

Winona City Council Zoom Meeting Access and Procedures

April 20, 2020

Meeting type: The regular meeting of the Winona City Council is being conducted electronically pursuant to Minnesota State Statute 13D.021, following the adoption of Resolution 2020-17 Declaring a Special Emergency, as adopted by the Winona City Council on Monday, March 16, 2020.

All interested parties are invited to watch or listen to meeting via electronic means. This meeting is open to the public via web or phone. This meeting begins at 6:30 p.m.; please log in prior to the start of the meeting. You may exit the meeting at any time.

- To join the Zoom Meeting via the web, go to: <https://zoom.us/j/896465916> and enter meeting ID:
896 465 916
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- Please mute your audio until you wish to speak. Then unmute your audio, and ask the Mayor for permission to talk.



Winona City Council Agenda

Monday, April 20, 2020
 6:30 P.M., Meeting No. 8
 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. Central Square Properties Comprehensive Plan Map Amendment Request: Downtown Fringe to Limited Industrial
3. Petitions, Requests, Communications	
4. Unfinished Business	
<i>Public Works</i>	1. Invasive Aquatic Plant Management Grant Contract Approval
<i>Port Authority</i>	2. BCS Automotive: Job Creation Fund Resolution of Support
5. New Business	
<i>Community Development</i>	1. Call for Public Hearing – The Commonwealth Company Proposed Application for Assistance
<i>Planning</i>	2. Plat Review – Main Square Annex Subdivision
<i>Engineering</i>	3. Bluff Intermittent Stream Stabilization Grant Contract
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 – April 6, 2020
<i>City Clerk</i>	2. Ordinance is to Place a Stop Sign on Chestnut Street at the Fifth Street Intersection
9. Adjournment	

REQUEST FOR COUNCIL ACTION

<i>Agenda Section:</i> Required Public Hearings	<i>Originating Department:</i> Planning	<i>Date:</i> 04/20/20
<i>No:</i> 2		
<i>Item:</i> Central Square Properties Comprehensive Plan Map Amendment Request: Downtown Fringe to Limited Industrial		
<i>No.</i> 2.1		

SUMMARY OF REQUESTED ACTION:

A request has been submitted by Central Square Properties to change the Comprehensive Plan's designation of 330 West Second Street (PIN 32.401.0062) from Downtown Fringe (area supporting the downtown core with similar mixes of uses) to Limited Industrial (area for manufacturing, warehousing, and distribution; uses that have few outside impacts). This change is necessary to support rezoning and future use of the property as climate controlled storage.

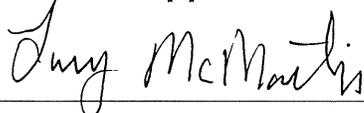
On January 13, 2020, the Planning Commission held a public hearing and adopted a resolution on February 10, 2020 voting unanimously to recommend denial with the following findings:

1. The benefits of re-designation flow only to the developer because it sets the stage for a change in use that is not in accordance with the surrounding blocks and the future land use designation of the City's 2007 Comprehensive Plan.
2. The potential uses supported by the Limited Industrial designation are incompatible with the existing commercial, office, and mixed use properties adjacent to the property.
3. The proposed designation of Limited Industrial is not consistent with the policies and objectives of the Comprehensive Plan in that location, such as the mixed use redevelopment of downtown-adjacent properties in a major principal corner near new office and mixed use development and recreation opportunities.

Given these findings, denial of the request is recommended. In consideration of this matter, the following alternatives are available to the City Council:

1. Deny the request. Under this option, a motion to adopt the findings of the Planning Commission and introduce the attached resolution for denial would be in order. A majority vote is required to deny this request.
2. Approve the request. Under this option, Council will need to state on the record findings supporting the approval of the request, and a motion should be made to adopt those findings and approve the attached resolution for approval. A supermajority of five votes is required to approve this request.
3. Modify the request.

Department Approval:



City Manager Approval:



**Central Square Properties Comprehensive Plan Map Amendment Request:
Downtown Fringe to Limited Industrial
Page 2**

Attachments:

1. Resolution to deny the Comprehensive Plan Map amendment at 330 West Second Street from Downtown Fringe to Limited Industrial
2. Resolution to re-designate 330 West Second Street from Downtown Fringe to Limited Industrial
3. Planning Commission Report from 1/13/2020
4. Planning Commission Minutes 1/13/2020
5. Planning Commission Minutes Excerpt 1/27/2020
6. Planning Commission Minutes 2/10/2020

RESOLUTION

WHEREAS, the City of Winona adopted a Comprehensive Plan in 2007 to establish a vision for development in the City of Winona over a period of 10 to 15 years; and

WHEREAS, the Comprehensive Plan contains a series of recommendations in several areas including land use, economic development, environment, housing and transportation; and

WHEREAS, the 2007 Comprehensive Plan designated the real property located at 330 West Second Street as Downtown Fringe; and

WHEREAS, Black Squirrel Properties submitted a petition requesting that the Comprehensive Plan be amended to designate the property located at 330 West Second Street as Limited Industrial; and

WHEREAS, the City of Winona Planning Commission held a public hearing regarding the request for a Comprehensive Plan amendment on January 13, 2020; and

WHEREAS, the Winona Planning Commission recommended denial of Black Squirrel Properties' request to change the designation of 330 West Second Street from Downtown Fringe to Limited Industrial by adopting Planning Commission Resolution 20-2, dated February 10, 2020; and

WHEREAS, the Winona City Council held a public hearing regarding the request for a Comprehensive Plan amendment on April 20, 2020; and

WHEREAS, section 43.06.44 B) 5) of the City of Winona City Code states that the City Council shall give reasons for its decision; and

WHEREAS, section 43.06.13 E)1) of the City of Winona City Code requires applications conform with the Unified Development Code Application Manual; and

WHEREAS, the City of Winona's Unified Development Code Application Manual requires Comprehensive Plan Map Amendment applications to address the criteria noted on the application; and

WHEREAS, the Comprehensive Plan Map Amendment Application states that the criteria to be considered by the City Council are the following:

- a) The amendment is consistent with the policies and objectives of the Comprehensive Plan.
- b) The amendment is being requested due to changes which have occurred since adoption of the Comprehensive Plan.
- c) The amendment will not have an undue impact on the health, safety, or welfare of the community; and

WHEREAS, the Winona Planning Commission made the following Findings for its recommendation of denial:

- 1) The benefits of re-designation flow only to the developer because it sets the stage for a change in use that is not in accordance with the surrounding blocks and the future land use designation of the City's 2007 Comprehensive Plan.
- 2) The potential uses supported by the Limited Industrial designation are incompatible with the existing commercial, office, and mixed use properties adjacent to the property.
- 3) The proposed designation of Limited Industrial is not consistent with the policies and objectives of the Comprehensive Plan in that location, such as the mixed use redevelopment of downtown-adjacent properties in a major principal corner near new office and mixed use development and recreation opportunities.

NOW THEREFORE LET IT BE RESOLVED by the City Council of the City of Winona, Minnesota that the Council hereby adopts and incorporates herein the Findings of the Planning Commission as set forth above, and the Council hereby denies the requested amendment to the 2007 Comprehensive Plan to designate 330 West Second Street as Limited Industrial.

Dated this _____ day of _____, 2020.

Mark Peterson
Mayor

Attest:

Monica Hennessy Mohan
City Clerk

EXHIBIT A

Legal Description

That part of the Easterly 300 feet of Outlot F, as measured along Second Street, of the recorded plat of Port Authority Riverview Park, City of Winona, County of Winona, State of Minnesota, described as follows: Beginning at the Southerly line of said Outlot F, 150 feet Westerly of the Southeast corner of said Outlot F; thence North 70° 06' 30" West along the Southerly line of said Outlot F, 150 feet; thence North 19° 53' 30" East, 240 feet; thence South 70° 06' 30" East, 150 feet; thence South 19° 53' 30" West, 240 feet to the point of beginning.

EXHIBIT B

Reference Map



RESOLUTION

WHEREAS, the City of Winona adopted a Comprehensive Plan in 2007 to establish a vision for development in the City of Winona over a period of 10 to 15 years; and

WHEREAS, the Comprehensive Plan contains a series of recommendations in several areas including land use, economic development, environment, housing and transportation; and

WHEREAS, the 2007 Comprehensive Plan designated the real property located at 330 West Second Street as Downtown Fringe; and

WHEREAS, Black Squirrel Properties submitted a petition requesting that the Comprehensive Plan be amended to designate the property located at 330 West Second Street as Limited Industrial; and

WHEREAS, the City of Winona Planning Commission held a public hearing regarding the request for a Comprehensive Plan amendment on January 13, 2020; and

WHEREAS, the Winona City Planning Commission recommended denial of Black Squirrel Properties' request to change the designation of 330 West Second Street from Downtown Fringe to Limited Industrial; and

WHEREAS, the Winona City Council held a public hearing regarding the request for a Comprehensive Plan amendment on April 20, 2020; and

WHEREAS, section 43.06.44 B) 5) of the City of Winona City Code states that the City Council shall give reasons for its decision; and

WHEREAS, section 43.06.13 E)1) of the City of Winona City Code requires applications conform with the Unified Development Code Application Manual; and

WHEREAS, the City of Winona's Unified Development Code Application Manual requires Comprehensive Plan Map Amendment applications to address the criteria noted on the application; and

WHEREAS, the Comprehensive Plan Map Amendment Application states that the criteria to be considered by the City Council are the following:

- a) The amendment is consistent with the policies and objectives of the Comprehensive Plan;
- b) The amendment is being requested due to changes which have occurred since adoption of the Comprehensive Plan; and
- c) The amendment will not have an undue impact on the health, safety, or welfare of the community; and

WHEREAS, the Winona City Council makes the following Findings for its approval decision:

- 1) _____

- 2) _____

- 3) _____

NOW THEREFORE LET IT BE RESOLVED by the City Council of the City of Winona, Minnesota that the Council hereby approves the requested amendment to the 2007 Comprehensive Plan to designate 330 West Second Street as Limited Industrial.

Dated this _____ day of _____, 2020.

Mark Peterson
Mayor

Attest:

Monica Hennessy Mohan
City Clerk

EXHIBIT A

Legal Description

That part of the Easterly 300 feet of Outlot F, as measured along Second Street, of the recorded plat of Port Authority Riverview Park, City of Winona, County of Winona, State of Minnesota, described as follows: Beginning at the Southerly line of said Outlot F, 150 feet Westerly of the Southeast corner of said Outlot F; thence North 70° 06' 30" West along the Southerly line of said Outlot F, 150 feet; thence North 19° 53' 30" East, 240 feet; thence South 70° 06' 30" East, 150 feet; thence South 19° 53' 30" West, 240 feet to the point of beginning.

EXHIBIT B

Reference Map



PLANNING COMMISSION

AGENDA ITEM: 3. Public Hearing – Comprehensive Plan Amendment Request:
Downtown Fringe to Limited Industrial

PREPARED BY: Luke Sims

DATE: January 13, 2020

INTRODUCTION

This item is the first step in potential rezoning of the property at 330 West Second Street. The format for this item is the following:

- A. Chair shall state the case to be heard.
- B. Chair shall ask the applicant to present his/her case.
- C. Chair shall call on City Staff, to present staff comments.
- D. The hearing shall be opened and interested persons, upon giving their name and address, are invited to speak to the Commission. Following recognition by the Chair, Commission members may ask questions of persons addressing the Commission in order to clarify facts. Any statement by a member, other than to question, may be ruled out of order.
- E. After all new facts and information have been brought forth, the hearing shall be closed, and interested persons shall not be heard again unless the hearing is reopened and unless all interested parties shall be allowed to be heard again. Upon completion of the hearing, the Commission shall discuss the item at hand and render a decision or recommendation.

The role of the Planning Commission is to review the request by considering potential future uses of the land and the Comprehensive Plan's recommendations.

BASE DATA

Petitioner: Black Squirrel Properties, LLC

Location: 330 West Second Street

Parcel ID: 324010062

Area: Approximately .82 acres (35,720 sq. ft.)

Existing Land Use Designation: Downtown Fringe

DF - Downtown Fringe

Area supporting the central downtown core, with a similar mix of uses but a lower intensity. Includes 'arts district,' medium density residential, mixed neighborhood retail and offices, employment centers, public spaces, and satellite parking facilities.

- Medium densities; mixed-use buildings are encouraged
- Pedestrian-oriented design
- Redevelopment opportunities
- Appropriate transitions to adjacent neighborhoods

Requested Designation:

Limited Industrial

LI - Limited Industrial

Areas for manufacturing, warehousing and distribution; uses that have few outside impacts, and are (or can be) located in relative proximity to non-industrial uses.

- Limit and screen any outdoor storage
- Add landscaping and materials standards, buffering from adjacent residential

Surrounding Land Use Designations:

The 330 West Second Street location is surrounded by a mix of transitional uses, including commercial uses, office, and industrial uses. Properties to the west are predominantly industrial and business-to-business commercial or office space while properties to the south and to the east are predominantly public-facing commercial spaces. The land use designations for the surrounding areas as dictated by the Future Land Use Map in the Comprehensive Plan is Downtown Fringe.

DF - Downtown Fringe

Area supporting the central downtown core, with a similar mix of uses but a lower intensity. Includes 'arts district,' medium density residential, mixed neighborhood retail and offices, employment centers, public spaces, and satellite parking facilities.

- Medium densities; mixed-use buildings are encouraged
- Pedestrian-oriented design
- Redevelopment opportunities
- Appropriate transitions to adjacent neighborhoods

ANALYSIS

The following criteria should serve as guidance for assessing the request to amend the Comprehensive Plan.

1) The amendment is consistent with the policies and objectives of the Comprehensive Plan.

The downtown fringe designation of 330 West Second Street reflected the property's transitional nature when the 2007 Comprehensive Plan was adopted. The property has operated as different commercial businesses since 2007.

Land Use

The Land Use Plan section of the 2007 Comprehensive Plan calls for mixed use districts to provide adequate transitions to industrial or auto-oriented commercial neighborhoods. The location in question has remained an auto-oriented commercial property since the 2007 Comprehensive Plan's adoption and nearby properties designed as mixed use may still function as a transitional separation between the proposed limited industrial designation the applicant is proposing.

Downtown Revitalization Plan

The Comprehensive Plan calls for connections to the river and mixed use in the downtown area with a broad business mix. This includes the redevelopment of industrial sites where industrial activities could be relocated. The Downtown Fringe land use designation, which the property currently operates under, is designed to provide for that transition. That transition along the western portion of that land use designation area has been limited since the adoption of the 2007 Comprehensive Plan.

