Delineation, Sequencing, and Replacement application for a building project at 1275 Riverview Drive. Based on the information provided and TEP review, staff finds that the application provides a suitable sequencing and alternative analyses, and replacement to support approval. In particular, this is due to the following:

1. The analysis and replacement plan provided in the application on pages 5-11 (attached).
2. Railroad access provided by the adjacent rail spur is key to the proposed building and land use. This is a major factor in the sequencing and alternative analysis.
3. The proposed wetland impact is necessary to meet stormwater ponding requirements for development of the site. In addition, the soils and size of the wetland impact ensures that all stormwater will remain onsite and an outlet culvert is not necessary.

In accordance, staff recommends approval of the proposal to impact .17 acres of wetland and replace it with .34 acres from the Graner Wetland Bank.

Attachments:

1. Application pages 5-11
2. TEP Approval
3. USACE Approval

PROJECT ALTERNATIVES: SEQUENCING ANALYSIS

The proposed project includes developing approximately 8.67-acres of property consisting of portions currently utilized for commercial use as well as undeveloped land into a larger commercial facility that will include the addition of new buildings, road access and storm water ponds. Wetland impacts are proposed to allow for proper road access, storm water ponds, buildings, storm water conveyance and engineering requirements for site grading, drainage and installation of utilities as required by the City of Winona.

We have discussed the sequencing analysis in accordance with MR 8420.0520 for the avoidance alternative and minimization alternative. The following is the sequencing analysis for the site in accordance with the BWSR Wetland Conservation Act Rules Chapter 8420 (Extracted from the Minnesota Rules 2009):

Special Considerations (8420.0515):

Sub 2 Endangered and Threatened Species:

In accordance with the Minnesota County Biological Survey there are **no** known endangered or threatened species within the project boundary. We have found no indication of endangered or threatened species within the limits of the project.

Subp 3 Rare Natural Communities:

There are **no** known rare features within the project area. The Minnesota County Biological Survey does not note any native plant communities or areas of significant biodiversity within the limits of the project. We have found no indication of rare natural communities within the limits of the project.

Subp 4 Special Fish and Wildlife Resources:

The Type I wetland present within the project area does not support fish or allow fish passage and spawning, nor do we suspect deer wintering yards. It is not anticipated that the proposed use of the property will have a significant adverse effect on any special or locally significant fish or wildlife populations.

Subp 5 Archaeological:

There are **no** known or suspected cultural resource sites within the project area.

Subp 6 Groundwater Sensitivity:

The project will have **no** impact on groundwater quality. Due to the current and proposed land use of the site and specific design elements, no adverse effects to groundwater quality are anticipated.

Subp 7 Sensitive Surface Water:

There are **no** “Outstanding Resource Waters” or trout streams within the project area, however, the Mississippi River is located 350 feet to the northeast of the Site and Prairie Island Park is located adjacent to the north.

Subp 8 Education and Research Use:

There are **no** education or research programs being conducted on the site. The site is primarily vacant and commercial land and would provide minimal educational or research opportunities.

Subp 9 Waste Disposal Sites:

There are **no** known or suspected waste disposal sites on the property.

Subp 10 Consistency with Other Plans:

The proposed project is consistent with the City of Winona Land Use and Development Plans. The Preliminary and Final Grading Plans will be submitted to the City for review and approval.

Sequencing (8420.0520):

Subpart 3.

- B. Wetland Dependence Determination:** The project is not wetland dependent.
- C. Alternatives Analysis – Impact Avoidance:** We have analyzed the required two impact avoidance alternatives in addition to the proposed project.
- (1) **a. No-Build Alternative:** The no-build alternative is not a prudent or feasible option for this project because it would not allow for construction of the commercial buildings, road access, storm water ponds and commercial facilities as required as part of the project site plan and meet the design requirements of by the City of Winona and the MPCA. If no construction occurs, the site would continue to be vacant or commercial land. The existing wetland on-site would continue to receive large amounts of erosional sediment from untreated storm water from adjacent vacant and commercial properties, significantly degrading the quality of the wetland. This alternative is not being considered.
- (1) **b. Avoidance Alternative:** This alternative would be to construct the new commercial facilities and storm water pond avoiding all wetland impacts (**Figure 11**). The avoidance alternative would develop the storm water pond adjacent to the existing wetland and replace much needed square footage of the proposed building. This option would not allow for proper turn around distanced to utilize the new building. Engineered fill would be brought to within a few feet of the wetland boundary and planted with stabilizing vegetation, to maximize the development potential. While “protected” the wetlands would likely be severely degraded. The following describes why the avoidance alternative would not meet the project’s purpose and need, City of Winona Storm Water Management Plans, Land Use Plans, or other project specific design requirements:

1. If wetlands were avoided, the site would not have adequate turning distances to utilize the proposed building. This would not meet the project purpose and need.
2. Avoiding wetland impact would leave the existing wetland in a state of degradation. The wetland will continue to receive untreated stormwater and sediment from up-gradient vacant land and commercial developments.

This alternative was rejected because of the inability to comply with the project's purpose and need, MPCA water quality requirements, City of Winona Storm Water Management Plan, Land Use Plans, Transportation Plans and design requirements.

Subpart 4: Determination of Impact Minimization

Minimization analysis requires a review of seven criteria:

(A) Spatial Requirements: The project requires 8.67-acres of developable area.

(B) Existing Structural or Natural Features: The site is primarily undeveloped land and commercial land with one small type I wetland on the northwest portion of the Site adjacent to the road access. One wetland has been delineated within this depressional area and was identified as a 0.17-acre Type I Forested wetland.

(C) Purpose of the Project: The proposed project includes construction of 8.67-acre commercial facility which includes construction of public roadway access, new commercial buildings, storm water pond and installation of underground and/or overhead utilities in accordance with all applicable construction design requirements.

(D) Sensitivity of Site Design: A minimization plan was reviewed for proposed wetland impacts on site (**Figure 12**).

A Minimization plan is included as **Figure 12** and consisted of 0.085-acres of permanent wetland impact. This was scrapped due to the required storm water pond and grading plan for the project and conveyance to improve water quality of untreated stormwater runoff from the up-gradient golf course and commercial developed watershed which is significantly degrading the existing wetland onsite. The proposed wetland impacts are within an excavated manmade depression. Existing vegetation includes reed canary grass, buckthorn, boxelder, eastern cottonwood and silver maple. The wetland impacts are proposed in a low function and value wetland in accordance to the MNRAM data (Appendix D). The existing wetland is influenced by existing stormwater runoff.

Moderately incised drainage channel, low hydrophytic vegetation diversity and low wetland function and value are all observed within the wetland. Proposed filling or grading of this low functioning wetland area is necessary for the storm water pond to receive and effectively treat storm water runoff.