Housing

The Housing Plan section in the 2007 Comprehensive Plan recognizes that the future land use designations encouraging mixed use and mixed income infill and redevelopment in portions of the city that are currently industrial may be suitable for redevelopment.

2) The amendments are being requested due to changes which have occurred since adoption of the 2007 Comprehensive Plan.

Since adoption of the Comprehensive Plan in 2007 the property has undergone multiple changes in commercial tenants. With the exception of 270 West Third Street to the southeast, the surrounding properties have not yet transitioned to the envisioned mixed use and vibrant commercial properties envisioned by the 2007 Comprehensive Plan.

3) The amendment will not have an undue impact on the health, safety, or welfare of the community.

The proposed amendment relates to potential reuse of the existing building as it stands. The potential reuse of the building, which has had past compatible uses under its Downtown Fringe designation, will likely not have an undue impact on the health, safety, or welfare of the community. Limited Industrial designation promotes that will have few outside impacts and can be located in relative proximity to non-industrial uses. The surrounding Downtown Fringe-designated transitional area is a natural adjoining designation for a Limited Industrial-designated property.

GENERAL PUBLIC CORRESPONDANCE

As of the date this agenda item was written, City Staff has received no correspondence from the public.

SUMMARY OF ANALYSIS

In summary, the previous analysis concludes:

1. Since adoption of the Comprehensive Plan in 2007, the property and the majority of its surrounding neighbors have not transitioned to the mixed use envisioned by the Comprehensive Plan as reflected in the Downtown Fringe Land Use Designation.
2. Considering the developer's proposal, the requested amendment is not likely to have an undue (excessive) impact on the health, safety, or welfare of the community.

PLANNING COMMISSION

3. PUBLIC HEARING – COMP PLAN AMENDMENT: DOWNTOWN FRINGE TO LIMITED INDUSTRIAL

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In consideration of this matter, the following alternative actions are available:

1. Recommend approval of the request with the following conditions:

In this case, a motion to approve and adopt the summary analysis as the findings of the Planning Commission would be appropriate.

2. Recommend denial of the request. If denial is recommended, specific reasons should be given. These reasons should relate to the analysis above or the general public health, safety, and welfare. In this case, a motion should be made to postpone further consideration and direct staff to bring a resolution of denial to the next meeting.

3. Recommend tabling the request.

ATTACHMENTS

- A. Comprehensive Plan Amendment Application
- B. Land Use Designation Map

A.

2019
**COMPREHENSIVE PLAN FUTURE LAND USE
 MAP AMENDMENT APPLICATION**
 COMMUNITY DEVELOPMENT, CITY OF WINONA, MINNESOTA 55987
 P.O. BOX 378 507/457-8250 FAX: 507/457-8212

SITE ADDRESS: ~~760~~ 330 West 2nd Street

Property Owner:			
Company/Individual	Black Squirrel Properties, LLC	E-Mail	mike@contagiousstays.com
Contact Person	Michael Onstad	Office Phone	
Mailing Address	1740 Wilkie Drive	Mobile Phone	507 313 2400
City/State/Zip	Winona, MN 55987		
Applicant:			
Company/Individual	Michael Onstad	E-Mail	same as above
Contact Person		Office Phone	
Mailing Address	Same as above	Mobile Phone	↓
City/State/Zip	↓		

This application will not be processed without payment of the \$215.00 fee.

Additional information required for the application is on following page.

Current Land Use Designation of Property: MU-DF DOWNTOWN FRINGE PD

Proposed Land Use Designation of Property: Limited Industrial


 Signature of Applicant

 Signature of Land Owner
 (If different from applicant)

For Staff Use Only	COMPLN	EG-INV-1843	
Date Received:	12/30/19	Comp Plan Change #	19-2019
Parcel #:	32.401.0068	Zoning	MU-DF
LEGAL DESCRIPTION OF PROPERTY:		Receipt #	574092

330 West 2nd Street, Winona MN 55987

1. Respond to the following criteria to be considered by the Planning Commission and City Council when reviewing the proposed Comprehensive Plan map amendment:

a. The amendment is consistent with the policies and objectives of the Comprehensive Plan.
Yes,

- **There is still a mixed-use buffer between the downtown district and my building- Ace Hardware/Empty Lot/and Huff Street act as buffers.**
- **Rezoning as Limited Industrial does not preclude me from offering services consistent to the objective of the comprehensive plan to the public and surrounding neighborhood as zoned as Limited Industrial. There will be no storage units located outside of the building.**
- **The building was built 1998-historically this building is not a part of downtown Winona.**

b. The amendment is being requested due to changes which have occurred since the adoption of the Comprehensive Plan.

Yes,

- **Death of retail**
- **Failure of 2 business in the space- Sears Homestore and Fetch Winona, LLC**
- **Fastenal new building and land purchase**

c. The amendment will not have an undue impact on the health, safety, or welfare of the community.

Yes,

- **There will be no changes to the exterior of the building**
- **Customer traffic will be similar or less than 2 previous tenants- Fetch and Sears**
- **There will be no heavy machinery being used or hazardous materials being used or stored.**
- **The building has adequate parking-22 spaces. Parking downtown will not be impacted by the change.**

2. Provide a preliminary site plan for the proposed use. Show proposed structures, parking areas, landscaping/buffering, and other general information as appropriate. Note that this plan is not binding but simply provided for informational purposes.

Attached.

3. Provide information on communication with neighboring property owners or residents regarding the proposed Comp Plan amendment. Note that property owners within 350 feet of the subject parcel will be notified of the requested Comprehensive Plan change prior to the Planning Commission and City Council Public hearings.

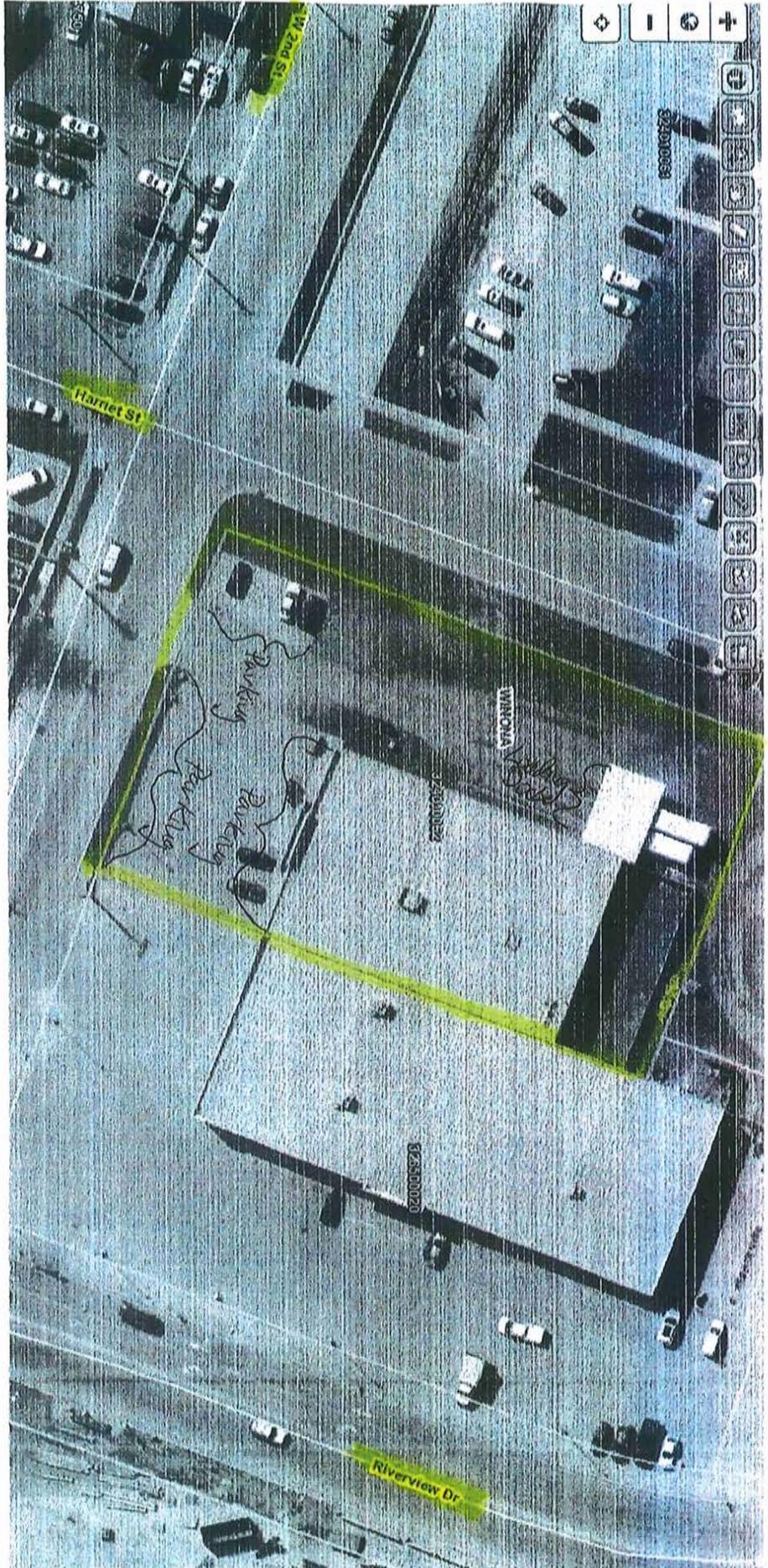
I will be contacting the neighbors located within the 350 feet of my parcel over the next week.

UDC Amendment
330 West 2nd Street
Parcel ID 324010062

~~Plan~~

Preliminary Site Plan

No Changes to
the site, ✓



Michael Onstad

B.

330 West Second Street Use Designation



Downtown Mixed Use



Downtown Fringe



Neighborhood Commercial



General Commercial



Limited Industrial



General Industrial

PLANNING COMMISSION MINUTES

DATE: January 13, 2020

TIME: 4:30 p.m.

PRESENT: Chairman Buelow; Commissioners Hahn, Olson, Hall, and Boettcher

ABSENT: Commissioner Paddock, Marks, Shorridge, and Ballard

STAFF PRESENT: City Planner Carlos Espinosa; Assistant City Planner Luke Sims

The meeting was called to order at 4:30 p.m. by Chairman Buelow.

Approval of Minutes – December 9, 2019

The minutes from the December 9, 2019 meeting were reviewed and then approved unanimously upon a motion from Commissioner Olson and second by Commissioner Hahn.

Public Hearing – Comprehensive Plan Amendment: Downtown Fringe to Limited Industrial

Chairman Buelow opened the public hearing and called on the petitioner.

The petitioner, Mike Onstad, 707 W. Broadway, stated that he is seeking a Comprehensive Plan change to facilitate use of the property at 330 W. Second as climate controlled storage. Mr. Onstad noted that the use would take place within the existing building with no additional storage units outside. Mr. Onstad explained that he has been seeking a buyer or renter for the property for over a year, but has not been successful.

Commissioner Hahn asked about traffic impacts for the new use. Mr. Onstad responded that the traffic would likely be less than the previous pet daycare use.

Commissioner Buelow called on Assistant City Planner Luke Sims to present the item. Mr. Sims noted that the Comp. Plan change is intended to facilitate future rezoning to accommodate the proposed storage use. Mr. Sims explained that current MU-DF zoning does not allow storage as a use in the district. Mr. Sims explained that the existing Downtown Fringe Land Use Designation was meant to be a buffer between downtown uses and surrounding residential areas. It was envisioned to have the same vibrant commercial mixed uses as downtown, but with a lower density. To date, the uses immediately surrounding 330 W. Second have not changed to this more commercial mixed use character.

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Mr. Hahn asked about future rezoning. Mr. Sims noted that if the Comp. Plan is changed future rezoning would likely be an I-1 or B-3 district. In this case, I-2 zoning exists immediately to the west of the subject property.

Commissioner Boettcher noted that although adjacent uses have not changed since the 2007 adoption of the Comprehensive Plan, uses to the east of Huff Street have change with the bridge project and construction of a new mixed use building opposite the car dealership. Another consideration is the impact of the Fastenal office building to be built immediately to the east of the bridge.

Commission Olson noted that he is concerned about the implications of splitting an existing building down the middle with two different zoning districts.

There being no further questions for staff, Chairman Buelow asked if there was anyone else in the audience who would like to speak.

Kathy Christenson, 275 Harriet Street, stated that the proposed storage use would not be in-line with the vibrant commercial mixed uses designated for the property by the Comprehensive Plan. Ms. Christenson further explained that she was concerned about the long term consequences of changing the Comp Plan and potentially zoning as well.

Mr. Onstad responded that he has examined a number of other uses for the building which are permitted under existing zoning - including daycare - but none of them has been feasible.

Matthew Goergen, 305 Winona Street, stated that he was concerned about piecemeal changes to the Comp Plan that do not align with the overall vision of the City. Mr. Goergen stated that the Comp Plan envisions a more vibrant people-friendly use for the property.

Preston Lawing, 351 W. Broadway, stated that he was concerned that this would be a piecemeal "spot" change to the Comp Plan.

Dave Christianson, 275 Harriet Street, stated that his concern is future use of the building after Mr. Onstad is no longer the owner, and encouraged the Commission not to change the Comp Plan.

There being no other people who wished to speak, Chairman Buelow closed the public hearing.

Commissioner Hahn made a motion to recommend denial of the request. The motion was seconded by Commissioner Olson.

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Chairman Buelow asked if there was any discussion.

Commissioner Hahn stated that this request is challenging because while the storage use itself may not be objectionable at the present time, things are likely to change with future development to the east of the property. As such, he was concerned about long term issues resulting from a Comp Plan change.

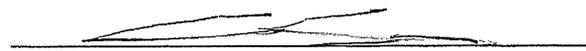
Commissioner Olson stated that he didn't necessarily have issues with the proposed storage use. Mr. Olson also stated that the people who spoke against the change are from a couple blocks away, and he thought it was significant that the adjacent property owner (who shares the same building) was not at the meeting.

Commissioner Hahn stated that perhaps it would be good for the Commission to have some more time on the item. As such, Commissioner Hahn stated that he would like to withdraw the original motion. Commissioner Olson agreed to withdraw the second.

Commissioner Hahn motioned to table the item to the next meeting. Commissioner Olson seconded. Upon vote, the motion passed unanimously.

Adjournment

The meeting was adjourned at 5:25 p.m.



Carlos Espinosa
City Planner

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there has been considerable changes in the surrounding area, will have limited impact on the surrounding area, it is an appropriate location for rezoning, and that there is a potential case for spot zoning as the rezoning does not completely reflect the Comprehensive Plan's future land use map, but given the past changes in zoning the request is not arbitrary or capricious or unreasonable.

Chairman Buelow opened the public hearing. No members of the public coming forward to speak, the public hearing was closed.

Commissioner Boettcher moved to approve the application adopting staff's analysis as the findings of the Commission. Commissioner Olson seconded the motion.

Chairman Buelow mentioned that the change could be beneficial to the surrounding area.

No further comments forthcoming, the Commission voted on the motion at hand. All members present voted aye.

Tabled Item – Comprehensive Plan Map Amendment 330 West Second Street

Chairman Buelow reminded the Commission of the past public hearing and discussion on the proposed Comprehensive Plan Map Amendment that took place on January 13, 2020. Chairman Buelow mentioned that there was some public comment at the past meeting from members of the community outside of the notice area and noted that Commissioners received additional comment regarding the application via mail separately following the last meeting. Commissioner Hall mentioned to clarify that the people objecting are not neighbors but are members of the community.

Commissioner Hall mentioned that there is some concern but that this is the first step in a multi-step process and that this proposal generally does not conflict and the change that is required is somewhat of a quirk in the zoning ordinance. He noted that by quirk, the existing zoning does not allow for storage units and that the City did not want downtown to become a place only for storage units. He also mentioned that the requested designation is Limited Industrial but that it wouldn't necessarily have to be Limited Industrial but could become a commercial zoning and accommodate the proposed use of storage units. Mr. Sims clarified that the proposal from the applicant is in line with a proposal for an industrial rezoning of the property. He did note that the desired use as storage units is possible in some commercial zones but that the application currently before the Commission would open the door to an industrial rezoning, which was proposed in part due to adjacent industrial zoning to the west. Mr. Sims reiterated that the proposal before the Commission is for the future land use map designation change to Limited Industrial. Applicant, Mike Onstad, mentioned that an

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industrial designation is more in line with the properties to the west, which may help address concerns over spot zoning.

Commissioner Shortridge mentioned that while the properties to the west are zoned industrial, there are a number of commercial and office uses in that location and it is limited industrial. Mr. Sims mentioned that the properties are zoned I-2, heavy industrial but that there are some office uses to the west.

Commissioner Shortridge expressed concern over the bifurcation of the property. He also mentioned that this is a key part of downtown at a key corner. Commissioner Shortridge address staff's analysis that the surrounding area has not yet transitioned to mixed use and that it would be shortsighted to look at the proposed change in that way as there is a multi-million dollar office building under development to the east and that letting industrial encroach on the mixed use areas of downtown would be ill fitting. He reiterated that the bifurcation of the existing building is a concern for the proposal. Commissioner Shortridge mentioned that future rezoning of the property to industrial could allow a gas station or other uses that would not be compatible with downtown.

Commissioner Hahn mentioned that what he thought came through clearly from the public was that they did not object to the proposed use but that they objected to this quirk that requires the requested change in order for that use to be instated. He noted that the land use change and future rezoning would open the door to a lot of changes should the applicant ever move on. Commissioner Shortridge mentioned that a change to industrial may make it more marketable for the applicant. Commissioner Boettcher mentioned that the property to the north is currently for sale as a comparable consideration. Commissioner Shortridge mentioned that there will be long-term implications for that corner and it would be a bad move to allow a short-term change that may inhibit more desirable development at that location. Commissioner Hall mentioned that the applicant's proposal would not prohibit many compatible uses like a restaurant or a childcare facility at that location. Commissioner Shortridge mentioned that in terms of planning for the future, it is not the intention of the Comprehensive Plan or the Unified Development Code to move toward more industrial on that corner.

Commissioner Olson mentioned that he does view the future rezoning of the property, especially as the existing building is physically connected to the property to the east as a problem. Commissioner Shortridge mentioned that there may be other ways to allow a variance or something to allow the short term use as storage until a larger master plan occurs. Commissioner Hall mentioned that a variance for a use that is disallowed is not possible. Mr. Sims confirmed that this is correct.

Commissioner Hall mentioned that the commenters at the last meeting and who emailed the Commission were making a slippery slope argument, which he mentioned

PLANNING COMMISSION MEETING MINUTES
JANUARY 27, 2020
PAGE 6

should not be taken into consideration as the Commission considers each application separately and doesn't think that argument is particularly valid. He mentioned that because of the quirk in zoning, creating a storage facility isn't allowed. Commissioner Shortridge interjected to clarify that the disallowing of storage facilities is not a quirk but rather just a regulation that must be complied with. Commissioner Hall mentioned that he views it as a quirk because at the time there was a push to not convert vacant storefronts to storage facilities and there are even a few still operating. Mr. Sims confirmed that there are some grandfathered storage facilities in downtown still. Commissioner Shortridge mentioned that storage facilities are a property holding strategy because they are cheap and they have limited taxable value, so the community wanted to see them further away from downtown. Commissioner Hall then rhetorically asked, what happens to the property if it doesn't become a storage facility? Will it sit vacant? He noted that past commercial uses at that location haven't stuck and it may become harder. Commissioner Shortridge mentioned that if the Commission changes the designation and, later, the zoning, then there is a little industrial section adjacent to downtown that will persist. He also mentioned that the Commission should not take into account the economic concerns of the applicant in its consideration. Regarding spot zoning, Commissioner Hall asked to clarify that the spot zoning concern would be addressed because the neighboring properties to the west are industrial. Mr. Sims responded that the application before the Commission is for a change to the Comprehensive Plan's future land use map, which leads to discussions similar to the concerns being grappled with by the Commission currently. He noted that the rezoning is a separate action that the Comprehensive Plan Land Use Map Amendment process could help justify in part.

Commissioner Hall mentioned that this is just the first step. Commissioner Shortridge mentioned that this change would lead to rezoning and once it is rezoned then everything industrial is on the table. Commissioner Hahn mentioned that this same concern was raised in the former Madison Elementary School process, which also had to go through a Comprehensive Plan Map Amendment process before rezoning to R-3, multi-family residential.

Chairman Buelow asked to clarify the land to the west is light industrial and that to the south is a car dealership. Mr. Sims mentioned that the car dealership is zoned Mixed Use-Downtown Fringe. Commissioner Shortridge mentioned that the surrounding area is not really industrial and that there are offices even in the industrial space to the west. He reiterated that the surrounding area is not particularly industrial.

Commissioner Boettcher asked the applicant if someone had approached him about using the existing space. The applicant responded that he has been approached by a number of different potential tenants including day care providers, commercial

PLANNING COMMISSION MEETING MINUTES
JANUARY 27, 2020
PAGE 7

providers, and that a restaurant wasn't interested due to parking and traffic counts. He mentioned that the property has been available for six months to eight months and that this is not a change he is pursuing without trying to use the property in its current land use designation and zoning. He mentioned that businesses and restaurants don't want to be in this location but rather out by Wal-Mart and other commercial. The applicant mentioned that the other options would be to move his online toy business back into the building but would then leave another building vacant to move it in there. He noted that there is excitement about the new Fastenal building and there is need for more storage. The applicant also mentioned that he reached out to Kwik Trip when the company was considering the YMCA lot.

Commissioner Shortridge mentioned that light manufacturing is already allowed, warehousing and wholesale trade are allowed, and that there are a lot of things that are currently allowed under the existing zoning. He clarified that it doesn't have to be office or commercial or retail in that location. Commissioner Hall pointed out it is a quirk that warehousing is allowed but storage is not. Commissioner Shortridge mentioned that there may be some concern about an oversight of turning an existing building into many small warehouses vs storage. Mr. Sims mentioned that the applicant is proposing climate-controlled storage, which is prompting the land use map change. Commissioner Shortridge clarified that the small spaces would be rented to individuals. Mr. Sims confirmed that this is the case and mentioned that warehousing deals more with bulk goods compared to general storage for individuals. Commissioner Hahn mentioned that this may be a loophole in the zoning code. Commissioner Shortridge mentioned it could open a can of worms and limit the long term potential of that corner.

Commissioner Shortridge moved to address staff to bring forward a resolution of denial at the next Planning Commission meeting. Commissioner Olson seconded the motion.

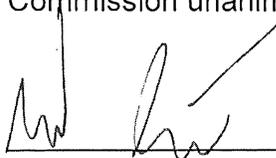
The Commission voted 5-1 on the motion at hand with Commissioner Hall dissenting.

Other Business

No other business was discussed.

Adjournment

On a motion from Commissioner Shortridge and second by Commissioner Olson, the Commission unanimously voted in favor of adjournment at 5:37 p.m.



Luke Sims
Assistant City Planner

PLANNING COMMISSION MINUTES

DATE: February 10, 2020

TIME: 4:30 p.m.

PRESENT: Chairman Buelow, Commissioners Hahn, Marks, Boettcher, Hall, and Shortridge

ABSENT: Commissioners Ballard, Olson, and Paddock

STAFF PRESENT: Assistant City Planner Luke Sims

The meeting was called to order at 4:31 p.m. by Chairman Buelow.

Approval of Minutes – January 13, 2020

The minutes from the Planning Commission meeting of January 27, 2020 were reviewed. Commissioner Shortridge moved to approve the minutes. Commissioner Boettcher seconded the motion. All members present voted aye.

Tabled Item – Comprehensive Plan Map Amendment Resolution – 330 W. Second Street

Mr. Sims informed the Commission that the item before them was a resolution denying the Comprehensive Plan Map Amendment request to change the land use designation from Downtown Fringe to Limited Industrial based on comments from the public hearing and the Commission's deliberations the past two meetings and that a motion to approve the resolution of denial would be in order if the Commission felt it reflected accurately.

Commissioner Shortridge moved to approve the resolution of denial. Commissioner Hahn seconded the motion. All members present voted aye.

Other Business

Mr. Sims informed the Commission that the 0 Garvin Heights Road project would be returning at the next meeting to be held on February 24, 2020.

Adjournment

On a motion from Commissioner Shortridge and second by Commissioner Hahn, the Commission unanimously voted in favor of adjournment at 4:36 p.m.



Luke Sims
Assistant City Planner

REQUEST FOR COUNCIL ACTION

<i>Agenda Section:</i> Unfinished Business	<i>Originating Department:</i>	<i>Date:</i>
<i>No:</i> 4	Public Works	04/20/20

Item: **Invasive Aquatic Plant Management Grant Contract Approval**

No. **4.1**

SUMMARY OF REQUESTED ACTION:

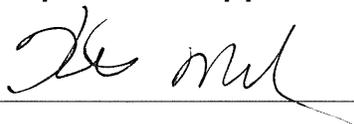
The Minnesota Department of Natural Resources (MN DNR) awarded the City of Winona an invasive aquatic plant control grant for a portion of the West Lake. This grant for \$1,800 will allow a delineation of aquatic plant species and fund a portion of the herbicide treatment for around 12 acres of curly leaf pondweed (see attached map).

Based on conversations with members of the community who expressed concern about applying herbicide and subsequent discussions with the MN DNR, the City's Natural Resources and Sustainability Coordinator would like to include some clarifications regarding the proposed work. The herbicide that will be applied is commonly called Endothall, which is a contact plant killer and will be applied by an experienced and licensed contractor to the surface of the water. The timing of the treatment will be late spring (May or early June) when next to no native plants are yet growing near the surface. Therefore no off target aquatic plants would be killed by treatment. There are no anticipated impacts to wildlife or humans because the herbicide chemical dilutes quickly in the water and is broken down by microbes, although fishing in the treated area probably should be halted for 3-5 days until the herbicide is broken down.

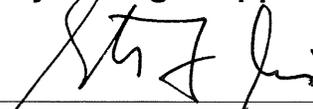
A key consideration is that treatment for just one year will have very little, if any, long term effect. Continued treatment and management of the treated area and other areas of the lake will be needed in the coming years to control the curly leaf pondweed situation. There are success stories of other lakes that have greatly reduced the curly leaf pondweed concentrations after 5-7 years of herbicide treatment, although most lakes are not given consistent treatments. Weed harvesting is not shown to have meaningful long term effects, so herbicide treatments would be the suggested course of action.

Staff is willing and should be able to manage a continued curly leaf pondweed management program. A next step after treatment this year would be to create a lake vegetation management plan to guide future efforts. However, if the City is not willing to do annual management on a scale similar to being proposed this year, the Natural Resources and Sustainability Coordinator would recommend passing on this grant.

Department Approval:



City Manager Approval:



Invasive Aquatic Plant Management Grant Contract Approval
Page 2

Given these considerations, the Natural Resources and Sustainability Coordinator's recommendation is to formally execute the grant and begin treatment this spring/early summer with knowledge that this is just the first step in the process.

If Council concurs with the staff recommendation, a motion to execute the included grant agreement would be in order.

Area visually observed by City of Winona staff in the summer of 2019. Winona is seeking an AIS control grant to do a formal delineation.



This map was compiled from a variety of sources. This information is provided with the understanding that conclusions drawn from such information are solely the responsibility of the user. The GIS data is not a legal representation of any of the features depicted and any assumptions of the legal status of this map is hereby disclaimed. Imagery from 2016





STATE OF MINNESOTA GRANT CONTRACT

This grant contract is between the State of Minnesota, acting through its Commissioner of Natural Resources ("State") and City of Winona care of John Howard, P.O. Box 378 Winona, MN 55987 ("Grantee").

Recitals

1. Under Minn. Stat. 84.026 the State is empowered to enter into this grant.
2. Pursuant to Minnesota Statute Section 84D.02, the Commissioner has the authority to coordinate programs to manage the growth of invasive species of aquatic plants with local units of government, special purpose districts, and lake associations; An infestation of the invasive aquatic plant(s) curly-leaf pondweed exists in Winona Lake (Lake ID# 85.0011) in Winona County;
3. The Grantee represents that it is duly qualified and agrees to perform all services described in this grant contract to the satisfaction of the State. Pursuant to Minnesota Statutes §16B.98 Subdivision 1, the Grantee agrees to minimize administrative costs as a condition of this grant.

Grant Contract

1 Term of Grant Contract

1.1 **Effective date:** This agreement becomes effective the date the State obtains all required signatures under [Minn. Stat. §16B.98](#), Subd. 5. Per, [Minn. Stat. §16B.98](#) Subd. 7, no payments will be made to the Grantee until this grant contract is fully executed.