- E) Wetland Function, Value and Spatial Distribution:** The MNRAM functions and values evaluation shows that Wetland is a 0.17-acres of low quality Type I wetland with low levels of floristic integrity/diversity, habitat structure, amphibian habitat and aesthetics and medium levels for hydrology and water quality (**Appendix D**).
- (F) Individual and Cumulative Impacts:** The proposed project will have 0.17-acres of permanent impact with a 2:1 wetland replacement totaling 0.34-acres. There are no other wetland impacts proposed for this project.
- (G) Applicant Efforts to Modify Size, Scope, Configuration, Remove Constraints of Zoning, Infrastructure, Confine Impacts to Fringe and Otherwise Minimize Impacts:** The project requirements for road access, permanent stormwater management systems, and site grading and drainage cannot be obtained without grading or filling the wetland within the project limits. We evaluated other configurations but could not substantially reduce the amount of wetland impact and effectively meet the goals of the project. The project has grading constraints; most notably the placement of storm water pond to treat storm water on Site. The project has tried to confine the impacts to the wetlands located on-site and minimize the impacts to the maximum amount possible, however minimizing impacts to wetlands is not feasible due to project design requirements and stormwater management requirements.

Subpart 5: Determination of Impact Rectification

No other wetland impacts are proposed.

Subpart 6: Reduction or Elimination of Impacts over Time

No additional wetland impact on-site is proposed. The project will require a NPDES Construction Stormwater Permit in which erosion and sediment control BMPs will be installed to protect downgradient surface waters. After final stabilization of the site will further enhance the quality of wetlands downgradient of the site.

Subpart 7: Unavoidable Impacts

Due to slope gradient, hydrologic influences to the site and soil types, there is not enough available area for wetland credit on-site. We are proposing to replace the 0.17-acres of unavoidable impact with 0.34-acres of wetland replacement by purchasing approved wetland bank credits from the Graner Wetland Bank.

Off-Site Alternatives Analysis

One off-site location has been evaluated to determine if the project's purpose and need can be achieved that may further minimize environmental impacts. The alternative location chosen is both within similar locations and in close proximity to the proposed project (**Figure 13**). The table below summarizes the

Practicability Factors to determine if the proposed project is the Least Damaging Practicable Alternative (LEDPA).

Practicability Category	Factor	Applicants Preferred Site (Fastenal)	Off Site Alternative Site #1
Location	Location	S21, T107N-R7W South of Riverview Drive and west of Prairie Island Rd.	S25, T107N-R7W East of East 8 th Street
Availability	Land Available for Acquisition	Yes Applicant owns parcel	Possible Peerless Chain owns parcel. Land is utilized as commercial and wetlands.
Logistics	Sufficient Parcel Size	Yes Parcel (8.67-ac)	Yes Parcel (4-ac)
	Land Use Plan	Commercial	Commercial
	Zoning Appropriate for Development	Possible	Possible
	Utilities Available to Parcel	Yes Riverview Drive	Yes East 8 th Street
	Access Available to Parcel	Yes Riverview Drive	Yes East 8 th Street
	Site Visibility and Traffic Counts for Commercial Business	Yes moderate Visibility, Low Traffic Counts	Yes Moderate Visibility, Low Traffic Counts
Existing Technology	Topography and soil conditions feasible for construction of project	Yes No significant soils, topography or floodplain concerns	Possible Permits and extensive amounts of fill material would need to be imported to the site to the elevation of East 8 th Street. Also, this property has over 10 times more wetland acreage with higher quality wetlands.
Cost (No Cost Threshold Established)	Reasonable Acquisition Costs	Yes Applicant owns the land	Possible Applicant does not currently own the land

Environmental Factors	Applicants Preferred Site (Cascade Pass Second Subdivision)	Offsite Alternative Site #1
Wetland Impacts	0.17 acres	2 acres
Floodplain Impacts	0 acres	0 acres
Other Aquatic Resource Impacts	None	Medium to High Quality Wetlands
Impacts to Federally Listed T & E Upland Species	None known	Rare species marked in the vicinity
Forested Land Impacts	0.17 acres	2 acres
LEDPA	Yes	No

Off-Site Alternative Site #1

This alternative would be to construct the proposed buildings west of East 8th Street in Winona, MN. The property is currently owned by Peerless Chain. Although alternative Site #1 meets the project objective this alternative was rejected as the cumulative impacts to wetlands and other aquatic resources are greater than impacts proposed with the development of the Fastenal Site. This alternative does not meet the requirements of LEDPA.

Practicability Factors

- The parcel location would meet development requirements.
- The parcel is not owned by the applicant but can possible be purchased.
- The parcel size is adequate for development.
- The parcel would meet future land use requirements.
- The parcel is not currently zoned for the proposed project, but could be obtained.
- Utilities would be available on-site.
- Accessibility to the site would be similar to the proposed location.
- Visibility of the site would be similar to the proposed location.
- The parcel would require large amounts of fill to develop the project due to existing topography.
- The value of the land is comparable to the proposed location.
- The parcel has more wetlands and would result in more impacts.

Environmental Factors

- It is estimated the project would require impact equal to or greater than 2 acres of higher quality Type II, III and IV wetlands due to grading requirements for the proposed buildings.
- Grading requirements for the proposed buildings would require large amounts of filling due to the topography on site.

Preferred Site (Fastenal Site)

This alternative would be to construct the buildings within the proposed location. The property is currently owned by the applicant. This site meets the proposed project's purpose and need. This alternative is also practicable and was accepted as the cumulative impacts to wetlands and other aquatic resources are less than potential impacts proposed with the former alternatives. This alternative meets the requirements of LEDPA.

Practicability Factors

- The parcel location would meet development requirements.
- The parcel is owned by the applicant.
- The parcel size is adequate for development.
- The parcel would meet future land use requirements.
- The parcel is currently zoned for the proposed project.
- Utilities would be available on-site.
- Accessibility to the site would be similar to the alternatives.
- Visibility of the site would be similar to the alternatives.
- The value of the land is comparable to the alternatives.

Environmental Factors

- It is estimated the project would require impact of a total of 0.17 acres of Type I wetlands due to grading, construction of new buildings, road access, storm water pond and utilities.

WETLAND IMPACTS AND REPLACEMENT PLAN

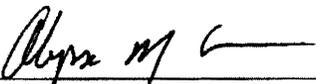
The total proposed permanent wetland impact on-site is 0.17-acres of existing wetlands. Impacts are proposed to allow for Fastenal to expand by construction new buildings, road access, storm water pond and utilities. The impact area will be replaced through direct wetland replacement by purchasing wetland credits from the Graner Wetland Bank.

The following table includes total wetland impact on-site:

Wetland Impact Areas	Wetland Impact (ac)	Replacement Ratio	Total Wetland Replacement
Wetland Impact 1	0.17	2:1	0.34 acres
Total	0.17	2:1	0.34 acres

1. Proposed Wetland Bank Replacement

The wetland impact is located within the limits of the City of Winona in Winona County, MN. The available option is to replace wetland impacts as direct wetland replacement at the Graner Wetland Bank located within the same wetland bank service area (8). A MNRAM assessment of the Graner Wetland Bank concludes that the wetland is a high-quality wetland with exceptional values (**Appendix E**). Fastenal is prepared to purchase 0.34-acres of Type II wetland credits needed for wetland replacement due to permanent wetland impacts proposed within the project (**Appendix F**).