The Grantee must not begin work under this grant contract until this contract is fully executed and the Grantee has been notified by the State's Authorized Representative to begin the work.

1.2 **Expiration date:** October 15, 2020 or until all obligations have been satisfactorily fulfilled, whichever occurs first. Encumbrances for grants issued by June 30 may be certified for a period of one year beyond the year in which the funds were originally appropriated. Services rendered under grant contracts may occur during the certification period.

1.3 **Survival of Terms.** The following clauses survive the expiration or cancellation of this grant contract:

8. Liability; 9. State Audits; 10. Government Data Practices; 12. Publicity and Endorsement; 13. Governing Law, Jurisdiction, and Venue; and 15 Data Disclosure.

2 Grantee's Duties

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

(a) Comply with required grants management policies and procedures set forth through [Minn. Stat. §16B.97](#), Subd. 4 (a) (1).

(b) Perform the duties specified in Exhibit A which is attached and incorporated into this grant contract.

3 Time

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

4 Consideration and Payment

4.1 **Consideration.** The State will pay for all services performed by the Grantee under this grant contract as follows:

(a) **Compensation.** The Grantee will be reimbursed up to \$1,800.00 for actual costs solely related to and necessary for the performance of the proposed invasive aquatic plant survey and treatment.

(b) **Travel Expenses.** Reimbursement for travel and subsistence expenses actually and necessarily

incurred by the Grantee as a result of this grant contract will not exceed \$0.00; provided that the Grantee will be reimbursed for travel and subsistence expenses in the same manner and in no greater amount than provided in the current "Commissioner's Plan" promulgated by the Commissioner of Minnesota Management and Budget (MMB). The Grantee will not be reimbursed for travel and subsistence expenses incurred outside Minnesota unless it has received the State's prior written approval for out of state travel. Minnesota will be considered the home state for determining whether travel is out of state.

(c) **Total Obligation.** The total obligation of the State for all compensation and reimbursements to the Grantee under this grant contract will not exceed \$1,800.00

4.2. **Payment**

(a) **Invoices.** The State will promptly pay the Grantee after the Grantee presents an itemized invoice for the services actually performed and the State's Authorized Representative accepts the invoiced services. Invoices must be submitted timely and according to the following schedule: Upon completion of the services

(b) **Unexpended Funds.** The Grantee must promptly return to the State any unexpended funds that have not been accounted for annually in a financial report to the State due at grant closeout.

4.3 **Contracting and Bidding Requirements**

Per [Minn. Stat. §471.345](#), grantees that are municipalities as defined in Subd. 1 must follow the law.

(a) For projects that include construction work of \$25,000 or more, prevailing wage rules apply per [Minn. Stat. §§177.41](#) through [177.44](#). These rules require that the wages of laborers and workers should be comparable to wages paid for similar work in the community as a whole.

5 **Conditions of Payment**

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

6 **Authorized Representative**

The State's Authorized Representative is Wendy Crowell, Ecological Resources Grants Coordinator, MN Department of Natural Resources, 500 Lafayette Rd, St. Paul MN 55155, 651-259-5085, or her successor, and has the responsibility to monitor the Grantee's performance and the authority to accept the services provided under this grant contract. If the services are satisfactory, the State's Authorized Representative will certify acceptance on each invoice submitted for payment.

The Grantee's Authorized Representative is John Howard, P.O. Box 378 Winona, MN 55987, 507-457-8273, jhoward@ci.winona.mn.us, or his or her successor. If the Grantee's Authorized Representative changes at any time during this grant contract, the Grantee must immediately notify the State.

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

7.1 **Assignment.** The Grantee shall neither assign nor transfer any rights or obligations under this grant contract without the prior written consent of the State, approved by the same parties who executed and approved this grant contract, or their successors in office.

7.2 **Amendments.** Any amendments to this grant contract must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original grant contract, or their successors in office.

7.3 **Waiver.** If the State fails to enforce any provision of this grant contract, that failure does not waive the provision or the State's right to enforce it.

7.4 **Grant Contract Complete.** This grant contract contains all negotiations and agreements between the State and the Grantee. No other understanding regarding this grant contract, whether written or oral, may be used to bind either party.

8 **Liability**

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

9 **State Audits**

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

10 **Government Data Practices**

10.1. **Government Data Practices.** The Grantee and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the State under this grant contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Grantee under this grant contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data referred to in this clause by either the Grantee or the State.

If the Grantee receives a request to release the data referred to in this Clause, the Grantee must immediately notify the State. The State will give the Grantee instructions concerning the release of the data to the requesting party before the data is released. The Grantee's response to the request shall comply with applicable law.

11 **Workers' Compensation**

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

12 **Publicity and Endorsement**

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

12.2 **Endorsement.** The Grantee must not claim that the State endorses its products or services.

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

14 **Termination**

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

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

15 **Data Disclosure**

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

16 **Invasive Species Prevention**

The DNR requires active steps to prevent or limit the introduction, establishment, and spread of invasive species during contracted work. The grantee (and their contractor) shall prevent invasive species from entering into or spreading within a project site by cleaning equipment prior to arriving at the project site.

If the equipment, vehicles, gear, or clothing arrives at the project site with soil, aggregate material, mulch, vegetation (including seeds) or animals, it shall be cleaned by grantee furnished tool or equipment (brush/broom, compressed air or pressure washer) at the staging area. The grantee shall dispose of material cleaned from equipment and clothing at a location determined by the DNR Contract Administrator. If the material cannot be disposed of onsite, secure material prior to transport (sealed container, covered truck, or wrap with tarp) and legally dispose of offsite.

The contractor shall ensure that all equipment and clothing used for work in infested waters has been adequately decontaminated for invasive species (ex. zebra mussels) prior to being used in non-infested waters. All equipment and clothing including but not limited to waders, tracked vehicles, barges, boats, turbidity curtain, sheet pile, and pumps that comes in contact with any infested waters must be thoroughly decontaminated.

Signatures

Title	Name	Signature	Date
Encumbrance verification	Felicia Barnes	 DocuSigned by: <i>Felicia Barnes</i> 660F88633C8A413...	March 17, 2020
	Grantee		

Winona Lake in Winona 2020 Exhibit A. Grantee's Duties

The City of Winona will perform the following duties in order to manage the growth of curly-leaf pondweed in Winona Lake in Winona County (Lake ID# 85.0011).

1. Arrange for an aquatic plant surveyor, who is not the contractor listed in #3 below, to do a delineation survey of the areas of curly-leaf pondweed to be treated in Winona Lake (Lake ID# 85.0011) in Winona County, and obtain an invoice from the surveyor for the work.
2. Complete the IAPM permit application for treatment by submitting the delineation survey map and GPS coordinates into MPARS. Notify the Regional Invasive Species Specialist (Keegan Lund (651-259-5828)) that the survey map has been added to the permit application.
3. Arrange for a contractor to treat curly-leaf pondweed in Winona Lake (Lake ID # 85.0011) and obtain an invoice from the contractor for the work undertaken
4. Provide to the State's Authorized Representative:
 - A copy of the original invoices from the surveyor and the treatment contractor,
 - The delineation map, and any associated report produced by the surveyor
 - The original pesticide application or harvesting record from the treatment. This should include a description of methods used, a map showing the actual treated areas, the number of acres treated, the date(s) of treatment, and, if herbicides are used, the name of the herbicide applied, the rate of application, and the total amount of herbicide applied.
 - Bill the State by mailing to the State's Authorized Representative, a letter or invoice requesting reimbursement for the appropriate portion of the costs of the survey and treatment.



Conflict of Interest Disclosure

Conflict of Interest

As referenced in the Minnesota Department of Administrations Office of Grants Management's Policy 08-01, a conflict of interest, actual, potential, or perceived, occurs when a person has actual or apparent duty or loyalty to more than one organization and the competing duties or loyalties may result in actions which are adverse to one or both parties. A conflict of interest exists even if no unethical, improper or illegal act results from it.

Actual Conflict of Interest

An actual conflict of interest occurs when a decision or action would compromise a duty to a party without taking immediate appropriate action to eliminate the conflict. Examples included but not limited to:

- One party uses his or her position to obtain special advantage, benefit, or access to the other party's time, services, facilities, equipment, supplies, badge, uniform, prestige, or influence.
- One party receives or accepts money (or anything else of value) from another party or has equity or a financial interest in or partial or whole ownership of the other party's organization.
- One party is an employee, board member or family member of the other party.

Potential Conflict of Interest

A potential conflict of interest may exist if one party has a relationship, affiliation, or other interest that could create an inappropriate influence if the person is called on to make a decision or recommendation that would affect one or more of those relationships, affiliations, or interests. Examples included but not limited to:

- One party has a relationship, affiliation, or other interest that could create an inappropriate influence if one party is called on to make a decision or recommendation that would affect one or more of those relationships, affiliations, or interests. For example, when one party serves in a volunteer capacity for another party, it has the potential to, but does not necessarily create a conflict of interest, depending on the nature of the relationship between the two parties.

A disclosed potential conflict of interest warrants additional discussion in order to identify the nature of the relationship, affiliation, or other interest and take action to mitigate any potential conflicts.

Perceived Conflict of Interest

A perceived conflict of interest is any situation in which a reasonable third party would conclude that conflicting duties or loyalties exist.

A disclosed perceived conflict of interest warrants additional discussion in order to identify the nature of the relationship, affiliation, or other interest and take action to mitigate any potential conflict

Individual Conflict of Interest

A conflict of interest that may benefit an individual employee where actions or non-action could be interpreted to be influenced by something that would benefit them directly or through indirect gain to a friend, relative, acquaintance or business or organization with which they are involved.

An employee uses his/her status or position to obtain special advantage, benefit, or access to the grantee or grant applicant's time, services, facilities, equipment, supplies, badge, uniform, prestige, or influence

Revised June, 2019

Organizational Conflict of Interest

A conflict of interest can also occur with an organization that is a grant applicant or grantee of a state agency. Organizational conflicts of interest occur when:

- A grantee is unable or potentially unable to render impartial assistance or advice to the State due to competing duties or loyalties
- A grantee's objectivity in carrying out the grant is or might be otherwise impaired due to competing duties or loyalties
- A grantee creates an unfair competitive advantage in hiring for professional services or purchasing supplies or equipment by furnishing unauthorized proprietary information or source selection information that is not available to all competitors and create a path to one or a few.

This section to be completed by Grantee's Authorized Representative:

I certify that we will maintain an adequate Conflict of Interest Policy, and throughout the term of our agreement will report any actual, potential and perceived conflicts of interests by individual employees or are organization as a whole to the State's Authorized Representative.

Organization Name: _____

Project Name: (Include Lake Name, County name, and species treated)

Authorized Representative Name: ^{Grantee} _____

Signature: _____ Date _____

REQUEST FOR COUNCIL ACTION

<i>Agenda Section:</i> Unfinished Business	<i>Originating Department:</i> Port Authority	<i>Date:</i> 04/20/20
<i>No:</i> 4		

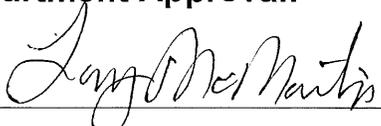
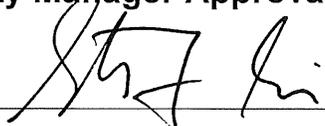
Item: **BCS Automotive: Job Creation Fund Resolution of Support**

No. **4.2**

SUMMARY OF REQUESTED ACTION:

At the April 6, 2020 City Council meeting the Council held a public hearing and approved a resolution in support of a MN Department of Employment and Economic Development Minnesota Investment Fund Application to support a BCS Automotive Solutions expansion in Winona.

The enclosed resolution pledges similar support for a Job Creation Fund application of up to \$400,000 for the project. This is a simple resolution of support and does not require a public hearing.

Department Approval: 	City Manager Approval: 
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RESOLUTION

WHEREAS, the City of Winona, Minnesota (the "City"), desires to assist BCS Automotive Interface Solutions ("BCS Automotive"), a manufacturer/supplier to the automotive industry, which is proposing to improve and expand their facility located in the City; and

WHEREAS, the City of Winona understands that BCS Automotive, through and with the support of the City, intends to submit to the Minnesota Department of Employment and Economic Development an application for an award and/or rebate from the Job Creation Fund Program; and,

WHEREAS, the City of Winona held a city council meeting on April 20, 2020, to consider this matter.

NOW THEREFORE, BE IT RESOLVED By The City Council of the City Of Winona, Minnesota, that, after due consideration, the Mayor and the City Clerk of the City of Winona, Minnesota, hereby adopts the following findings of fact related to the project proposed by BCS Automotive and its application for an award and/or rebate from the Job Creation Fund Program and express their approval.

The City Council hereby finds and adopts the reasons and facts supporting the following findings of fact for the approval of the Job Creation Fund application:

1. Finding that the project is in the public interest because it will encourage the growth of commerce and industry, prevent the movement of current or future operations to locations outside Minnesota, result in increased employment in Minnesota, and preserve or enhance the state and local tax base.
 - BCS Automotive considered operations in Winona, MN, Auburn, NY and possibly Mexico. In the end the Auburn, NY operations will be closed and consolidated into the Winona production facility.
 - If BCS had chosen a Auburn, NY location, Winona employment would have been zero by December 31, 2020. Instead, Winona employment is estimated to be 208 full time employees with benefits.
 - BCS will make significant investments into the Winona facility opening up additional business opportunities in the future.

2. Finding that the proposed project, in the opinion of the City Council, would not reasonably be expected to occur solely through private investment within the reasonably foreseeable future.
 - BCS Automotive had facilities and a labor force in Auburn, NY along with an incentive package from the State of New York.
 - BCS Winona had/has lost a significant contract with a major US automaker (it may have been an easier decision to move what was left of Winona production to New York).
3. Finding that the proposed project conforms to the general plan for the development or redevelopment of the City as a whole.
 - The BCS Automotive property is zoned industrial and the existing footprint has the capacity to incorporate the new production.
4. Finding that the proposed project will afford maximum opportunity, consistent with the sound needs of the City as a whole, for the redevelopment or development of the project by the private enterprise.
 - The development opportunity will serve to maintain and expand the capabilities of the BCS Automotive Winona workforce.

Dated this _____ day of _____, 2020.