<input checked="" type="checkbox"/> BWSR TEP Member: Alyssa Core	Agree with Findings & Recommendations: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Signature: 	Date: 12/11/2019
<input checked="" type="checkbox"/> US ACE: Kerrie Hauser	Agree with Findings & Recommendations: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Signature:	Date:

From: Daryl Buck
To: Carlos Espinosa; Kerrie.J.Hauser@usace.army.mil; "Alyssa Core"; "Eric Johnson"
Subject: RE: TEP Findings for Wetland Mitigation Plan - Fastenal
Date: Monday, November 25, 2019 1:19:55 PM
Attachments: [image003.png](#)

Carlos,

It looks good to me.

Thanks for getting all the additional information on this.

Daryl Buck
District Manager
Winona County SWCD
507-523-2171 ext. 112
<https://winonaswcd.org>



From: Carlos Espinosa [mailto:cespinosa@ci.winona.mn.us]
Sent: Thursday, November 21, 2019 3:00 PM
To: Kerrie.J.Hauser@usace.army.mil; Alyssa Core <alyssa.core@state.mn.us>; Daryl Buck <daryl.buck@winonaswcd.com>; Eric Johnson <ejohnson@co.winona.mn.us>
Subject: TEP Findings for Wetland Mitigation Plan - Fastenal

All-

Please see attached for a draft TEP recommendation form related to this project. Please let me know if you have any additional comments or objections to approval. I will use e-mail responses as signatures for the form.

Thank you,

-Carlos

Carlos Espinosa, AICP
City Planner
City of Winona
207 Lafayette Street, P. O. Box 378
Winona, Minnesota 55987
Ph. 507-457-8216

Minnesota Wetland Conservation Act Technical Evaluation Panel Form

This form can be used to document TEP findings and recommendations related to WCA decisions, determinations, enforcement and pre-application reviews.

Local Government Unit:	City of Winona	County:	Winona
Landowner/Applicant:	Fastenal – Dana Johnson Tenley, WSB	Agent/Representative(s):	Joe
Project Name:	Fastenal Wetland Delineation and Replacement Plan		
Project No. (if any):	55-2019		
Project Location:	1275 Riverview Drive, Winona, MN		

Purpose of TEP Findings/Recommendation - check all that apply and describe

<input type="checkbox"/> Pre-application review <input checked="" type="checkbox"/> Application Review (related to WCA Decision) <input type="checkbox"/> Local Government Road Wetland Replacement Program Eligibility <input type="checkbox"/> WCA Determination Request <input type="checkbox"/> Other (specify): Describe:
--

Meeting Type – check all that apply and specify dates as applicable

<input type="checkbox"/> In-Person Meeting(s), Date(s): <input checked="" type="checkbox"/> Onsite Review(s), Date(s): 10/25/19	<input checked="" type="checkbox"/> Electronic Exchanges (email, skype, etc.) <input type="checkbox"/> Other (specify):
---	--

Findings and Recommendations

TEP recommends approval pursuant to application and supplementary information provided
--

<input checked="" type="checkbox"/> Attachment(s) (specify): Supplementary information to Application
--

DNR Protected Waters and Shoreland Protection Zone

Will the project/activity affect DNR public waters, DNR public waters wetlands or wetlands within the shoreland protection zone? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes, DNR representative is a member of the TEP. <i>DNR Rep. opted out of application due to absence of public waters; shoreland regulations will be applied at site planning phase by LGU.</i>

Signatures

<input checked="" type="checkbox"/> Winona County TEP Member: Eric Johnson <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Agree with Findings & Recommendations:
Signature:	Date: 11/22/19
<input checked="" type="checkbox"/> SWCD TEP Member: Daryl Buck No	Agree with Findings & Recommendations: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Signature:	Date:



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT
180 FIFTH STREET EAST, SUITE 700
ST. PAUL, MN 55101-1678

3.

December 11, 2019

Regulatory File No. MVP-2006-02536-KJH

Dana Johnson
Fastenal
2001 Theurer Boulevard
Winona, Minnesota 55987

Dear Dana Johnson:

We are responding to a request by Fastenal for authorization to construct a larger commercial facility that includes the addition of a new building, road access, and a stormwater pond. The proposed work is located in Section 21, Township 107 North, Range 7 West, in Winona County, Minnesota.

Project authorization:

The regulated activities associated with this project include the discharge of dredged and fill material into 0.17 acre of wetland for the construction of an approximately 0.68 acre storm water pond in connection with the expansion of your commercial facilities. We have determined that these activities are authorized by a Nationwide Permit (NWP), specifically, NWP 39, Commercial and Institutional Developments. This work is shown on the enclosed figures, labeled MVP-2006-02536-KJH Page 1 of 2 through Page 2 of 2.

Conditions of your permit:

You must ensure the authorized work is performed in accordance with the enclosed General Permit terms, General Conditions, and St. Paul District Regional Conditions. In addition, this verification is subject to the following Special Conditions:

1. As compensatory mitigation for the authorized activities, a minimum of 0.34 fresh (wet) meadow wetland credits shall be debited from Minnesota Wetland Bank Account #S4870-1580 (Graner Wetland Bank), a Corps-approved mitigation bank serving Bank Service Area 8.
 - a. Prior to undertaking the activities authorized by this permit, the permittee shall ensure that the Corps receives the "Notice of Withdrawal of Wetland Credits from the Minnesota Wetland Bank", specifying the mitigation bank used and the amount and type of credits withdrawn.
 - b. All documentation submitted shall include the file number MVP-2006-02536-KJH, and be submitted to the U.S. Army Corps of Engineers, 1114 South Oak Street, La Crescent, Minnesota 55947, Attention: Kerrie J. Hauser

You are also required to complete and return the enclosed Compliance Certification form within 30 days of completing your project. Please email the completed form to the contact identified in the last paragraph.

A change in location or project plans may require re-evaluation of your project. Proposed changes should be coordinated with this office prior to construction. Failure to comply with all

terms and conditions of this permit invalidates this authorization and could result in a violation of Section 301 of the Clean Water Act or Section 10 of the Rivers and Harbors Act. You must also obtain all local, State, and other Federal permits that apply to this project.

Water Quality Certification:

You must also comply with the enclosed Water Quality Certification conditions associated with this General Permit.

Permit expiration:

This permit is valid until March 18, 2022, unless the general permit is modified, suspended, or revoked. If the work has not been completed by that time, you should contact this office to verify that the permit is still valid. Furthermore, if you commence or are under contract to commence this activity before the date of General Permit expiration, modification, or revocation, you have 12 months to complete the activity under the present terms and conditions of the General Permit.