Mark F. Peterson
Mayor

Attest:

Monica Hennessy Mohan
City Clerk

REQUEST FOR COUNCIL ACTION

<i>Agenda Section:</i> New Business	<i>Originating Department:</i>	<i>Date</i>
<i>No:</i> 5	Community Development	4/20/2020
<i>Item:</i> Call for Public Hearing – The Commonwealth Company Proposed Application for Assistance		
<i>No.</i> 5.1		

SUMMARY OF REQUESTED ACTION:

Community Development staff has been working with The Commonwealth Companies (the “Developer”) in submitting an application to Minnesota Housing Finance Agency (MHFA) to receive an allocation of Housing Tax Credits (HTCs) to develop workforce rental housing.

The purpose of tonight’s action is to call for a public hearing on May 4, 2020. The information below is a summary of the project, development and requested assistance for background information to the City Council.

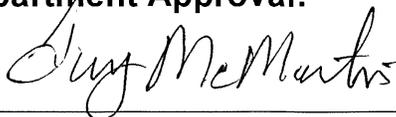
Commonwealth has a purchase agreement to acquire two parcels (Parcel ID#s 32.320.4250 and 32.315.0010) located at 602 Mankato Avenue. Their plan is to construct 41 workforce rental housing units under the name Water’s Edge Apartments to serve a wide range of income levels and occupations such as, teachers, nurses, frontline professionals, and blue collar employees. The development would complement the numerous housing developments, such as the recent senior and market rate developments, allowing for greater housing choices in Winona and an opportunity for the 64.5% of commuters to live in Winona.

- The proposed 3-story building with surface parking will consist of one, two, and three bedroom units.
- Per the *Comprehensive Housing Needs Assessment*, the vacancy rate for workforce rental housing units is 0%.
- The development will have income and rent restrictions for all rental units.
- The development will set aside units serving households earning 30%, 50%, & 80% of area median income.
- The estimated total development costs would be \$10.7 million.

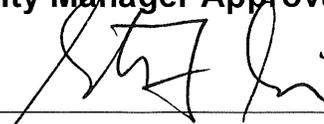
The proposed development meets community needs as outlined in the Comprehensive Plan, the Housing Needs Assessment, and the Mayor’s Housing Task Force.

Generally, there are significant costs associated with housing development projects including land acquisition, demolition, infrastructure improvements, site improvements, and construction costs. Often developments with rent limits, such as Waters Edge Apartments use TIF or Tax Abatement to fill the financial gap due to the lower income generated relative to market rate developments.

Department Approval:



City Manager Approval:



**Call for Public Hearing – The Commonwealth Companies Proposed
Application for Assistance
Page 2**

Water's Edge Apartments has requested the use of Tax Abatement as a means to make the development financially feasible. The developer is applying to MHFA for an allocation of HTC's to generate equity to supplement the first mortgage, but a finance gap of approximately \$135,674 still exists. The criteria to obtain HTC's is very competitive throughout the state and it is important for local government to support the project as it significantly enhances the application to have the development selected by MHFA.

Staff is performing a preliminary review with the City's financial advisor and legal consultant of the developer's pro-forma and preliminary *Application for Assistance* requesting Tax Abatement.

Considerations:

1. Legislation provides Tax Abatement as a tool for development;
2. The *Mayor's Housing Task Force* recommends the use of HTC's and the use of Tax Abatement as a funding gap source to make development feasible;
3. Addresses a workforce housing need identified in the *City of Winona Housing Needs Assessment*;
4. Aligns with the *Comprehensive Plan's* Future Use and Housing Plans;
5. Tax Abatement is contingent upon the developer receiving HTC's from MHFA.
6. The Port Authority has reviewed a summary of this project and approved a motion of support and encouraged support from the City Council as housing and economic development go hand in hand.

The first of several steps in considering Tax Abatement for the Water's Edge Apartments development is for the City Council to set a public hearing for May 4, 2020. If Council concurs, a motion to approve the attached resolution calling for a public hearing on May 4, 2020 would be appropriate.

RESOLUTION

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

1. Recitals.

(a) Minnesota Statutes, Sections 469.1812 through 469.1815, as amended, both inclusive, authorize the City, upon satisfaction of certain conditions, to grant an abatement of all or a part of the taxes levied by the City on real property within its boundaries.

(b) It is a legal requirement that the City hold a public hearing prior to adoption of a resolution granting any property tax abatements.

2. Hearing. A public hearing on the consideration of the property tax abatement will be held at the time and place set forth in the Notice of Hearing attached hereto as Exhibit A and hereby made a part hereof.

3. Notice. The Community Development Specialist is hereby authorized and directed to cause notice of said hearing in substantially the form attached hereto as Exhibit A to be given one publication in a newspaper of general circulation in the City at least 10 days but not more than 30 days before the hearing. The newspaper must be one of general interest and readership in the City, and the notice must be published at least once.

Dated this _____ day of _____, 2020.

Mark F. Peterson
Mayor

Attest:

Monica Hennessy Mohan
City Clerk

**Notice of Public Hearing
By Electronic Means
Regarding Proposed Property Tax Abatement:
Water's Edge Apartments LLC**

Notice is hereby given that at **6:30pm on Monday, May 4, 2020** at **City Council Chambers, 207 Lafayette, Winona, MN** the **Winona City Council** will hold a public hearing, pursuant to Minnesota State Statutes 469.1812 through 469.1815, concerning the proposal of Water's Edge Apartments LLC to have the City abate all or a portion of the City's share of property taxes to be levied on residential parcels (PINs) 32.320.4250 and 32.315.0010 (the "Properties"), which are located in the City as shown on the map set forth below:



The total amount of the taxes proposed to be abated the City on the Properties is estimated to be not more than \$135,674. After the Public Hearing the City Council will consider granting property tax abatement on the Properties in connection with financing the Water's Edge Apartments LLC development of 41 workforce rental housing units in the City.

This public hearing and meeting is being conducted electrically following Minnesota State Statute 13D.021 pursuant to Resolution 2020-17 Declaring a Special Emergency, as adopted by the Winona City Council on Monday, March 16, 2020.

All interested parties are invited to provide input via Zoom at which time you will be given the opportunity to express comments on the project. This meeting is open to the public via web or phone.

ZOOM login and phone to change

- To join the Zoom Meeting via web, go to: <https://zoom.us/j/176090573> and enter meeting ID: 176 090 573.
- To join via phone, dial either phone number:
+1 312 626 6799 (Priority)
+1 646 558 8656 (Backup)
When prompted, enter the following Meeting ID: 176 090 573

Written testimony will also be accepted prior to the public hearing. Written comments must be sent via email to: **Nick Larson at nlarson@ci.winona.mn.us by 4:00 p.m. Thursday, April 30, 2020. Specific questions can be directed to nlarson@ci.winona.mn.us or the Community Development Office, 507.457.8250.**

The City of Winona makes reasonable accommodation for any known disability and to meet the needs of non-English speaking residents that may interfere with a person's ability to participate in this public hearing. Person needing an accommodation must notify Monica Hennessy Mohan, City Clerk, 507.457.8200 no later than April 30, 2020 to allow adequate time to make needed arrangements.

THIS NOTICE OF REGULAR MEETING BY TELEPHONE OR OTHER ELECTRONIC MEANS IS GIVEN PURSUANT TO MINN. STAT. § 13D.04.

Dated: April 21, 2020
Nick Larson
Community Development Specialist

REQUEST FOR COUNCIL ACTION

<i>Agenda Section:</i> New Business	<i>Originating Department:</i>	<i>Date</i>
<i>No:</i> 5	Planning	4/20/20
<i>Item:</i> Plat Review – Main Square Annex Subdivision		
<i>No.</i> 5.2		

SUMMARY OF REQUESTED ACTION:

Staff requests Council review the attached subdivision (plat). The subdivision proposes to split 166 W. 6th Street into two lots. The existing parcel currently houses the East Washington Crossings building and the former Winona Middle School auditorium. The lot split is intended to facilitate future construction of a parking ramp. The overall ramp project will require multiple other zoning approvals and review by the Heritage Preservation Commission. However, this item is simple related to the lot split.

Staff's review indicates that the plat meets City regulations with the following conditions:

1. A lot size variance for Lot 2 shall be obtained.
2. A variance shall be obtained for 40 off-site parking spaces related to the East Washington Crossings building.

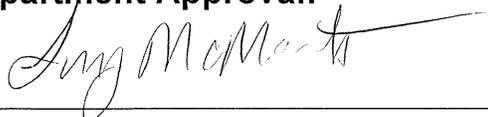
The Planning Commission unanimously recommended approval of this item with these conditions at its April 13th meeting.

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

Attachments:

- A) Plat Resolution
- B) Planning Commission Agenda Item and Plat

Department Approval:



City Manager Approval:

RESOLUTION

APPROVAL OF THE FINAL PLAT OF MAIN SQUARE ANNEX

WHEREAS, Main Square Development LLC, (“Petitioner” or “Applicant”) has submitted an application for Final Plat approval of the proposed Main Square Annex (“Final Plat” or “Plat”), legally described in Exhibit A, which is attached hereto and incorporated herein by reference; and

WHEREAS, the Winona City Planning Commission (“Commission”) in accordance with provisions of the Winona City Code, Section 43.06.31 (B) held a required public hearing to consider said Plat on April 13, 2020; and

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

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

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

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

1. A lot size variance for Lot 2 shall be obtained.
2. A variance shall be obtained for 40 off-site parking spaces related to the East Washington Crossings building.
3. The Final Plat shall comply with the provisions of all applicable State statutes and standard procedures for platting in Winona County.
4. That no Development Agreement is required as the subdivision does not involve installation or construction of new public improvements.
5. The Final Plat shall be recorded within 180 days of City Council approval or the City’s approval shall be deemed null and void.

6. The Applicant shall be responsible for and pay all fees, including recording fees.

Dated this _____ day of _____, 2020.

Mark F. Peterson
Mayor

Attest:

Monica Hennessy Mohan
City Clerk

EXHIBIT A

Legal Description of Main Square Annex

Lot 3 through 10, Block 31, Together with that part of vacated Washington Street appurtenant to said Block 31 and together with that portion of the vacated alley in said Block 31 appurtenant to said Lots 3 through 10, all in Original Plat of Winona, according to the recorded plat thereof, Winona County, Minnesota.

PLANNING COMMISSION

AGENDA ITEM: 4. Public Hearing – Main Square Annex Subdivision

PREPARED BY: Carlos Espinosa

DATE: April 13, 2020

BASE DATA

Petitioner:	Main Square Development LLC
Location:	166 W. 6 th St.
Existing Zoning:	Lot 1 – MU-DC (Mixed Use Downtown Core) Lot 2 – R-3 (High Density Residence)
Lot Area:	82,764 Sq. Ft.
Lot Area Requirements:	MU-DC – None R-3 – 74,000 Sq. Ft. (1,500 sq. ft. X 11 One Bedroom units; 2,500 sq. ft. X 23 Two Bedroom Units in East Washington Crossings Building)
Lot Frontage Requirements:	Lot 1 – None Lot 2 – 75 ft.
Existing Number of Lots:	One
Proposed Number of Lots:	Two
Proposed Lot Areas:	Lot 1 – 34,412 sq. ft. Lot 2 – 48,352 sq. ft.
Proposed Lot Frontage:	Lot 1 – 215 ft. Lot 2 – 335 ft.



DISCUSSION

The subdivision is proposed to facilitate construction of a structured parking facility on the “auditorium” lot (Lot 1). This project will require the following approvals:

1. Heritage Preservation Commission review of auditorium demolition
2. Conditional Use Permit (CUP) for structured parking in the MU-DC zoning district
3. Variance for a parking structure within 50 feet of a residential (R-3) zoning district
4. Site Plan (design standards will apply to a new parking structure)

Thus, splitting the property though this plat is the beginning of a multi-step public review process for the overall project. At this time, the role of the Commission is simply related to the lot split. Staff’s review indicates that the plat meets subdivision and zoning standards with the following exceptions:

1. Per Code, the existing East Washington Crossings building requires a lot area of 74,000 square feet. Lot 2 (which will house the building) is proposed to be only 48,352 square feet.
2. Forty (40) off-street parking spaces related to the East Washington Crossings building are required to be on the same lot as the structure. However, the plat will create a separate standalone parking area on Lot 1.

To address these exceptions, staff would recommend that approval of the Main Square Annex subdivision contain the following conditions:

1. A lot size variance for Lot 2 shall be obtained.
2. A variance shall be obtained for 40 off-site parking spaces related to the East Washington Crossings building.

Attachment:

- Final Plat Copy

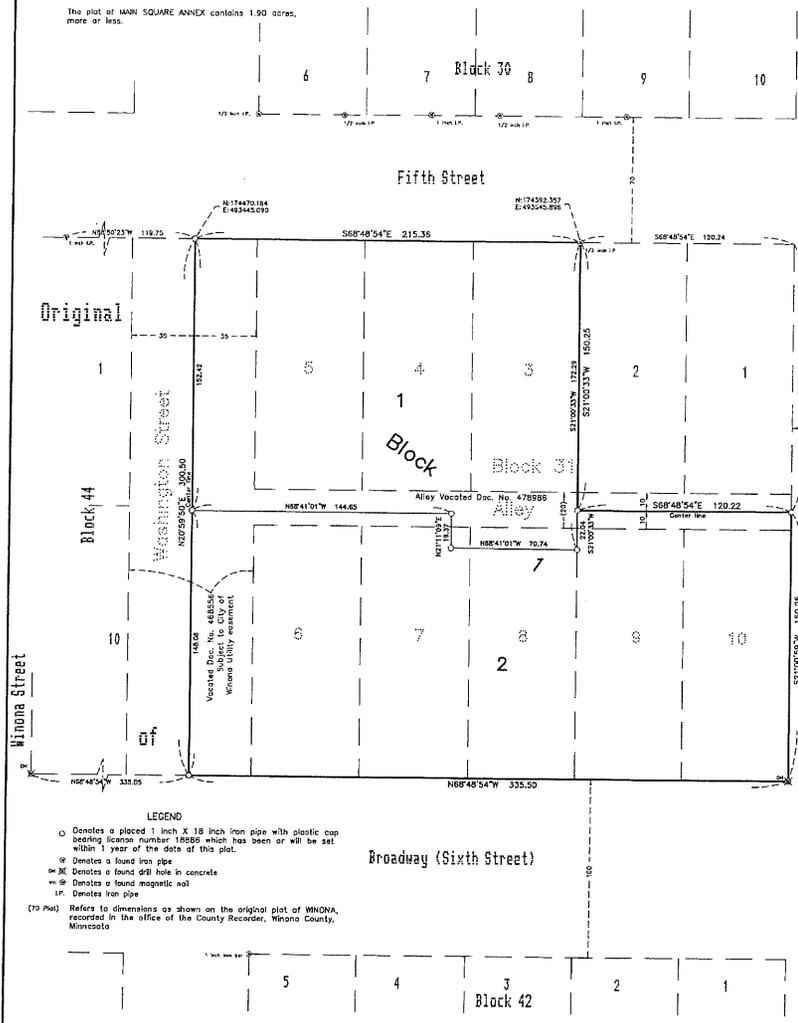
NOTES:

BASIS OF BEARINGS: Bearings and coordinates shown are based on the Winona County Coordinate System, NAD 1983 (1996 adjustment).