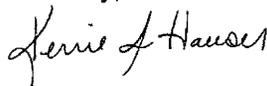
Jurisdictional determination:

No jurisdictional determination was requested or prepared for this project. While not required, you may request a jurisdictional determination from the contact identified in the last paragraph.

Contact Information:

If you have any questions, please contact me in our La Crescent office at (651) 290-5903 or by email at Kerrie.j.hauser@usace.army.mil.

Sincerely,



Kerrie J. Hauser
Project Manager

Enclosures

cc: WSB, Luke Lunde
BWSR, Alyssa Core
MN DNR, Taylor Huinker
Winona LGU, Carlos Espinosa

REQUEST FOR COUNCIL ACTION

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

Originating Department:

Date:

No: 3

City Clerk

01/06/20

Item: **Walk to End Alzheimer's Request**

No. 3.1

SUMMARY OF REQUESTED ACTION:

Councilmembers,

My name is Jennifer O'Donnell and I am the walk manager for the Alzheimer's Association. This year's walk will take place on Saturday, October 3, 2020. We have reserved the East Lake path for the day of the walk. We would like to request to close down the parking lots in front of the bandshell from Friday, October 2nd at 3:00 p.m. to Saturday, October 3rd at 2:00 p.m.

If you are standing on the bandshell looking out at the parking lots the left side will be used for the tables/tents/chairs and the right side will be for participant parking. We would also like to request to close down Lake Park Drive from Franklin to the Bandshell from 10:20 am - 12:00 p.m. the day of the walk.

If there is any additional information that you need from me, please let me know. I look forward to hearing back from you. Have a great holiday.

Jennifer O'Donnell
Walk Manager/Administrative Assistant
jodonnell@alz.org

Department Approval:

City Manager Approval:

Monica Hennessy Mohan

Mark J...

REQUEST FOR COUNCIL ACTION

Agenda Section: **New Business**

Originating Department:

Date

No: **5**

Planning

1/6/20

Item: **Right of First Refusal: Cobblestone Land Purchase**

No. **5.1**

SUMMARY OF REQUESTED ACTION:

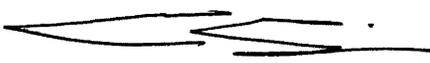
The 2008 Development Agreement for the Cobblestone Creek Subdivision includes a provision (Attachment B) that gives the City of Winona right of first refusal to purchase bluffland property within the subdivision (the "subdivision" or "plat"). The 2008 Development Agreement sought donation of such bluffland to the City by the Developer, but the Developer has to date not sought to donate the property. The provision then gives an undefined right of first refusal to the City of Winona to purchase all of the bluffland included in the plat.

A buyer is now proposing to purchase the undeveloped land and outlots in the subdivision (Attachment C). This action appears to have triggered the City's right of first refusal to purchase the bluffland within these areas. The bluffland is undevelopable land with steep slopes totaling approximately 175 acres (Attachment D).

At this time, staff recommends waiving and releasing the City's right of first refusal to purchase the above-mentioned bluffland for the following reasons:

1. The bluffland cannot be disturbed per City zoning regulations and the development agreement for the subdivision.
2. The buyer does not propose to develop the remainder of the Cobblestone Creek Subdivision. If development is proposed in the future, dedication or public use of the bluffland can be addressed through the platting process at that time.
3. The bluffland in the Cobblestone Creek Subdivision is located far from the City's existing natural parks and trail systems. In consultation the Park and Recreation Department, the City's Parks, Open Space, and Recreation System Plan do not address or propose expansion into this area.
4. Based on assessed value of existing privately-owned bluffland in the City's Valley Oaks Subdivision, the Cobblestone Creek bluffland would potentially be valued at approximately \$550,000.
5. The right of first refusal language contained in the development agreement does not specify clearly how the same was to be exercised by the City and what property was to be included.

Department Approval:



City Manager Approval:



Right of First Refusal: Cobblestone Land Purchase

Page 2

Should Council concur with waiving and releasing the right of first refusal, a motion to adopt the attached WAIVER, RELEASE AND TERMINATION OF FIRST RIGHT OF REFUSAL and authorize the mayor and city clerk to execute the same would be in order.

Attachments:

- A) WAIVER, RELEASE AND TERMINATION OF FIRST RIGHT OF REFUSAL
- B) 2008 Development Agreement Provision
- C) Map of Undeveloped Land and Outlots in the Cobblestone Creek Subdivision
- D) Map of Bluffland Property

WAIVER, RELEASE AND TERMINATION OF RIGHT OF FIRST REFUSAL

KNOW ALL MEN BY THESE PRESENTS, that the City of Winona, Minnesota, holds a right of first refusal included as a single provision, Section I.H., of that certain Development Agreement, dated June 12, 2008, by and between the City of Winona and Phillips Development, Inc., relating to that certain real property described therein, situated in the County of Winona, State of Minnesota and filed for record in the office of the County Recorder in and for said County of Winona, State of Minnesota, on June 18, 2008, as Document No. 530199 (the "Development Agreement").

The City of Winona, as Grantee of said right of first refusal, hereby waives, releases and terminates said right of first refusal, as contained in Section I.H. of the Development Agreement, in its entirety with respect to the real property described in Exhibit A, which is attached hereto and incorporated herein by reference. With the exception of Section I.H. of the Development Agreement hereby waived, released and terminated, all other provisions of the Development Agreement remain in full force and effect.

Dated and issued this _____ day of _____, 2020.

EXHIBIT A

Legal Description

EXHIBIT A

Outlots A, B, C and D, Cobblestone Creek, Winona County, Minnesota; excepting therefrom the following described 4 parcels:

1. That part of the Southeast Quarter of the Northeast Quarter (SE $\frac{1}{4}$ of NE $\frac{1}{4}$) of Section Thirteen (13), Township One Hundred Six (106) North of Range Seven (7) West of the Fifth Principal Meridian, Winona County, Minnesota, described as follows:

Commencing at the Northeast corner of the South Half of the Northeast Quarter (S $\frac{1}{2}$ of NE $\frac{1}{4}$) of said Section Thirteen (13); thence South along the Easterly line of the South Half of the Northeast Quarter (S $\frac{1}{2}$ of NE $\frac{1}{4}$), 730 feet; thence West at a right angle, 700 feet to the point of beginning of the land to be described; thence South along a line parallel with and 700 feet Westerly of said Easterly line of the South half of the Northeast Quarter (S $\frac{1}{2}$ of NE $\frac{1}{4}$), 340 feet; thence West at a right angle to the Easterly right of way line of Echodale Road; thence Northeasterly along said Easterly right of way line of Echodale Road to a point on a line drawn parallel with and 730 feet Southerly of the Northerly line of the South Half of the Northeast Quarter (S $\frac{1}{2}$ of NE $\frac{1}{4}$) of said Section Thirteen (13); thence East to the point of beginning and there terminating.