Record Lot size for lots in Block 31 is 60 feet by 140 feet.

The plot of MAIN SQUARE ANNEX contains 1.90 acres, more or less.

MAIN SQUARE ANNEX



- LEGEND**
- Denotes a placed 1 inch X 18 inch iron pipe with plastic cap bearing license number 18886 which has been or will be set within 1 year of the date of this plot.
 - ⊗ Denotes a found iron pipe
 - ⊗ Denotes a found 4" hole in concrete
 - ⊗ Denotes a found magnetic nail
 - IP Denotes iron pipe
 - (70 Plot) Refers to dimensions as shown on the original plot of WINONA, recorded in the office of the County Recorder, Winona County, Minnesota

DEDICATION

KNOW ALL PERSONS BY THESE PRESENTS that MDI Limited Partnership #78, A Minnesota limited partnership, owner of the following described property:

Lots 3 through 10, Block 31, together with that part of vacated Washington Street appurtenant to said Block 31 and together with that portion of the vacated alley in said Block 31 appurtenant to said Lots 3 through 10, all in the Original Plat of Winona, according to the recorded plat thereof, Winona County, Minnesota.

Has caused the same to be surveyed and platted as MAIN SQUARE ANNEX.

In witness whereof said MDI Limited Partnership #78, A Minnesota limited partnership, has caused these presents to be signed by its proper person this ____ day of _____, 20____.

Signed: MDI Limited Partnership #78
By: CLS Properties, LLC, a Florida limited liability company

Gary L. Stenson, Chief Manager

STATE OF _____
COUNTY OF _____

This instrument was acknowledged before me on _____ 20____ by Gary L. Stenson, Chief Manager of CLS Properties, LLC, a Florida limited liability company, General Partner of MDI Limited Partnership #78, A Minnesota limited partnership, on behalf of the partnership.

Notary signature: _____
Print Notary's name _____
Notary Public, _____ County, _____
My commission expires _____

SURVEYOR'S CERTIFICATE AND ACKNOWLEDGEMENT

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

Dated this ____ day of _____ 20____.

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

STATE OF _____
COUNTY OF _____

This instrument was acknowledged before me on _____ 20____ by Tony A. Blumentritt.

Notary signature: _____
Print notary's name _____
Notary Public, _____ County, Minnesota
My Commission expires _____

CITY COUNCIL

City Council, City of Winona, Minnesota

This plot of MAIN SQUARE ANNEX was approved and accepted by the City Council of the City of Winona, Minnesota at a regular meeting thereof held this ____ day of _____ 20____ and said plot is in compliance with the provisions of Minnesota Statutes, Section 505.03, Subd. 2.

City Council, City of Winona, Minnesota

By _____
Monica Monnessey Mohan, City Clerk

COUNTY SURVEYOR

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

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

COUNTY AUDITOR/TREASURER

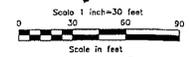
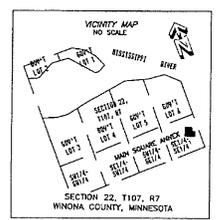
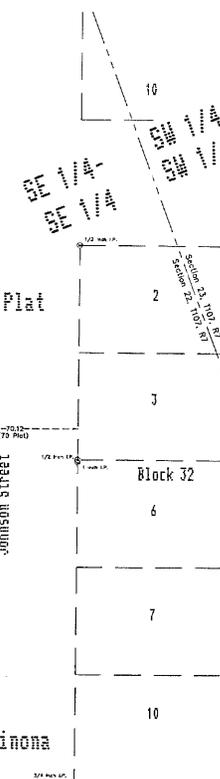
Pursuant to Minnesota Statutes, Section 505.021, Subd. 9, taxes payable in the year 20____ on the land hereinbefore described have been paid. Also, pursuant to Minnesota Statutes, Section 272.12, there are no delinquent taxes and transfer entered this ____ day of _____ 20____.

Sandra J. Suchta, Winona County Auditor/Treasurer

COUNTY RECORDER, COUNTY OF WINONA, STATE OF MINNESOTA

I hereby certify that this plot of MAIN SQUARE ANNEX was filed in the office of the County Recorder for public record on this ____ day of _____ 20____ at ____ o'clock ____ A.M. and was duly filed as Document No. _____.

Robert J. Bembek, Winona County Recorder
By _____ Deputy



JOHNSON & SCOFIELD INC.
SURVEYING AND ENGINEERING
4240 WYOMING STREET, WINONA, MN 55991
(507)454-4134 FAX (507)454-2544
js@winnet.com

REQUEST FOR COUNCIL ACTION

<i>Agenda Section:</i> New Business	<i>Originating Department:</i>	<i>Date</i>
<i>No:</i> 5	Engineering	04/20/20

<i>Item:</i> Bluff Intermittent Stream Stabilization Grant Contract
<i>No.</i> 5.3

SUMMARY OF REQUESTED ACTION:

City staff developed a proposal and received a grant to utilize the Conservation Corps to build check dam structures to lessen the erosion of two intermittent streams in our bluffs. The streams in question suffer from high degrees of concentrated storm sewer output which cut gullies and erode side banks.

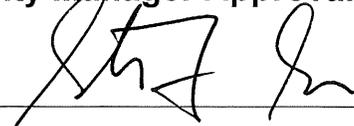
Attached for Council consideration is the standard contract for services that the Conservation Corps has agreed to. The City is responsible for materials used in construction of the check dams, while the labor of the Conservation Corps will be covered by the grant. Please note that the Conservation Corps included certificates of insurance meeting the contract requirements, but these certificates (22 pages) are not included in the agenda item.

If the City Council supports proceeding with the project, a motion to execute the contract would be in order.

Department Approval:



City Manager Approval:



CLEAN WATER GRANT FUND SERVICE CONTRACT

This Contract is made this _____ day of _____, 2020, by and between the CITY OF WINONA, a Minnesota municipal corporation, 207 Lafayette Street, Winona MN 55987, (“CITY” or “PROJRCT HOST”), and Conservation Corps, a Minnesota nonprofit corporation, 60 Plato Blvd E #210, St. Paul, MN 55107, d/b/a Conservation Corps of Minnesota & Iowa, (“CORPS”), (collectively the “PARTIES”).

WHEREAS, CITY requires certain services in conjunction with the Bluff Intermittent Stream Stabilization Project (the “Project”); and

WHEREAS, CORPS agrees to furnish certain services required by CITY pursuant to Minnesota Session Laws 2019, 1st Special Session, Chapter 2, Article 2, Section 7(o), which requires the Board of Water and Soil Resources to contract with the Conservation Corps for restoration, maintenance, and other activities, for at least \$500,000 in FY20, and is subject to all provisions of the Board of Water and Soil Resources Clean Water Grant Fund Contract No 131838, which is incorporated by reference..

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

SECTION I – CORPS'S SERVICES AND RESPONSIBILITIES

- A. **Scope of Services.** CORPS agrees to perform various Project services as detailed in Exhibit 1, Scope of Services, attached hereto and incorporated herein by reference. In addition the CORPS shall:
1. Complete services as specified in Clean Water Fund Project Request Form, which is attached hereto, and shall be a part of this work order.
 2. Enroll and supervise AmeriCorps members in accordance with program guidelines.
 3. Provide basic orientation and training as appropriate for corpsmembers.
 4. Provide consultation and on-site project review to ensure that service is progressing in accordance with this work order and program guidelines.
 5. Provide personnel and payroll administration for corpsmembers.
 6. Provide all necessary transportation of corpsmembers to and from service sites.
 7. Provide basic tools, safety gear, personal supplies and equipment needed by corpsmembers to meet all PROJECT HOST and federal safety requirements. Provide professional liability and worker's compensation insurance for all corpsmembers.
 8. Track services completed and make this information available to PROJECT HOST upon request.
 9. Report financial information on the use of state funds, and outcome and match information in eLINK using information provided by the PROJECT HOST.

- B. **Changes to Scope of Services/Additional Services.** Upon mutual agreement of the PARTIES hereto pursuant to Section VI, Paragraph I of this Contract, a change to the scope of services detailed in Exhibit 1, attached hereto, may be authorized. In the event that such a change to the scope of services detailed in Exhibit 1, attached hereto, requires additional services by CORPS, CORPS and CITY may consider an amendment hereto. CORPS shall give notice to CITY of any additional services prior to furnishing such additional services. CITY may request an estimate of cost to CITY, if any, from CORPS, and upon receipt of the request, CORPS shall furnish such cost estimate, prior to CITY's authorization of the changed scope of services.
- C. **Changed Conditions.** If CORPS determines that any services it has been directed or requested to perform by CITY are beyond the scope of services detailed in Exhibit 1, attached hereto, or that, due to changed conditions or changes in the method or manner of administration of the Project, CORPS's effort required to perform its services under this Contract exceeds the estimate which formed the basis for CORPS's compensation, CORPS shall promptly notify CITY of that fact. Upon mutual agreement of the PARTIES hereto pursuant to Section VI, Paragraph I of this Contract, additional compensation for such services, and/or an extension of time for completion thereof, may be authorized. In the absence of such a mutual agreement, amounts of compensation and time for completion shall be equitably adjusted, provided that CORPS first provides notice to CITY as required by this Paragraph and CITY has not terminated this Contract pursuant to Section IV, Paragraph B.
- D. **Standard of Care.** Services provided by CORPS or its subcontractors under this Contract will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of CORPS's profession or industry. CORPS shall be liable to the fullest extent permitted under applicable law, without limitation, for any injuries, loss, or damages proximately caused by CORPS's breach of this standard of care. CORPS shall put forth reasonable efforts to complete its duties in a timely manner. CORPS shall not be responsible for delays caused by factors beyond its control or that could not be reasonably foreseen at the time of execution of this Contract. CORPS shall be responsible for costs, delays or damages arising from unreasonable delays in the performance of its duties.
- E. **Duplication, Displacement, Supplantation.**
1. Conservation Corps crews are subject to the provisions of 42 U.S.C. §§ 12501 - 12682 and 45 C.F.R. parts 2500 - 2550. These laws require, in part, that AmeriCorps assistance be used only for a program that:
 - i. Does not duplicate, and is in addition to, an activity otherwise available in the locality of the program;
 - ii. Will not displace an employee or position, including partial displacement such as reduction in hours, wages, or employment benefits; and
 - iii. Will not create a service opportunity that will infringe on the promotional opportunity of an employee.
 2. An AmeriCorps/Conservation Corps member shall not perform services or duties

or engage in activities that:

- i. Would otherwise be performed by an employee as part of the employee's assigned duties.
- ii. Will supplant the hiring of employed workers.
- iii. Are services or duties with respect to which an individual has recall rights pursuant to a collective bargaining agreement or applicable personnel procedures.
- iv. Have been performed by or were assigned to any presently employed worker; an employee who recently resigned or was discharged; an employee who is on leave, on strike, being locked out, subject to a reduction in force, or has recall rights subject to a collective bargaining agreement or applicable personnel procedure.

F. **Insurance.** CORPS shall not commence work under this Contract until CORPS has obtained all insurance required herein and such insurance has been approved by CITY, nor shall CORPS allow any subcontractor to commence work on a subcontract until such subcontractor has obtained like insurance covering as to worker's compensation, liability, and automobile insurance. All this insurance coverage shall be maintained throughout the life of this Contract.

1. CORPS agrees to procure and maintain, at CORPS's expense, statutory Workers' Compensation coverage. Except as provided below, CORPS must provide Workers' Compensation insurance for all its employees. If Minnesota Statutes, section 176.041 exempts CORPS from Workers' Compensation insurance or if CORPS has no employees in the City, CORPS must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes CORPS from the Minnesota Workers' Compensation requirements. If during the course of the Contract CORPS becomes eligible for Workers' Compensation, CORPS must comply with the Workers' Compensation insurance requirements herein and provide CITY with a certificate of insurance.
2. CORPS agrees to procure and maintain, at CORPS's expense, Commercial General Liability ("CGL") and business automobile liability insurance coverages insuring CORPS against claims for bodily injury or death, or for damage to property, including loss of use, which may arise out of operations by CORPS or by any subcontractor or by anyone employed by any of them or by anyone for whose acts any of them may be liable (including automobile use). The following coverages shall, at a minimum, be included in the CGL insurance: Premises and Operations Bodily Injury and Property Damage, Personal and Advertising Injury, Blanket Contractual Liability, and Products and Ongoing and Completed Operations Liability. The required automobile liability coverage must include coverage for "any auto" which extends coverage to owned autos, non-owned autos, and hired autos. Such insurance shall include, but not be limited to, minimum coverages and limits of liability specified in this Paragraph, or required by law. CITY shall have additional insured status and be listed by name on an endorsement attached to such policy(ies) for the services provided under this

Contract and shall provide that CORPS's coverage shall be primary and noncontributory in the event of a loss.

3. CORPS agrees to procure and maintain, at CORPS's expense, the following insurance policies, including the minimum coverages and limits of liability specified below, or as specified in the applicable insurance certificate(s), or as required by law, whichever is greater:

Worker's Compensation	Statutory Limits
Employer's Liability	\$500,000 bodily injury by accident \$500,000 bodily injury by disease aggregate \$500,000 bodily injury by disease per employee
Commercial General Liability	\$1,000,000 property damage and bodily injury per occurrence \$2,000,000 annual aggregate \$2,000,000 annual aggregate Products – Completed Operations
Automobile Liability	\$1,000,000 per occurrence combined single limit for Bodily Injury and Property Damage (shall include coverage for all owned, hired and non-owned vehicles)
Umbrella or Excess Liability	\$1,000,000

4. True, accurate and current certificates of insurance, showing evidence of the required insurance coverages, are hereby provided to CITY by CORPS and are attached hereto as Exhibit 2.
5. Any insurance limits in excess of the minimum limits specified herein above shall be available to CITY.
6. CORPS's insurance policies and certificate(s) shall not be cancelled without at least thirty (30) days' advance written notice to CITY, or Ten (10) days' prior written notice to CITY for nonpayment of premium.
7. CORPS's policies shall be primary insurance and noncontributory to any other valid and collectible insurance available to CITY with respect to any claim arising out of CORPS's performance under this Contract.
8. CORPS is responsible for payment of Contract related insurance premiums and

deductibles. If CORPS is self-insured, a Certificate of Self-Insurance must be attached.

9. CORPS shall ensure that all subcontractors comply with the insurance provisions contained in this Contract and such insurance is maintained as specified.
10. CORPS's policies shall include legal defense fees in addition to its liability policy limits, with the exception of the professional liability insurance, if applicable.
11. All policies listed above, except professional liability insurance (or other coverage not reasonably available on an occurrence basis), shall be written on a per "occurrence" basis ("claims made" and "modified occurrence" forms are not acceptable) and shall apply on a "per project" basis.
12. CORPS shall obtain insurance policies from insurance companies having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the State of Minnesota, or as approved by CITY.
13. Effect of Failure to Provide Insurance. If CORPS fails to provide the specified insurance, then CORPS will defend, indemnify and hold harmless CITY and CITY's officials, agents and employees from any loss, claim, liability and expense (including reasonable attorney's fees and expenses of litigation) to the extent necessary to afford the same protection as would have been provided by the specified insurance. Except to the extent prohibited by law, this indemnity applies regardless of any strict liability or negligence attributable to CITY (including sole negligence) and regardless of the extent to which the underlying occurrence (i.e., the event giving rise to a claim which would have been covered by the specified insurance) is attributable to the negligent or otherwise wrongful act or omission (including breach of contract) of CORPS, its subcontractors, agents, employees or delegates. CORPS agrees that this indemnity shall be construed and applied in favor of indemnification. CORPS also agrees that if applicable law limits or precludes any aspect of this indemnity, then the indemnity will be considered limited only to the extent necessary to comply with that applicable law. The stated indemnity continues until all applicable statutes of limitation have run.

If a claim arises within the scope of the stated indemnity, CITY may require CORPS to:

- a. Furnish and pay for a surety bond, satisfactory to CITY, guaranteeing performance of the indemnity obligation; or
- b. Furnish a written acceptance of tender of defense and indemnity from CORPS's insurance company.

CORPS will take the action required by CITY within Fifteen (15) days of receiving notice from CITY.

14. Notwithstanding the foregoing, CITY reserves the right to immediately terminate this Contract if CORPS is not in compliance with the insurance requirements contained herein and retains all rights to pursue any legal remedies against CORPS.

SECTION II – CITY’S RESPONSIBILITIES

- A. CITY shall be responsible for the following duties:
 1. Provide project specific direction and assistance to the corpsmember(s).
 2. Maintain records of and provide any requested project information for purposes of grant reporting consistent with Sections 3.6 and 3.7 of the FY20 Clean Water Fund Policy (available on the BWSR website - https://bwsr.state.mn.us/sites/default/files/2019-07/190625_Final%20Policy_FY20%20CWF.pdf)
 - i. This includes any records of match, direct expenses, pollution reduction estimates, or other project data which may be completed or collected by a third party project partner.
 3. Provide at least one media promotion to the public stating that the services(s) are being performed by the Corps. Any publicity regarding the subject matter of this work order must not be released without prior approval from the Corps' Authorized Representative.
 4. Ensure safe working conditions in and around project areas that meet all state and federal standards.
 5. Secure all local, county, and federal permits required by law prior to the commencement of work.
 6. Provide corpsmembers with training and educational opportunities relevant to the services being performed. This includes an on-site project overview at the outset of the project which outlines project background, goals and overall outcomes expected as a result of the corpsmembers' efforts.
 7. Provide specialized tools, safety gear, personal supplies and equipment that are not available through the Corps that is needed by corpsmembers to meet all state and federal safety requirements.
 8. Assist in the acquisition of camping/lodging accommodations if necessary.
 9. Provide all project materials, supplies and chemicals.
- B. CITY shall provide access to any and all previously acquired information relevant to the scope of services detailed in Exhibit 1, attached hereto, in its custody to CORPS for its use, at CORPS's request.
- C. CITY will, to the fullest extent possible, grant access to and make all provisions for entry upon both public and private property as necessary for CORPS's performance of the services detailed in Exhibit 1, attached hereto.

- D. John Howard, CITY's Natural Resources Sustainability Coordinator, shall serve as the liaison person to act as CITY's representative with respect to services to be rendered under this Contract. Said representative shall have the authority to transmit instructions, receive instructions, receive information, interpret and define CITY's policies with respect to the Project and CORPS's services. Such person shall be the primary contact person between CITY and CORPS with respect to the services from CORPS under this Contract. CITY reserves the right to substitute the authorized contact person at any time and shall notify CORPS thereof.

SECTION III – CONSIDERATION

- A. The CORPS will pay for services performed, utilizing its Clean Water Grant Fund accounts. Expenditures from these accounts shall be expended only for the purposes for which they were approved and intended.
- B. Materials (chemicals, lumber, hardware, plant material, etc.) shall be provided by the PROJECT HOST at the expense of the PROJECT HOST. There shall be no direct payment from CITY to the CORPS under this Agreement for services rendered by CORPS for the Project.
- C. Services by CORPS shall be performed to the satisfaction of the CITY's Natural Resources Sustainability Coordinator.

SECTION IV – TERM AND TERMINATION

- A. **Term.** This Contract shall be in effect until such time as the Project is completed. The anticipated completion date is June 30, 2021.
- B. **Termination.** This Contract may be terminated by either PARTY for any reason or for convenience by either PARTY upon Thirty (30) days written notice. In the event of termination, the CORPS shall expend dedicated funds for services performed up to date of termination. The CORPS reserves the right to withdraw corpsmembers from PROJECT HOST for emergency response work including, but not limited to, natural disasters and wild fire response. The CORPS will make reasonable efforts to accommodate the needs of the PROJECT HOST to ensure rescheduling
- C. **Default.** If CORPS fails to satisfy any of the provisions of this Contract, or so fails to perform and/or administer the services detailed in Exhibit 1, attached hereto, pursuant to the requirements of Section I of this Contract, in such a manner as to endanger the performance of the Contract or the services provided hereunder, this shall constitute default. Unless CORPS's default is excused by CITY, CITY may, upon written notice, immediately cancel this Contract or exercise any other rights or remedies available to CITY under this Contract or law. In the event of CORPS's default, CORPS shall be liable to CITY for any and all costs, disbursements, attorneys and CORPS fees reasonably incurred by CITY in enforcing this Contract.

- D. **Suspension of Work.** If any work performed by CORPS is abandoned or suspended in whole or in part by CITY, CORPS shall be paid for any services performed to the satisfaction of the CITY's Natural Resources Sustainability Coordinator prior to CORPS's receipt of written notice from CITY of such abandonment or suspension, but in no event shall the total of CITY's payments to CORPS under this Contract be required to exceed a percentage of the total contract price (calculated by either the Contract price or the maximum price set forth in Exhibit 3, attached hereto) equivalent to the percentage of the scope of services completed by CORPS to the satisfaction of the CITY's Natural Resources Sustainability Coordinator, as determined by CITY.

SECTION V – INDEMNIFICATION

- A. CORPS shall indemnify, protect, save, and hold harmless CITY, and its respective officers, directors, employees and members and agents, from and against any claims, liability, damages, costs, judgments, or expenses, including reasonable attorney's fees, to the extent attributable to or caused by the negligent or otherwise wrongful acts or omissions, including breach of a specific contractual duty, of CORPS or CORPS's independent contractors, subcontractors, agents, employees, vendors or delegates with respect to this Contract or the Project. CORPS shall defend CITY against the foregoing, or litigation in connection with the foregoing, at CORPS's expense, with counsel reasonably acceptable to CITY, except that for professional liability claims, CORPS shall have no upfront duty to defend CITY, but shall reimburse defense costs to CITY to the same extent of CORPS's indemnity obligation herein. CITY, at its expense, shall have the right to participate in the defense of any claims or litigation and shall have the right to approve any settlement, which approval shall not be unreasonably withheld. The indemnification provision of this Section shall not apply to damages or other losses proximately caused by or resulting from the negligence or willful misconduct of CITY. All indemnification obligations shall survive termination, expiration or cancellation of this Contract. CORPS agrees, that in order to protect itself and CITY under the indemnity provisions set forth above, it will at all times during the term of this Contract keep in force policies of insurances required in the Paragraph entitled, "Insurance." Nothing in this Contract shall be construed to waive any immunities or limitations to which CITY is entitled under Minn. Stat. Chapter 466 or otherwise.
- B. CITY shall indemnify protect, save, and hold harmless CORPS, and its respective officers, directors, employees and members and agents, from and against any claims, liability, damages, costs, judgments, or expenses, including reasonable attorney's fees, to the extent attributable to or caused by the negligent or otherwise wrongful acts or omissions of CITY or its agents, employees, contractors or subcontractors with respect to CITY's performance of its obligations under this Contract. CITY shall defend CORPS against the foregoing, or litigation in connection with the foregoing, at CITY's expense. CORPS, at its expense, shall have the right to participate in the defense of any Claims or litigation. The indemnification provision of this Section shall not apply to damages or other losses proximately caused by or resulting from the negligence or willful misconduct of CORPS. All indemnification obligations shall survive termination, expiration or

cancellation of this Contract.

- C. Nothing contained in this Contract shall create a contractual relationship with or a cause of action in favor of a third party against CITY or CORPS. CORPS's services under this Contract are being performed solely for CITY's benefit, and no other entity shall have any claim against CORPS because of this Contract or the performance or nonperformance of services provided hereunder.

SECTION VI – GENERAL TERMS

- A. **Voluntary and Knowing Action.** The PARTIES, by executing this Contract, state that they have carefully read this Contract and understand fully the contents hereof; that in executing this Contract they voluntarily accept all terms described in this Contract without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound hereby.
- B. **Authorized Signatories.** The PARTIES each represent and warrant to the other that (1) the persons signing this Contract are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Contract against it; each PARTY indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.
- C. **Notices.** All notices and other communications required or permitted under this Contract shall be in writing, and hand delivered or sent by registered or certified mail, return-receipt requested, postage prepaid, or by overnight delivery service and shall be effective upon receipt at the following addresses or as either PARTY shall have notified the other PARTY. The PARTIES' representatives for notification for all purposes are:

CITY:

John Howard
Natural Resources Sustainability Coordinator
207 Lafayette Street
Winona MN 55987
Phone: (507) 457-8273
Email: jhoward@ci.winona.mn.us

CORPS:

Doug Ekstrom
South District Manager
1160 S. Victory Drive, Suite 5
Mankato MN 56001
Phone: (507) 345-4744
Email: doug.ekstrom@conservationcorps.org

- D. **Dispute Resolution.** CITY and CORPS agree to negotiate all disputes between them in good faith for a period of Thirty (30) days from the date of notice of dispute prior to

proceeding to formal dispute resolution or exercising their rights under law.

- E. **Electronic/Digital Data.** Because of the potential instability of electronic/digital data and susceptibility to unauthorized changes, copies of documents that may be relied upon by CITY are limited to the printed copies (also known as hard copies) that are signed or sealed by CORPS. Except for electronic/digital data which is specifically identified as a Project deliverable by this Contract or except as otherwise explicitly provided in this Contract, all electronic/digital data developed by CORPS as part of the Project is acknowledged to be an internal working document for CORPS's purposes solely and any such information provided to CITY shall be on an "as is" basis strictly for the convenience of CITY without any warranties of any kind. In the event of any conflict between a hard copy document and the electronic/digital data, the hard copy document governs. The electronic/digital data shall be prepared in the current software in use by CORPS and is not warranted to be compatible with other systems or software.

- F. **Independent Contractor Status.** CORPS, at all times and for all purposes hereunder, shall be an independent contractor and is not an employee of CITY for any purpose. No statement contained in this Contract shall be construed so as to find CORPS to be an employee of CITY, and CORPS shall not be entitled to any of the rights, privileges, or benefits of employees of CITY, including but not limited to, workers' compensation, health/death benefits, and indemnification for third-party personal injury/property damage claims. CORPS acknowledges that no withholding or deduction for State or Federal income taxes, FICA, FUTA, or otherwise, will be made from the payments due CORPS, and that it is CORPS's sole obligation to comply with the applicable provisions of all Federal and State tax laws. CORPS shall at all times be free to exercise initiative, judgment and discretion as to how to best perform or provide services identified herein. CORPS is responsible for hiring sufficient workers to perform the services/duties required by this Contract, withholding their taxes and paying all other employment tax obligations on their behalf.

- G. **Subcontracting.** CORPS shall not enter into any subcontract for performance of any services contemplated under this Contract without the prior written approval of CITY. CORPS shall be responsible for the performance of all subcontractors and/or sub-CORPSs. As required by Minn. Stat. § 471.425, CORPS must pay all subcontractors, less any retainage, within Ten (10) calendar days of CORPS's receipt of payment from CITY for undisputed services provided by the subcontractor(s) and must pay interest at the rate of one and one half percent per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s).

- H. **Assignment.** This Contract may not be assigned by either PARTY without the written consent of the other PARTY.

- I. **Modifications/Amendment.** Any alterations, variations, modifications, amendments or waivers of the provisions of this Contract shall only be valid when they have been reduced to writing, and signed by authorized representative of CITY and CORPS.