2. That part of Outlot A, Cobblestone Creek, City of Winona, Winona County, Minnesota, described as follows:

Commencing at the Northeast Corner of said Outlot A; thence South 72° 08' 51" West, (Note: All bearings are in relationship with the Winona County Coordinate System NAD '83, Adjusted 1996), along the Northerly line of said Outlot A, a distance of 326.23 feet to the Point of Beginning; thence South 61° 36' 59" West along said Northerly line, 170.00 feet; thence South 28° 23' 01" East, 130.59 feet; thence North 60° 49' 51" East, 10.00 feet; thence North 28° 23' 01" West, 35.00 feet, thence North 41° 18' 51" East, 60.00 feet; thence North 04° 16' 58" East, 75.00 feet; thence North 51° 18' 43" East, 64.28 feet to the Point of Beginning, subject to easements and restrictions of record. Containing 0.19 acres more or less.

3. That part of Outlot A, Cobblestone Creek, City of Winona, Winona County, Minnesota, described as follows:

Commencing at the Northeast Corner of said Outlot A; thence South 72° 08' 51" West, (Note: All bearings are in relationship with the Winona County Coordinate System NAD '83, Adjusted 1996), along the Northerly line of said Outlot A, a distance of 326.23 feet to a deflection point; thence South 61° 36' 59" West along said Northerly line, 170.00 feet to the Point of Beginning; thence continuing South 61° 36' 59" West, along said Northerly line, 210.00 feet to a corner of said Outlot A; thence South 28° 23' 01" East, 138.06 feet to a point on the Northerly line of Lot 1, Block 2 of said Cobblestone Creek; thence North 51° 17' 54" East, 13.50 feet to a deflection point of said Lot 1, thence South 78° 21' 02" East, 67.93 feet along a Northerly line of said Lot 1; thence easterly a distance of 115.88 feet along a non-tangential curve concave to the southeast having a

radius of 135.00 feet and a central angle of 49° 10' 53", the chord of said curve bears North 36° 14' 25" East; thence North 60° 49' 51" East, 43.20 feet; thence North 28° 23' 01" West, 130.59 feet to the Point of Beginning, subject to easements and restrictions of record. Containing 0.70 acres more or less.

4. A part of Outlot "C" in Cobblestone Creek located in the Northeast Quarter of the Northeast Quarter (NE ¼ of NE ¼) of Section Thirteen (13), Township One Hundred Six (106) North, Range Seven (7) West of the Fifth Principal Meridian, Winona County, Minnesota, described as:

Beginning at the Southeast Corner of Lot 1, Block 3 of said Cobblestone Creek; thence North 23° 34' 35" West (Note: All bearings are in relationship to the Winona County Coordinate System NAD '83, Adjusted 1996) along said Lot 1, a distance of 120.55 feet; thence North 65° 11' 51" West along said Lot 1, a distance of 72.89 feet; thence South 60° 29' 36" West along said Lot 1, a distance of 90.14 feet to the Northwest Corner of said Lot 1 and the Easterly Right-of-Way line of Cobblestone Lane; thence North 29° 31' 42" West along said Right-of-Way line, 72.32 feet; thence North 60° 49' 51" East 333.02 feet to the Easterly Line of said Outlot "C"; thence South 27° 29' 21" East along said Easterly line, 250.81 feet; thence South 60° 49' 51" West, 203.95 feet to said Point of Beginning.

and

The South Half of the Northeast Quarter (S ½ of NE ¼), the North Half of the Southeast Quarter (N ½ of SE ¼), the Northeast Quarter of the Southwest Quarter (NE ¼ of SW ¼) and the Southwest Quarter of the Southeast Quarter (SW ¼ of SE ¼), of Section Thirteen (13), Township One Hundred Six (106) North, Range Seven (7), West of the Fifth Principal Meridian, Winona County, Minnesota, excepting therefrom those parts platted as Cobblestone Creek and Cobblestone Creek First Revision.

B.

a licensed installer and the Lot Owner has incurred and paid for the cost of installation. Sewer service lines shall be installed in a manner that each Lot shall have a separate sewer service line connected to the CITY sanitary sewer system and that sewer service line shall not cross lot lines.

F. Parkland Dedication. In the final plat of the SUBDIVISION, the DEVELOPER shall dedicate to the CITY parkland consistent with the parkland appearing in the preliminary plat of the SUBDIVISION as Outlot C. This dedication will satisfy the CITY'S ordinance requiring parkland dedication as to the final plat approval for the SUBDIVISION.

G. Dedication of Site for Water Storage Tank. The DEVELOPER shall dedicate to the CITY a mutually agreed upon site within the SUBDIVISION for the location of a water storage tank and CITY access to such site. The site location shall be mutually agreed upon by the parties prior to final plat approval for Phase I of the development. The site and access easement thereto shall be dedicated to the City by warranty deed free and clear of all liens and encumbrances no later than December 31, 2008.

H. Donation of Undevelopable Bluffland. DEVELOPER agrees to consider the donation to the CITY of any and all bluffland designated in the plat of Cobblestone Creek Subdivision as a separate outlot or, if such a donation is not made, hereby grants to the CITY a right of first refusal to purchase said bluffland property.

I. Erosion Control. DEVELOPER agrees to take all storm water and erosion control measures during the grading of the site and construction of the street and other Exhibit B Improvements as indicated on the storm water management plan

COBBLESTONE LAND PURCHASE: UNDEVELOPED LAND AND OUTLOTS C.



This map was compiled from a variety of sources; 2008 Lidar data. 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.



-  Subject Property, 250 Acres
-  Undeveloped Land and Outlots
-  Cobblestone Phase I Lots

COBBLESTONE LAND PURCHASE: BLUFFLAND

D.



This map was compiled from a variety of sources; 2008 Lidar data. 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.



-  Subject Property, 250 Acres
-  Bluffland Within Subject Property, 175 Acres
-  Cobblestone Phase I Lots

WAIVER, RELEASE AND TERMINATION OF RIGHT OF FIRST REFUSAL

KNOW ALL MEN BY THESE PRESENTS, that the City of Winona, Minnesota, holds a right of first refusal included as a single provision, Section I.H., of that certain Development Agreement, dated June 12, 2008, by and between the City of Winona and Phillips Development, Inc., relating to that certain real property described therein, situated in the County of Winona, State of Minnesota and filed for record in the office of the County Recorder in and for said County of Winona, State of Minnesota, on June 18, 2008, as Document No. 530199 (the "Development Agreement").

The City of Winona, as Grantee of said right of first refusal, hereby waives, releases and terminates said right of first refusal, as contained in Section I.H. of the Development Agreement, in its entirety with respect to the real property described in Exhibit A, which is attached hereto and incorporated herein by reference. With the exception of Section I.H. of the Development Agreement hereby waived, released and terminated, all other provisions of the Development Agreement remain in full force and effect.

Dated and issued this _____ day of _____, 2020.

EXHIBIT A
Legal Description

EXHIBIT A

Outlots A, B, C and D, Cobblestone Creek, Winona County, Minnesota; excepting therefrom the following described 4 parcels:

1. That part of the Southeast Quarter of the Northeast Quarter (SE $\frac{1}{4}$ of NE $\frac{1}{4}$) of Section Thirteen (13), Township One Hundred Six (106) North of Range Seven (7) West of the Fifth Principal Meridian, Winona County, Minnesota, described as follows:

Commencing at the Northeast corner of the South Half of the Northeast Quarter (S $\frac{1}{2}$ of NE $\frac{1}{4}$) of said Section Thirteen (13); thence South along the Easterly line of the South Half of the Northeast Quarter (S $\frac{1}{2}$ of NE $\frac{1}{4}$), 730 feet; thence West at a right angle, 700 feet to the point of beginning of the land to be described; thence South along a line parallel with and 700 feet Westerly of said Easterly line of the South half of the Northeast Quarter (S $\frac{1}{2}$ of NE $\frac{1}{4}$), 340 feet; thence West at a right angle to the Easterly right of way line of Echodale Road; thence Northeasterly along said Easterly right of way line of Echodale Road to a point on a line drawn parallel with and 730 feet Southerly of the Northerly line of the South Half of the Northeast Quarter (S $\frac{1}{2}$ of NE $\frac{1}{4}$) of said Section Thirteen (13); thence East to the point of beginning and there terminating.

2. That part of Outlot A, Cobblestone Creek, City of Winona, Winona County, Minnesota, described as follows:

Commencing at the Northeast Corner of said Outlot A; thence South 72° 08' 51" West, (Note: All bearings are in relationship with the Winona County Coordinate System NAD '83, Adjusted 1996), along the Northerly line of said Outlot A, a distance of 326.23 feet to the Point of Beginning; thence South 61° 36' 59" West along said Northerly line, 170.00 feet; thence South 28° 23' 01" East, 130.59 feet; thence North 60° 49' 51" East, 10.00 feet; thence North 28° 23' 01" West, 35.00 feet; thence North 41° 18' 51" East, 60.00 feet; thence North 04° 16' 58" East, 75.00 feet; thence North 51° 18' 43" East, 64.28 feet to the Point of Beginning, subject to easements and restrictions of record. Containing 0.19 acres more or less.

3. That part of Outlot A, Cobblestone Creek, City of Winona, Winona County, Minnesota, described as follows:

Commencing at the Northeast Corner of said Outlot A; thence South 72° 08' 51" West, (Note: All bearings are in relationship with the Winona County Coordinate System NAD '83, Adjusted 1996), along the Northerly line of said Outlot A, a distance of 326.23 feet to a deflection point; thence South 61° 36' 59" West along said Northerly line, 170.00 feet to the Point of Beginning; thence continuing South 61° 36' 59" West, along said Northerly line, 210.00 feet to a corner of said Outlot A; thence South 28° 23' 01" East, 138.06 feet to a point on the Northerly line of Lot 1, Block 2 of said Cobblestone Creek; thence North 51° 17' 54" East, 13.50 feet to a deflection point of said Lot 1, thence South 78° 21' 02" East, 67.93 feet along a Northerly line of said Lot 1; thence easterly a distance of 115.88 feet along a non-tangential curve concave to the southeast having a

radius of 135.00 feet and a central angle of 49° 10' 53 " , the chord of said curve bears North 36° 14' 25" East; thence North 60° 49' 51" East, 43.20 feet; thence North 28° 23' 01" West, 130.59 feet to the Point of Beginning, subject to easements and restrictions of record. Containing 0.70 acres more or less.

4. A part of Outlot "C" in Cobblestone Creek located in the Northeast Quarter of the Northeast Quarter (NE ¼ of NE ¼) of Section Thirteen (13), Township One Hundred Six (106) North, Range Seven (7) West of the Fifth Principal Meridian, Winona County, Minnesota, described as:

Beginning at the Southeast Comer of Lot 1, Block 3 of said Cobblestone Creek; thence North 23° 34' 35" West (Note: All bearings are in relationship to the Winona County Coordinate System NAD '83, Adjusted 1996) along said Lot 1, a distance of 120.55 feet; thence North 65° 11' 51" West along said Lot 1, a distance of 72.89 feet; thence South 60° 29' 36" West along said Lot 1, a distance of 90.14 feet to the Northwest Corner of said Lot 1 and the Easterly Right-of-Way line of Cobblestone Lane; thence North 29° 31' 42" West along said Right-of-Way line, 72.32 feet; thence North 60° 49' 51" East 333.02 feet to the Easterly Line of said Outlot "C "; thence South 27° 29' 21" East along said Easterly line, 250.81 feet; thence South 60° 49' 51" West, 203.95 feet to said Point of Beginning.

and

The South Half of the Northeast Quarter (S ½ of NE ¼), the North Half of the Southeast Quarter (N ½ of SE ¼), the Northeast Quarter of the Southwest Quarter (NE ¼ of SW ¼) and the Southwest Quarter of the Southeast Quarter (SW ¼ of SE ¼), of Section Thirteen (13), Township One Hundred Six (106) North, Range Seven (7), West of the Fifth Principal Meridian. Winona County, Minnesota, excepting therefrom those parts platted as Cobblestone Creek and Cobblestone Creek First Revision.

REQUEST FOR COUNCIL ACTION

Agenda Section: **New Business**

Originating Department:

Date

No: **5**

Fire Department

01/06/20

Item: **Joint & Cooperative Agreement for Public Safety Purchasing**

No. **5. 2**

SUMMARY OF REQUESTED ACTION:

Entering into this agreement is pursuant to Minnesota Statutes 471.59 which authorizes the joint and cooperative exercise of governmental powers common to contracting parties.

The intent of this agreement is to make available joint public safety purchasing and leasing to governmental agencies who are parties to this agreement.

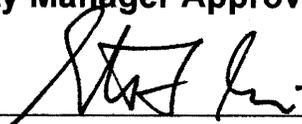
Currently 32 Minnesota fire departments are parties to the JPA (Joint Powers Agreement). On behalf of the JPA, city has solicited bids for the purchase of self-contained breathing apparatus and ASSOCIATED RESPIRATORY EQUIPMENT (air bottles), and for the purchase of maintenance and repair services for the equipment.

If the City Council concurs with the Joint & Cooperative Agreement for Public Safety Purchasing, a motion to approve the attached resolution would be appropriate.

Department Approval:



City Manager Approval:



RESOLUTION

WHEREAS, Minnesota Statute 471.59 authorizes local units of government to enter into Joint and Cooperative Agreement of governmental powers common to the contracting parties. The intent of this agreement is to make available purchased firefighting self-contained breathing apparatus and associated equipment.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Winona, Minnesota, that it hereby approve the Joint and Cooperative Agreement for the purchasing program of self-contained breathing apparatus with current cities and fire departments from the State of Minnesota.

BE IT FURTHER RESOLVED that the Mayor and City Clerk are authorized to execute said Joint and Cooperative Agreement on behalf of the City of Winona.

Dated this _____ day of _____, 2020.

Mark F. Peterson
Mayor

Attest:

Monica Hennessy Mohan
City Clerk

**THIRD AMENDED AND RESTATED
JOINT & COOPERATIVE AGREEMENT
FOR PUBLIC SAFETY PURCHASING**

1. Purpose

This Agreement is made pursuant to Minnesota Statutes 471.59 which authorizes the joint and cooperative exercise of governmental powers common to contracting parties. The intent of this Agreement is to make available joint public safety purchasing and leasing to the governmental agencies who are parties to this Agreement. The intent of this agreement is to also replace and rescind the Amended and Restated Joint & Cooperative Agreement For The Acquisition and Use of SCBA executed and approved by the parties in March, April and May, 2009, and the Second Amended and Restated Joint & Cooperative Agreement For The Acquisition and Use of Firefighting Equipment executed and approved by some or all of the parties in August and September 2010 (“Prior Agreements”).

2. Parties

The initial parties to this Agreement are the cities of Bloomington, Brooklyn Park, Eden Prairie, Edina, Hopkins, Saint Louis Park, and Minnetonka, all of which are municipal corporations and subdivisions of the state of Minnesota. Additional governmental agencies may become parties to this Agreement by adopting a resolution approving this Agreement and sending an original execution page and a certified copy of the resolution to the secretary of the Operating Committee established below. The secretary of the Operating Committee must maintain a current list of the parties to this Agreement and must notify the contact person for each party whenever there is a change in the parties to this Agreement.

3. Operating Committee

3.1. Creation.

There will be an Operating Committee (the “Committee”) to administer this Agreement. The Committee will consist of one representative appointed by each of the parties to the Agreement. In the absence of a specific appointment, a party’s representative will be its fire chief. Each member of the Committee is entitled to one vote.

3.2. Procedural Rules.

The Committee must adopt procedural rules to govern its operations.

3.3. Officers.

The Committee will select from its members a chair to conduct meetings, a vice-chair to act in the place of the chair, and a secretary to keep the records of the Committee.

3.4. Powers, Duties.

The Committee has the authority and responsibility to administer this Agreement on behalf of the parties and to take all necessary actions allowed by law to implement its terms.

4. Procedures

4.1. Acquisition.

The Committee will take the necessary actions for obtaining contracts for the purchase or lease of public safety uniforms, supplies, equipment, and other items, and for contracting for services, as selected by the Committee. The Committee will comply with the Municipal Contracting Law, including the preparation of specifications and requests for proposals. The Committee will designate one of the member parties to act as the lead agency for selecting the contractor for a contract, based on the recommendation of the Committee.

4.2. Contract Terms.

The contract with each selected contractor (the "Contract") must provide that each party to this Agreement will have the option to order items directly from each selected contractor and make payments directly to the contractor. No party will have any responsibility for paying for the items ordered by any other party. When appropriate, the Contract may include an option for the contractor to maintain and certify designated equipment. The Contract must provide the terms of payment to the contractor for this service.

4.3. Rules for Use.

When appropriate, the Committee will establish rules and procedures for the parties' use of items acquired pursuant to this Agreement, including determining the responsibility for damage to, or loss of, the items.

5. Responsibility for Employees

All persons engaged in the work to be performed by a party under this Agreement may not be considered employees of any other party for any purpose, including worker's compensation and other claims that may or might arise out of the employment context on behalf of the employees. All claims made by a third party as a result of any act or omission of a party's employees while engaged on any of the work performed under this Agreement are not the obligation or responsibility of any other party. Each party is responsible for injuries or death of its own

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

6. Indemnification

Each party agrees to defend, indemnify, and hold harmless the other parties against any and all claims, liability, loss, damage, or expense arising under the provisions of this Agreement and caused by or resulting from negligent acts or omissions of the party and/or those of its employees or agents. Under no circumstances, however, may a party be required to pay on behalf of itself and another party any amounts in excess of the limits on liability established in Minnesota Statutes Chapter 466 applicable to any one party. The limits of liability for two or more parties may not be added together to determine the maximum amount of liability for one party. The intent of this paragraph is to impose on each party a limited duty to defend and indemnify each other subject to the limits of liability under Minnesota Statutes Chapter 466. The purpose of creating this duty to defend and indemnify is to simplify the defense of claims by eliminating conflicts among the parties and to permit liability claims against both parties from a single occurrence to be defended by a single attorney.

7. Duration

This agreement will be in force from the date of execution by at least two parties and notification to the secretary of the Operating Committee. Any party may withdraw from this Agreement upon 30 days written notice to the other party or parties to the Agreement. Upon execution of all of the parties to the Prior Agreements, the Prior Agreements will terminate.

8. Execution

A separate execution page is provided for each party.

[Signature pages follow]

**Execution Page for the
Third Amended and Restated Joint & Cooperative Agreement
For Public Safety Purchasing**

The party listed below has read, agreed to and executed this Agreement on the date indicated.

Date _____

Entity _____

By _____

Title _____

And _____

Title _____

REQUEST FOR COUNCIL ACTION

Agenda Section: **New Business**

Originating Department:

Date

No: **5**

City Manager

1/06/20

Item: **Amendment to GreenMark Community Solar Garden Agreement**

No. **5.3**

SUMMARY OF REQUESTED ACTION:

At the December 2nd, 2019 Council meeting, Council passed a motion to sign a contract amendment to increase the City's subscription with GreenMark community solar gardens and subsequently getting a better per kWh rate. GreenMark has again offered to increase the City's subscription by 0.06 MW and would further decrease our rate from \$0.1294/kWh to \$0.1289/kWh.

The City has ample electrical use capacity to increase our subscription – the additional 0.06 MW will meet about 1-2% of the City's annual usage - and the new terms make for a more favorable economic return. Staff anticipates the improved rate will save the City about \$4,300 over the course of the contract and the added capacity would yield long term savings of nearly \$60,000. Therefore staff recommends executing the amendment.

The amendment approved by the Council in December has not been formally executed, so our attorney recommends abandoning that amendment and replacing it with the new amendment included here. The new amendment incorporates the added capacity approved in December as well as the new capacity being offered now.

If Council concurs, a motion to rescind the motion on December 2nd authorizing the amendment to the community solar contract and to execute the new attached amendment would be in order.

Department Approval:



City Manager Approval:

AMENDMENT TO SUBSCRIPTION AGREEMENTS

This Amendment (“Amendment”) is effective as of January __, 2020 (“Effective Date”) and is by and between the City of Winona, Minnesota, on the one hand (“Subscriber”), and New Energy Equity, LLC, a Maryland limited liability company (“NEE”), Houston Winona Community Solar One LLC (“HWCS”) and Winona Community Solar One LLC (“WCS”) on the other hand (“collectively, Provider”).

WHEREAS, Subscriber and Provider are parties to a Subscription Agreement dated November 6, 2017, with respect to a 0.4 megawatt (AC) (400 KW AC) allocated percentage in a community solar garden, representing 690,560 kilowatt-hours of estimated first-year production (having a reference in the header of “Contract #1”) and a Subscription Agreement dated November 6, 2017, with respect to a 0.14 megawatt (AC) (140 KW AC) allocated percentage in a community solar garden, representing 241,696 kilowatt-hours of estimated first-year production (having a reference in the header of “Contract #2”) (Contract #1 and Contract #2 being referred to, collectively as the “Subscription Agreements”). The Subscription Agreements were previously assigned to NEE by SolarStone Community, LLC, Minnesota limited liability company and Belter Holdco LLC, a Delaware limited liability company, pursuant to an Assignment, Amendment, and Assumption Agreement (the “Assignment Agreement”). NEE assigned the Subscription Agreements to HWCS and WCS, which are the entities that own the community solar gardens.

WHEREAS, the Parties wish to increase the size of the allocated percentage of Contract #2 and reduce the rate charged per kWh under both Subscription Agreements.

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, on behalf of themselves, their successors and assigns, hereto agree as follows:

1. Amendments. The Subscription Agreements are hereby amended as follows:
 - a. The “Subscriber’s Allocated Percentage” for Contract #2 (which is included in attachment C-2 to the Assignment Agreement) is amended from 14% to 26% (260 KW AC) and the associated estimated production numbers are increased pro rata. The “Subscriber’s Allocated Percentage” for Contract #1 shall remain unchanged.
 - b. The “Estimated Annual Delivered Energy” for each year set forth on Exhibit D of Contract #2 shall be increased pro rata to reflect the higher subscription, by multiplying such amounts by 1.857 (obtained by dividing 0.26 by 0.14). The “Estimated Annual Delivered Energy” for Contract #1 shall remain unchanged.
 - c. The definition of “Kwh Rate” contained in Section 6.1 of both Subscription Agreements is amended to delete “\$0.13” per Kilowatt Hour and replace it with “\$0.1289”, reflecting that the Kwh Rate is reduced for both Subscription Agreements.
 - d. The “Termination Fee” for each year set forth on Exhibit E of Contract #1 shall be multiplied by 0.9915 ($=0.1289/0.13$) to reflect the lower Kwh Rate. The “Termination Fee” for each year set forth on Exhibit E of Contract #2 shall be (i) increased pro rata to reflect the higher subscription, by multiplying such amounts by 1.857, and (ii) the product obtained in clause (i) shall be multiplied by 0.9915 to reflect the lower Kwh Rate such that the overall adjustment to the Termination Fee for Contract # 2 shall be 1.841 ($=1.857 \times 0.9915$).
 - e. The Parties agree that Subscriber will be subscribed to a 0.33MW (33% Subscriber’s Allocated Percentage) in each of the HWCS and WCS community solar gardens.

Subscriber agrees that Provider may divide and assign the Subscription Agreements to HWCS and WCS in order to accomplish this allocation.

2. Validity and Consent. The parties hereto and the Subscriber, by acknowledging and consenting hereto, hereby confirm the continuing validity and enforceability of the Subscription Agreement, as amended hereby.
3. Subscriber Representation. Pursuant to Section 17.2 of the Subscription Agreements, Subscriber hereby confirms that Subscriber's Allocated Percentage under both Subscription Agreements, combined with any other distributed resources serving the Service Address, represents no more than 120% of Subscriber's average annual consumption at the Service Address over the last twenty-four months.
4. Separability of Provisions. Each provision of this Amendment shall be considered separable; and if, for any reason, any provision or provisions herein are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this Amendment which are valid.
5. Further Assurances. At any time and from time to time after the date hereof, and without further consideration, the parties shall execute and deliver such other instruments and take such other action as either party may reasonably request as necessary or desirable in order to further the purposes of this Amendment and the transactions contemplated hereby.
6. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of Minnesota without regard to principles of conflicts of law.
7. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. A facsimile signature shall be as binding as an original, and delivery by facsimile or email shall be valid and binding.
8. Attorneys' Fees. If any party hereto seeks to enforce its rights under this Amendment by legal proceedings, or otherwise, the non-prevailing party shall pay the prevailing party's costs and expenses, including without limitation reasonable attorneys' fees. Notwithstanding the foregoing, this Section shall not apply to the Subscriber.
9. Successors and Assigns. This Amendment shall be binding upon, and inure to the benefit of the Provider and Subscriber and their respective successors and assigns.
10. Entire Agreement. The Subscription Agreements, as amended hereby and to date, represent the entire understanding and agreement of the parties with respect to the subject matter hereof and may only be amended or modified in a writing signed by both parties and evidencing their mutual agreement thereto.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first above written.

[signatures begin on the following page]

PROVIDER:

New Energy Equity LLC

By: _____
Matthew Hankey, Chief Operating Officer

Houston Winona Community Solar One LLC

By: _____

Name:

Title:

Winona Community Solar One LLC

By: _____

Name:

Title:

[Subscriber's signature is on the following page]

City of Winona, Minnesota

By: _____
Name: Mark Peterson
Title: Mayor

By: _____
Name: Monica Hennessy Mohan
Title: City Clerk

REQUEST FOR COUNCIL ACTION

Agenda Section: **Council Concerns**

Originating Department:

Date:

No: 7

City Clerk

01/06/20

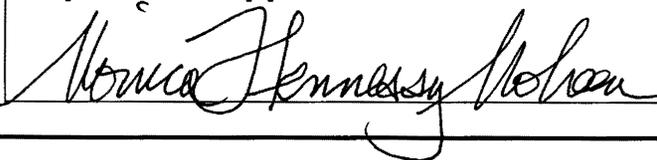
Item: **Council Concerns**

No. 7.1

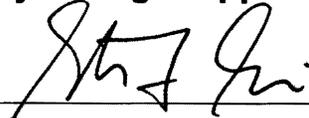
SUMMARY OF REQUESTED ACTION:

Time is reserved for Council Concerns.

Department Approval:



City Manager Approval:



REQUEST FOR COUNCIL ACTION

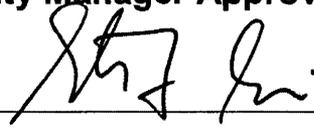
<i>Agenda Section:</i> Consent Agenda	<i>Originating Department:</i>	<i>Date:</i>
<i>No:</i> 8	City Clerk	01/06/20

Item: **Consent Agenda**

No. **8.**

SUMMARY OF REQUESTED ACTION:

City Clerk: Item No. 8.1: Approval of Minutes – December 16, 2019
Minutes of the December 16, 2019 City Council & Closed Session meetings have been distributed. If the minutes are satisfactory, a motion to approve same would be in order.

Department Approval: 	City Manager Approval: 
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