- J. **Records—Availability and Retention.** Pursuant to Minn. Stat. § 16C.05, subd. 5, CORPS agrees that CITY, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of CORPS and involve transactions relating to this Contract. CORPS agrees to maintain these records for a period of six years from the date of termination of this Contract.
- K. **Force Majeure.** The PARTIES shall each be excused from performance under this Contract while and to the extent that either of them is unable to perform, for any cause beyond its reasonable control. Such causes shall include, but not be restricted to fire, storm, flood, earthquake, explosion, war, total or partial failure of transportation or delivery facilities, raw materials or supplies, interruption of utilities or power, and any act of government or military authority. In the event either PARTY is rendered unable wholly or in part by force majeure to carry out its obligations under this Contract then the PARTY affected by force majeure shall give written notice with explanation to the other PARTY immediately.
- L. **Compliance with Laws.** CORPS shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Contract or to the facilities, programs and staff for which CORPS is responsible.
- M. **Covenant Against Contingent Fee.** CORPS warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CORPS to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from award or making of this Contract.
- N. **Covenant Against Vendor Interest.** CORPS warrants that it is not employed by any vendor of equipment or service provider that could result in a commission, percentage, brokerage, or contingent fee as a result of CORPS's association with CITY.
- O. **Non-Discrimination.** The provisions of any applicable law or ordinance relating to civil rights and discrimination shall be considered part of this Contract as if fully set forth herein.
- P. **Interest by City Officials.** No elected official, officer, or employee of CITY shall during his or her tenure or employment and for one year thereafter, have any interest, direct or indirect, in this Contract or the proceeds thereof.
- Q. **Work Product.** All materials such as reports, exhibits, models, graphics, computer files, maps, charts, and supporting documentation produced under work authorized by this Contract (“Materials”) shall become the property of CITY upon completion of the work. CITY may use the information for the Project for which they were prepared. Such use by

CITY shall not relieve any liability on the part of CORPS. Notwithstanding any of the foregoing to the contrary; (a) CORPS may reuse standard details of its Materials in the normal course of its business; and (b) CITY understands that the Materials have been prepared for a specific project, and are not intended to be reused for other purposes. If CITY reuses the Materials for any other purpose, CITY waives any claims against CORPS arising from such reuse and agrees to defend and indemnify CORPS from any claims arising from such reuse.

- R. **Governing Law.** This Contract shall be deemed to have been made and accepted in Winona County, Minnesota, and the laws of the State of Minnesota shall govern any interpretations or constructions of the Contract without regard to its choice of law or conflict of laws principles.
- S. **Data Practices.** The PARTIES acknowledge that this Contract is subject to the requirements of Minnesota's Government Data Practices Act (Act), Minnesota Statutes, Section 13.01 *et seq.* CORPS agrees to abide by the applicable provisions of the Act, HIPAA requirements and all other applicable state or federal rules, regulations or orders pertaining to privacy or confidentiality. CORPS understands that all of the data created, collected, received, stored, used, maintained or disseminated by CORPS in performing those functions that the CITY would perform is subject to the requirements of the Act, and CORPS must comply with those requirements as if it were a government entity. This does not create a duty on the part of CORPS to provide the public with access to public data if the public data is available from the CITY, except as required by the terms of this Contract.
- T. **No Waiver.** Any PARTY's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Contract or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that PARTY's right to assert or rely upon the terms and conditions of this Contract. Any express waiver of a term of this Contract shall not be binding and effective unless made in writing and properly executed by the waiving PARTY.
- U. **Data Disclosure.** Under Minn. Stat. § 270C.65, Subd. 3 and other applicable law, CORPS consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to CITY, to federal and state agencies and state personnel involved in the payment of CITY obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring CORPS to file state tax returns, pay delinquent state tax liabilities, if any, or pay other CITY liabilities.
- V. **Patented Devices, Materials and Processes.** If this Contract requires, or CORPS desires, the use of any design, device, material or process covered by letters, patent or copyright, trademark or trade name, CORPS shall provide for such use by suitable legal agreement with the patentee or owner and a copy of said agreement shall be filed with CITY. If no such agreement is made or filed as noted, CORPS shall indemnify and hold harmless CITY from any and all claims for infringement by reason of the use of any such

patented designed, device, material or process, or any trademark or trade name or copyright in connection with the services agreed to be performed under the Contract, and shall indemnify and defend CITY for any costs, liability, expenses and attorney's fees that result from any such infringement.

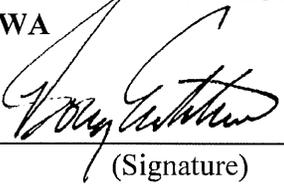
- W. **Mechanic's Liens.** CORPS hereby covenants and agrees that CORPS will not permit or allow any mechanic's or materialman's liens to be placed on CITY's interest in the Property that is the subject of the Project during the term hereof. Notwithstanding the previous sentence, however, in the event any such lien shall be so placed on CITY's interest, CORPS shall take all steps necessary to see that it is removed within thirty (30) days of its being filed; provided, however, that CORPS may contest any such lien provided CORPS first posts a surety bond, in favor of and insuring CITY, in an amount equal to 125% of the amount of any such lien.
- X. **Severability.** The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Contract to the extent of its invalidity or unenforceability, and this Contract shall be construed and enforced as if the Contract did not contain that particular provision to the extent of its invalidity or unenforceability.
- Y. **Entire Contract.** These terms and conditions constitute the entire Contract between the PARTIES regarding the subject matter hereof. All discussions and negotiations are deemed merged in this Contract.
- Z. **Headings and Captions.** Headings and captions contained in this Contract are for convenience only and are not intended to alter any of the provisions of this Contract and shall not be used for the interpretation of the validity of the Contract or any provision hereof.
- AA. **Survivability.** All covenants, indemnities, guarantees, releases, representations and warranties by any PARTY or PARTIES, and any undischarged obligations of CITY and CORPS arising prior to the expiration of this Contract (whether by completion or earlier termination), shall survive such expiration.
- BB. **Execution.** This Contract may be executed simultaneously in two or more counterparts that, when taken together, shall be deemed an original and constitute one and the same document. The signature of any PARTY to the counterpart shall be deemed a signature to the Contract, and may be appended to, any other counterpart. Facsimile and email transmissions of executed signature pages shall be deemed as originals and sufficient to bind the executing PARTY.

Remainder of page intentionally left blank.

SECTION VII –SIGNATURES

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

CORPS: CONSERVATION CORPS d/b/a CONSERVATION CORPS OF MINNESOTA & IOWA

By: 
(Signature)
Title: District Manager
Print Name: Doug Ekstrom

Date: April 14th, 2020

CITY OF WINONA:

By: _____
Mark F. Peterson, Its Mayor

Date: _____

By: _____
Monica Hennessy Mohan, Its City Clerk

Date: _____

EXHIBIT 1

SCOPE OF SERVICES

Subject to the terms of this Contract, CORPS shall perform the following services:

Project Location Information & Description

1. Project Name: Bluff Intermittent Stream Stabilization
2. Project Location: Bluffland
3. If applicable, project address: Winona, MN 55987
4. Project Purpose: The goal of the project is to reduce erosion from the banks of intermittent streams which receive heavy water flows from storm sewer outlets. Erosion of these streams contributes sediment and nutrients to the receiving water ways, including Lake Winona that has a TMDL for total phosphorus. The gullies resulting from the erosion are 5 or more feet in places and therefore impact recreation and animal movement in the bluff lands because the gullies are too steep and deep to cross safely.

Two streams would be targeted as part of this project. Winona proposes wooden check dams to step down the water flow in order to slow the water velocity, and to settle out sediment and debris from the water column. The plan calls for building these structures from locally sourced black locust trees, so the structures will be sturdy, have a low environmental resource cost, and better fit the natural surroundings.

Red cedar revetments would be used to slow and reverse erosion of stream banks that exhibit erosion and undercutting below the check dams. The cedar trees are planned to be sourced from nearby bluff prairies undergoing restoration. The trees will be anchored into the banks using duckbill anchors.

The success of this project could lead to additional projects at other similar bluff intermittent streams in future years.

5. Project Explanation: There are two general crew tasks: Check dam construction and cedar revetment.

For the check dams, the crew would begin by familiarizing with the sites and taking measurements of the gullies in order to cut proper size spans for the dam. Local black locust trees, all within 1,000 feet of the site, will be cut down and dragged or rolled to the site. A skid steer or similar may help with this task. The wood would then be cut into the proper length and roughly planed to facilitate easier stacking of the logs.

The crew would also need to excavate the space for the logs to be placed into the gully. The CITY intends for the horizontal logs to be dug 2-3 feet into each side of the gully and also held in place by logs driven vertically into the ground. Depending on the stability and fit of the logs, metal screws or fasteners may need to be used.

The red cedar revetment would entail hauling in red cedar trees, which likely would be

sourced from a prairie restoration effort about 0.5 to 1 mile away. A CITY 1 ton pickup or dump truck could be provided to move the red cedars. Once at the site, the crew would position and anchor in the red cedars.

BMP To Be Installed & Priority Level

1. Dam, multi-purpose, HIGH - New installation or establishment of BMPs
2. Stream channel stabilization, HIGH - New installation or establishment of BMPs

Pollution Reduction Estimate

Pollutant	Amount	Estimation Method
Sediment - TSS (tons/yr)	1.99	BWSR Estimator (gully stabilization)
Phosphorous - est. reduction (lbs/yr)	1.99	BWSR Estimator (gully stabilization)

Project Coordination & Scheduling

1. Detailed description and purpose of project, including desired outcomes:
 The goal of the project is to reduce erosion from the banks of intermittent streams which receive heavy water flows from storm sewer outlets. Erosion of these streams contributes sediment and nutrients to the receiving water ways, including Lake Winona that has a TMDL for total phosphorus. The gullies resulting from the erosion are 5 or more feet in places and therefore impact recreation and animal movement in the bluff lands because the gullies are too steep and deep to cross safely.

Two streams would be targeted as part of this project. Winona proposes wooden check dams to step down the water flow in order to slow the water velocity, and to settle out sediment and debris from the water column. The plan calls for building these structures from locally sourced black locust trees, so the structures will be sturdy, have a low environmental resource cost, and better fit the natural surroundings.

Red cedar revetments would be used to slow and reverse erosion of stream banks that exhibit erosion and undercutting below the check dams. The cedar trees are planned to be sourced from nearby bluff prairies undergoing restoration. The trees will be anchored into the banks using duckbill anchors.

The success of this project could lead to additional projects at other similar bluff intermittent streams in future years.

2. Educational value and/or on-site education provided to crew: The City would intend to share the project with local resident interest groups, and would be happy to share lessons learned with other entities looking for gully stabilization strategies. The crew would gain experience in wood construction and learn about erosion control options. Check dams and revetment are somewhat uncommon, so this would present a unique experience. The crew will also learn about the failings of outdated stormwater control strategies - the gullies are clear examples of why we no longer just direct storm water “away”.
3. Estimated Crew Time Required: 4-5 days

4. Preferred Season/Dates: June - Nov. 15th
5. Description of crew responsibilities and tasks to be carried out There are two general crew tasks: Check dam construction and cedar revetment.

For the check dams, the crew would begin by familiarizing with the sites and taking measurements of the gullies in order to cut proper size spans for the dam. Local black locust trees, all within 1,000 feet of the site, will be cut down and dragged or rolled to the site. A skid steer or similar may help with this task. The wood would then be cut into the proper length and roughly planed to facilitate easier stacking of the logs.

The crew would also need to excavate the space for the logs to be placed into the gully. The CITY intends for the horizontal logs to be dug 2-3 feet into each side of the gully and also held in place by logs driven vertically into the ground. Depending on the stability and fit of the logs, metal screws or fasteners may need to be used.

The red cedar revetment would entail hauling in red cedar trees, which likely would be sourced from a prairie restoration effort about 0.5 to 1 mile away. A CITY 1 ton pickup or dump truck could be provided to move the red cedars. Once at the site, the crew would position and anchor in the red cedars.

6. List hand tools needed for the project: Shovels, trenching spade, pick axe, loppers, mallet/hammer, wrench set, pry bar, level, and driving rod for installing ground anchors. Most or all can be supplied by the CITY if the crew does not have them.
7. List power tools needed for the project: Chain saws, screw driver. (Truck and skid steer can be provided by the CITY, and operated by CITY personnel if needed)

Community Planning Information

1. Is all permitting, contracting, and landowner consent completed? No
 - a. If not, what is still required that may cause delay or cancellation of this project? The CITY needs to consult with the DNR as to whether a work in waters permit is necessary. The CITY also needs to obtain a permit from the CITY's Planning Commission to do land disturbance work in bluff areas. Both should be obtained by March of 2020.
2. Has a TMDL implementation plan, watershed management plan, county comprehensive local water management plan, local surface water management plan, metro groundwater plan, surface water intake plan or well head protection plan been approved and locally adopted? Please explain: A TMDL implementation plan is underway, and may be completed prior to project work. The County has a local water management plan, and the CITY has a well head protection plan.
3. How will this project ensure practices implemented will be of a long-lasting public benefit with a minimum 10 years effective life? The use of durable and rot resistant wood such as red cedar and black locust will ensure the installations will last 10 years or more. CITY staff will monitor the sites in the first couple months after installation to detect any undercutting or weaknesses that require fixing. Following the first year, CITY staff will check the sites at least annually. At some point after 5-10 years, the CITY would likely need to excavate the accumulated material behind the check dams to regain the sediment collection function of the dams.

4. Local financial contribution – itemized description and amount:
 - a. Staff time and labor: Anticipate 25-40 hours total at \$30/hour = \$750-\$1,200 in kind,
 - b. Fasteners: As needed, estimate of \$150-\$250,
 - c. Duckbill anchors: \$60.

EXHIBIT 2

CERTIFICATES OF REQUIRED INSURANCE COVERAGES

[Certificates of Insurance attached hereto]

EXHIBIT 3

COMPENSATION

Subject to the limitations set forth in this Exhibit, CITY will use Clean Water Funds secured through a grant from the State of Minnesota Board of Water and Soil Resources, an amount not to exceed \$7,750.00 (“Contract price”) for CONTRACTOR’s services, including expenses, under this Contract.

REQUEST FOR COUNCIL ACTION

Agenda Section: **Council Concerns**

Originating Department:

Date:

No: 7

City Clerk

04/20/20

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>
No: 8	City Clerk	04/20/20

<i>Item:</i> Consent Agenda
No. 8.

SUMMARY OF REQUESTED ACTION:

City Clerk: Item No. 8.1: Approval of Minutes – April 6, 2020

Minutes of the April 6, 2020 City Council meeting have been distributed. If the minutes are satisfactory, a motion to approve same would be in order.

City Clerk: Item No. 8.2: Ordinance is to Place a Stop Sign on Chestnut Street at the Fifth Street Intersection

An ordinance is to place a stop sign on Chestnut Street at the Fifth Street intersection was introduced at the April 6, 2020 Council meeting. The purpose and effect of the proposed ordinance has been published by law. Accordingly, the ordinance may now be considered for final adoption.

Department Approval:



City Manager Approval:

