



BAXTER CITY COUNCIL AGENDA

Tuesday, February 2, 2016

The regular meeting of the Baxter City Council will be held on Tuesday, February 2, 2016 at 7:00 p.m. at the Baxter City Hall, 13190 Memorywood Dr., Baxter, MN.

- 1. Call Meeting to Order**
- 2. Roll Call**
- 3. Pledge of Allegiance**
- 4. Public Comments**

Comments received from the public may be placed on a future meeting agenda for consideration.

5. Consent Agenda

The following items are considered non-controversial by staff and are recommended to be read and passed in one motion. Any council person, staff, citizen, or meeting attendee can request one or more items be pulled from the Consent Agenda and the item will be pulled and addressed immediately after the passage of the Consent Agenda; otherwise, the following items will be passed in one motion:

- A. Approve City Council Minutes from January 19, 2016 (pp. 4 – 8).
- B. Approve City Council Work Session Minutes from January 19, 2016 (pp. 9 – 10).
- C. Approve the Payment of Bills and Finance Report (Addendum A and Addendum A-1).
- D. Approve Parks and Trails Commission Minutes from January 25, 2016 (pp. 11 – 14).
- E. Approve Long Range Planning Commission Minutes from January 25, 2016 (pp. 15 – 24).
- F. Adopt Resolution 2016-006 Ordering Improvement and Preparation of Plans for the 2016 Fairview Road Improvement (pg. 25).
- G. Adopt Resolution 2016-007 Ordering Preparation of Report on 2016 Golf Course Drive Improvement Project (pg. 26)
- H. Adopt Resolution 2016-008 Ordering Preparation of Report on Excelsior Road, Fairview Road, and Edgewood Drive Improvement Project (pg. 27).
- I. Adopt Resolution 2016-009 Crow Wing County Highway Department Plans and Specifications for 2016 Dellwood Drive Improvement Project (pg. 28 – Plans enclosed in packet).



- J. Adopt Resolution 2016-010 Relating to Parking Restrictions on Dellwood Drive from Novotny Road to County State Aid Highway 49 (Wise Road) in the City of Baxter, Minnesota (pg. 29).
- K. Adopt Resolution 2016-011 Relating to Bike Lanes on Inglewood Drive from Excelsior Road to Trunk Highway 210 in the City of Baxter, Minnesota (pg. 30).
- L. Adopt Resolution 2016-012 Relating to Bike Lanes on Woida Road from Inglewood Drive to Lynwood Drive in the City of Baxter, Minnesota (pg. 31).
- M. Adopt Resolution 2016-013 Relating to Bike Lanes on Dellwood Drive from Novonty Road to Whispering Woods Lane in the City of Baxter, Minnesota (pg. 32).
- N. Adopt Resolution 2016-014 Relating to Bike Lanes on Novotny Road from Trunk Highway 371 to Dellwood Drive in the City of Baxter, Minnesota (pg. 33).
- O. Approve Amended Baxter-Brainerd Annexation Agreement (pp. 34 – 42).
- P. Approve Ordinance 2016-002 Summary Publication of Ordinance 2016-001 Amending the Text of Title 5, Chapter 6 Tobacco and Tobacco Related Devices (pg. 43).
- Q. Approve Ordinance 2016-007 Amending Ordinance 2016-003 Regulating the Use of Electronic delivery Devices within the City of Baxter Minnesota and Approve Ordinance 2016-008 Summary Publication of Ordinance 2016-007 (pp. 44 – 47).
- R. Approve the WSN Excelsior Road, Fairview Road and Edgewood Drive Feasibility Study Contract Amendment (pp. 48 – 55).
- S. Approve the WSN Proposal for Land Survey Services for the Baxter City Cemetery Monumentation Project in the amount of \$6,750.00 (pp. 56 – 63).
- T. Approve Plans and Specifications and Ordering Advertisement for Bids for Fixed Network Water Meter Reading System Project (pp. 64 – 65).
- U. Award the Professional Engineering and Related Engineering Services Contract for 2016 Golf Course Drive Improvements Project to Bolton & Menk in the not to exceed amount of \$133,180.00 (pp. 66 - 77).
- V. Approve Plans and Specifications for the Oscar Kristofferson Park Pavilion and Kitchen and Authorize staff to advertise for bids. (pp. 78 – 84).

6. Pulled Agenda Items

7. Other Business

- A. Approve Ordinance 2016-005 Amending Text of Title 4, Chapter 3 Open Burning and Ordinance 2016-006 Summary Publication of Ordinance 2016-005 (pp. 85 – 93).

8. Council Comments

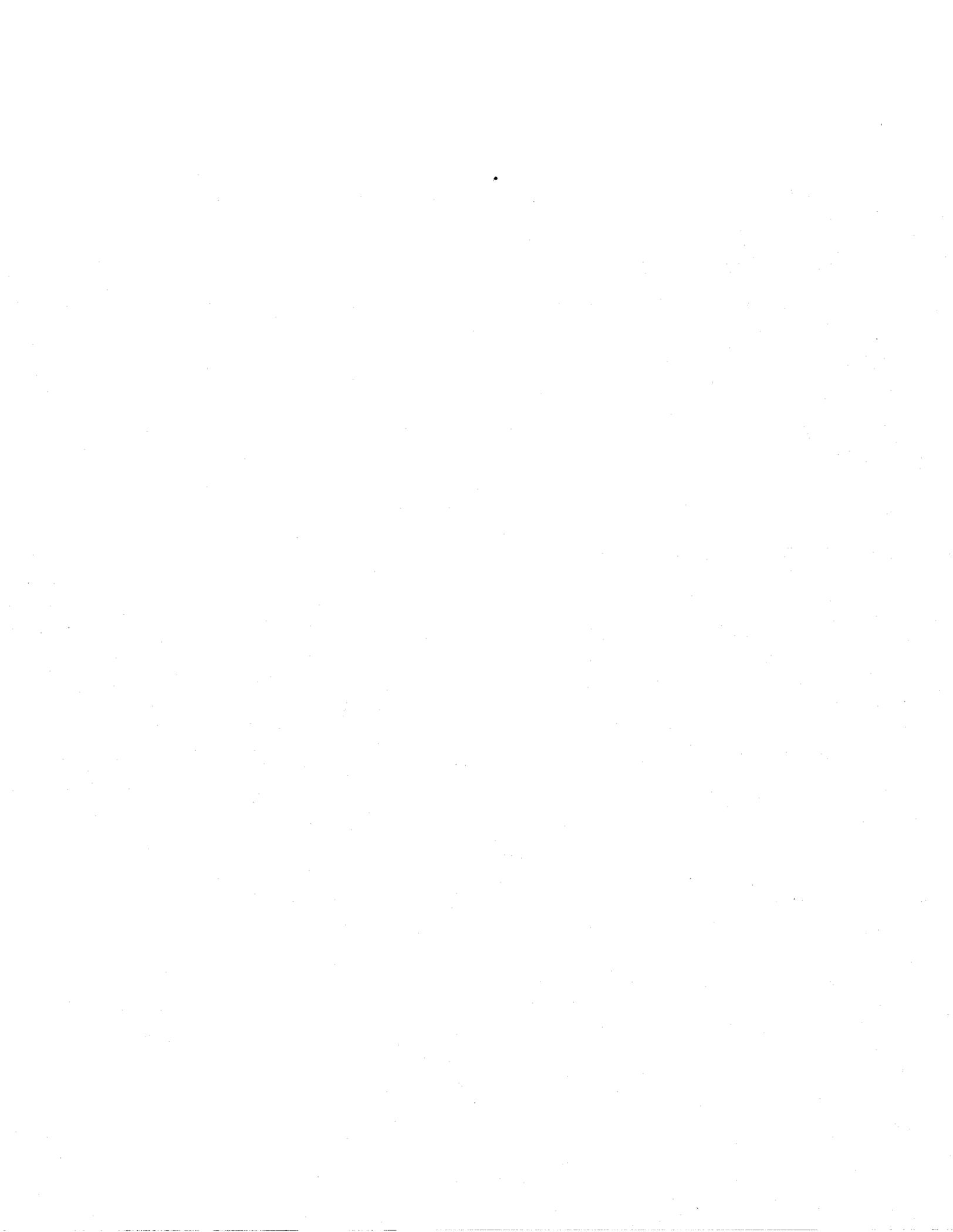


- A. Quinn Nystrom
- B. Steve Barrows
- C. Todd Holman
- D. Mark Cross
- E. Darrel Olson

8. City Administrator's Report

9. City Attorney's Report

10. Adjourn



BAXTER CITY COUNCIL MINUTES
January 19, 2016

Mayor Darrel Olson, who led in the pledge to the flag, called the regular meeting of the Baxter City Council to order at 7:00 p.m.

COUNCIL MEMBERS PRESENT: Mayor Darrel Olson and Council Members Steve Barrows, Todd Holman, and Mark Cross

COUNCIL MEMBERS ABSENT: Council Member Quinn Nystrom

STAFF PRESENT: City Administrator Gordon Heitke, Community Development Director Josh Doty, Chief of Police Jim Exsted, Assistant City Administrator Kelly Steele, Finance Director Jeremy Vacinek, and Public Works Director Trevor Walter

FRANCHISE FEE INFORMATIONAL DISCUSSION

Nick Anhut, Ehlers, explained the City is holding a public informational meeting on the proposed establishment of utility franchise fees. Ehlers has been working with the City to provide information on steps and best practices for implementing gas and electric franchise fees and propose a fee structure to fund a portion of the City's street maintenance and street lighting programs.

Cities in Minnesota charge franchise fees to utility service providers as an alternative means to raise revenues for the City's general fund or for a specific project. Franchise fees have become a more common and desirable alternative to taxes for funding street maintenance in the absence of other funding mechanisms. Currently over 65 cities in Minnesota have implemented franchise fees to assist with raising revenues. The franchise fees are usually a fixed amount charged per month, but in some cases they are based on a percentage of gross revenues. Generally, fees will vary by type of customer – whether it is residential or commercial- and they may be capped per customer.

There are several benefits to establishing franchise fees, such as reliable and stable source of revenue irrespective of economic conditions and state budgets; growth in revenues is proportional to the growth in business activity and population; new residents immediately begin contributing to the cost of city services; tax exempt properties, including state, county and school facilities along with churches and other non-profits, contribute their respective share to the revenue stream; and opportunity to balance the financial obligations between payer classes without being based on property valuation.

While there are several benefits, there are also disadvantages, such as viewed as another form of taxes; perceived as a means of generating new revenues without annual notification and approval; unpopular with certain property or user classes; may be opposed by non-profits that do

not believe their benefits equal their costs; and may need to be adjusted periodically for inflationary and other factors.

Ehlers and the City have communicated with the four utility providers regarding the process of implementing a franchise fee. Empowered by each provider's franchise agreement, the City must adopt an ordinance for each service provider enacting the fee. The ordinance will contain the terms of the fees imposed, along with setting effective and expiration dates.

Fees are collected on a monthly basis from service provider customers. Service providers then remit said fees to the City.

Each service provider has unique customer classifications to differentiate pricing for residential and various commercial entities. These classifications are based on the usage and peak demand each account places on the utility system. Customers are charged monthly fixed fees by customer type as well as usage rates. Schools, churches, hospitals, and other similar institutes are classified as commercial.

In developing its fee structure, the City projected a 10-year funding need and reviewed average monthly gross revenue information for each utility provider by customer classification. For pavement management funding, an initial 2.5% target of average monthly gross revenues by customer classification was used to set the fixed fee level. The City then adjusted the fee structure with the intent to try to alleviate disparities between the utility providers' customer classifications at the bequest of the utility providers. The City underwent a similar exercise for street lighting using only the electric utilities.

Matt Killian, Brainerd Lakes Chamber, asked if the local option sales tax could be used for pavement management. City Administrator Heitke explained the sales tax could not be used for pavement management projects. Mr. Killian explained 60% of the revenue would be generated from commercial businesses. Due to the commercial district being condensed, is a 60% commercial and 40% residential the correct split.

Matt Seymour, 8218 Highland Scenic Drive, inquired what would prevent the city from doubling or tripling the proposed fee in the future. Streetlights are light pollution and can be turned off for cost savings.

Mayor Olson explained the City of Baxter does not receive local government aid and has maintained a single digit levy increase. The council has discussed implementing a fair fee.

City Administrator Heitke explained the funding source was identified to be used for street maintenance. The next step is to submit the ordinance to the utility companies for review. The Council consensus was to add this to the February 2, 2016 meeting for consideration.

Naomi Houdek, 5005 Brentwood Road, inquired if the proposed funding is adequate for funding pavement management.

CONSENT AGENDA

- A. Approve City Council Minutes from January 05, 2016
- B. Approve City Council Work Session Minutes from January 05, 2016
- C. Approve the Payment of Bills and Finance Report
- D. Approve Ordinance 2016-005 Amending Text of Title 4, Chapter 3 Open Burning and Ordinance 2016-006 Summary Publication of Ordinance 2016-005
- E. Award the Professional Engineering and Related Engineering Services Contract for 2016 Mill & Overlay/Full Depth Reclamation and New Construction of Right Turn Lane Construction Project to WSN in the not to exceed amount of \$164,409
- F. Approve Ordinance 2016-002 Summary Publication of Ordinance 2016-001 Amending the Text of Title 5, Chapter 6 Tobacco and Tobacco Related Devices
- G. Approve Ordinance 2016-004 Summary Publication of Ordinance 2016-003 Regulating the Use of Electronic Delivery Devices within the City of Baxter Minnesota
- H. Accept Utilities Commission Minutes of January 6, 2016
 - 1. Approve the Bolton & Menk Inc. 2015 Chip Seal Improvements Project Reimbursement Request in the amount of \$7,164.00
 - 2. Approve the R. L. Larson Excavating Change Order No. 3 in the increased amount of \$22,740.00 for the 2015 Isle Drive Extension Improvements Project
 - 3. Approve the R. L. Larson Excavating Change Order No. 4 in the increased amount of \$47,680.00 for the 2015 Isle Drive Extension Improvements Project
 - 4. Approve the R. L. Larson Excavating Final Pay Estimate No. 7 in the amount of \$339,827.37 for the 2015 Isle Drive Extension Improvement Project
 - 5. Approve the SEH, Inc. Agreement for Fee Increase in the Not to Exceed amount of \$25,137.00 for the 2015 Mill & Overlay Project
 - 6. Accept the Mills Indoor Shooting Range Project as per the Development Agreement
 - 7. Accept the Northern Lakes Senior Living Project as per the Development Agreement and release the Irrevocable Letter of Credit No. 105887734 in the amount of \$89,510.44 to TM Excelsior, LLC

City Administrator Heitke asked the council to pull agenda item D.

Kim Murray, 8897 Gwynn Lane, Brainerd, asked the council to pull agenda items F and G.

MOTION by Council Member Cross, seconded by Council Member Barrows to accept the consent agenda with the exception of agenda items, D., F., and G. Motion carries unanimously.

PULLED AGENDA ITEMS

City Administrator Heitke explained a question regarding the open burning amendment arose today, and because there is no rush to approve the amendment, staff recommends the council tables the discussion until the next council meeting.

MOTION by Council Member Cross, seconded by Council Member Barrows to table agenda item D. Approve Ordinance 2016-005 Amending Text of Title 4, Chapter 3 Open Burning and Ordinance 2016-006 Summary Publication of Ordinance 2016-005. Motion carries unanimously.

Ms. Murray explained she would rather see children safe than left unattended in a vehicle. Ms. Murray asked the council to reconsider allowing children to enter a vape shop with an adult.

The consensus of the council was to amend the ordinance to allow children in vape shops. Staff will prepare an amendment for council consideration at the next council meeting.

MOTION by Council Member Holman, seconded by Council Member Barrows to table agenda items F. and G. to allow staff time to make amendments to the ordinance to allow children to enter tobacco product shops when accompanied by a parent or legal guardian. Motion carries unanimously.

COUNCIL COMMENTS

Todd Holman: Council Member Holman explained when a holiday falls on the Monday preceding a council meeting, council does not have access to staff to ask for clarification on agenda items. Council Member Holman asked council to consider adjustments when setting the 2017 meeting calendar.

Council Member Holman explained the City Administrator's review needs to be scheduled in March. The council consensus was to schedule City Administrator Heitke's review for March 24 and March 31 was reserved as an alternate date.

MOTION by Council Member Holman, seconded by Council Member Barrows to schedule City Administrator Heitke's review for 6:00 p.m. on Thursday, March 24, 2016. Motion carries unanimously.

CITY ATTORNEY'S REPORT

Closed Session under Minnesota Statute 13D.05, Subd. 3 (c) (3) to develop an offer for the purchase of real property.

Attorney Person asked council to enter a closed session to discuss an offer to purchase real property.

MOTION by Council Member Holman, seconded by Council Member Cross to enter a closed session at 8:07 p.m. Motion carries unanimously.

Mayor Olson opened the regular meeting at 8:27 p.m.

Attorney Person asked council to table action until the next council meeting to allow staff more time to review.

MOTION by Council Member Cross, seconded by Council Member Holman to table discussion on the offer to purchase real property until the next council meeting. Motion carries unanimously.

ADJOURNMENT

MOTION by Council Member Cross, seconded by Council Member Barrows to adjourn the meeting at 8:28 p.m. to the special meeting on Monday, February 1, 2016 for the Fairview Road improvement hearing. Motion carries unanimously.

Approved by:

Respectfully submitted,

Darrel Olson
Mayor

Kelly Steele
Assistant City Administrator/Clerk

BAXTER CITY COUNCIL MINUTES
Work Session
January 19, 2016

Mayor Darrel Olson called the Work Session to order at 5:30 p.m.

COUNCIL MEMBERS PRESENT: Mayor Darrel Olson and Council Members Steve Barrows, Todd Holman, and Mark Cross

COUNCIL MEMBERS ABSENT: Council Member Quinn Nystrom

STAFF PRESENT: City Administrator Gordon Heitke, Community Development Director Josh Doty, Assistant City Administrator Kelly Steele, Public Works Director Trevor Walter, and Finance Director Jeremy Vacinek

2017 Baxter Water Quality Project for the Whiskey Creek Tributary to the Mississippi River Funding Options

Shawn Tracy, WSB, provided the background on the project and explained the project ranked the second highest out of 59 regional projects for the removal of phosphorus. Mr. Tracy summarized funding sources for implementation and land acquisition. The City most likely could be eligible for an MPCA nutrient credit for the project. The council could take formal action during the February 2nd council meeting.

Tim Terrell of the Mississippi Headwaters Board explained the Crow Wing Soil and Water Conservation District began the Whiskey Creek project.

Excelsior Road, Fairview Road and Edgewood Drive Feasibility Study Update

Aric Welch, WSN, has prepared a draft feasibility study for the Excelsior Road, Fairview Road, and Edgewood Drive project. Community Development Director Doty explained staff recently learned Cub Foods will not be modifying their building at this time, but they do support the project moving forward with the new roundabout and the reconstruction of Edgewood Drive between the Cub Foods building and the strip mall building to the south.

The reconstruction of Edgewood Drive, between the existing buildings, affects the development layout. Staff finds additional analysis and plans are needed to show how the private improvements should be reconstructed. Because there are many existing improvements in the area, it is important to propose a plan that considers traffic, but also considers a functional re-design of the private property on both sides of Edgewood Drive.

Mr. Welch explained the additional analysis requires a revision to the scope of the feasibility study. The additional analysis will include the realigning of Edgewood Drive to the south, farther away from the existing Cub Foods building; layout potential strip mall parking and entrance; and layout new Cub Food entrance and drive aisle. This additional analysis will cost \$4,200. Mr. Welch will bring a contract amendment back to a future council meeting and will continue working on the project. The council asked Mr. Welch to use simulation modeling when presenting the project to the property owners. The council discussed adding bike lanes along Excelsior.

2017 CSAH 48 (Highland Scenic Road) Mill and Overlay Project – Letter from Crow Wing County Highway Department Requesting Action

Public Works Director Walter explained Crow Wing County provided a response to the City's list of items for the CSAH 48 mill and overlay project. The City's proposed improvements are not included in the five-year capital improvements plan. Public Works Director Walter explained there are two options for the council to consider. The first option is to do nothing and allow the county to complete the mill and overlay with no upgrades. The second option it to explore the financial impact to the City for a possible 2017 project with the county. The Council consensus was to support continuing the trail on the east side of CSAH 48 and extending the trail to Foley on the east side and to explore the financial impact to the City for a possible 2017 project with the county.

Adjournment

MOTION by Council Member Barrows, seconded by Council Member Cross to adjourn at 6:48 p.m. Motion carries unanimously.

Approved by:

Respectfully submitted,

Darrel Olson
Mayor

Kelly Steele
Assistant City Administrator/Clerk

PARKS & TRAILS COMMISSION MINUTES
January 25, 2016

The regular meeting of the Baxter Parks and Trails Commission was called to order at 4:00 p.m.

MEMBERS PRESENT: Chair Jim Kalkofen, Commissioner Mari Holderness, Gail Brecht and Ken Hasskamp

MEMBERS ABSENT: Melissa Barrick and Council Liaison Quinn Nystrom

STAFF PRESENT: Community Development (CD) Director Josh Doty and Planner Matthew Gindele

OTHERS PRESENT: None

Approval of the Minutes

MOTION by Commissioner Hasskamp, seconded by Commissioner Brecht to approve the regular meeting minutes of November 23, 2015 as presented. Motion carried unanimously.

OK Park Pavilion-Construction Schedule

CD Director Doty referred the Commission to the memo and color rendering in the packet. Staff has been working with WSN on the plans for construction and schedule regarding the pavilion. The target date for completion is in early July with a music event coordinated with that date. CD Director Doty asked the Commission to review the dates and see if there are any dates that would not work with their schedule. CD Director Doty stated that he has also talked to the school district and there are ball games scheduled at the park. The music event would likely need to take place after 7:00 pm to allow for adequate parking.

Chair Kalkofen asked the Commission for a consensus on the date. Commissioner Hasskamp stated that he liked the later part of the month just to make sure everything is complete. Commissioner Brecht indicated that baseball doesn't always end at 7:00 pm, it usually goes until it's dark. She was also in favor of a week night such as July 20th or 21st. The Commission suggested the middle of the week and requested that staff contact the school to request if there could be no athletic events that evening. If there are no issues staff will take it straight to Council for approval.

Oakwood Trail Update

Transportation Alternatives Program (TAP) Grant-Oakwood Trail

Planner Gindele explained that the grant is from the Minnesota Department of Transportation (MN Dot) and ranges from \$100,000.00 to \$1 million dollars in grant funding. The funding is proposed for 2020, 4 years from now. He explained that 20% of the eligible costs would have to come from the City through the park dedication fund. This grant application is for trails used as alternate transportation methods and not necessarily for trails serving a purely recreational use such as snow shoeing or roller blading. Planner Gindele explained the grant request is for a trail along Oakwood Drive from the intersection of Cedar Scenic Drive and Oakwood Drive extending all the way to Whipple Beach Recreational Area. This section of trail is in the comprehensive plan. The trail would be 12 feet wide and potentially handicap assessable, if the grade can be met. Staff did include a few alternate areas where trail connections could also be considered for funding in this grant application. Gindele stated that three alternate trail segments could be included in this grant if funding allowed for it; those three alternative segments are 1) from Cedar Scenic Drive extending south along Oakwood Drive to a parcel of Potlatch land 2) From Cedar Scenic and Oakwood Drive intersection extending east along Cedar Scenic to Memorywood Drive and 3) from Oakwood Drive near the Cedar Scenic intersection extending west across county land to connect to the Brownsville Circle trail.

Planner Gindele reviewed the cost breakdown with the Commission and explained the total cost that would come out of the park dedication fund would equal roughly \$110,000.00. Chair Kalkofen asked for a further

explanation of the \$83,939.00. Planner Gindele explained that the City would need to acquire easements for the trail and the engineering of the trail and would not be covered in the grant. Staff is also working with the County to obtain approval for the trail easement and should have an answer from the County at about the time the grant approval/denial is given for this trail (roughly sometime in April). Planner Gindele reviewed the (3) optional trail extensions and the cost associated with each trail segment.

Chair Kalkofen asked where the funding is coming from. Staff indicated that this is a federal grant that comes from the transportation department.

Commissioner Hasskamp complimented staff on how well the grant application was put together. CD Director Doty indicated that Planner Gindele had done the majority of the work on this grant and the credit should go to him for doing a great job.

Crow Wing County Submittals

CD Director Doty indicated that staff did meet with the County and they seemed interested in the trail on Oakwood Dr. Planner Gindele indicated the application to the County was included in the packet. He explained that typically easements can take close to a year for approval; however, the County was willing to work with a shorter timeframe for this project. They are currently going through the process of reviewing the property to flush out any environmental, historical or cultural issues of significance; the County's next step is to solicit public comment on the proposed trail segment.

Joint Powers Meeting Update

CD Director Doty indicated that he did not have much to report on this topic other than the main item of discussion which was the soccer program. The school district requested that the City acquire a cart to carry the nets around when the nets need to be put up and taken down.

Commissioner Brecht, whom also attended, indicated that the budget was on point and the registration numbers were good. Chair Kalkofen asked how often they meet, Commissioner Brecht indicated at least twice a year, before and after summer/winter sports.

Commissioner Brecht indicated that Joe Pullkamp continues to bring up the need for the additional 4th ballfield at OK Park. CD Director Doty indicated at the meeting that the City needs to balance Park Dedication funds to cover all City park and recreational needs. He noted that the City is currently putting money into the baseball programs with the additional safety nets. Commissioner Brecht indicated that the property line through the park is still a lingering issue that hasn't been resolved to date.

Berrywood Park Buffer

CD Director Doty shared with the Commission that the Council looked into the park buffer. Staff had some conversations with the land owner and a few different options were presented to the City Council. Ultimately the Council decided that the additional land was not needed at this time. The Commission held conversation regarding what could be placed on that land in the future if the land was still available.

Riverview Park Boardwalk Update

CD Director Doty noted that the boardwalk hand railing has been installed as an added safety feature. Chair Kalkofen asked if there was any idea of how much that park is being utilized. CD Director Doty stated that he can ask the Parks Department if they have any ideas on usage.

Parks 5 Year Capital Improvement Plan (CIP)

CD Director Doty indicated that this is the time to incorporate anything that this Commission would like to build into the budget for the next 5 years. He explained that the Commission has looked at this previously and now needs to review the plan to see if there are any changes or updates to the current CIP Park Improvements. CD Director Doty indicated that it is tough to make some determinations since you don't always know how much money will be available. This is a plan that should be reviewed once a year to see if the Commission would like to add or remove items based on the funding available. Currently, there are more projects than funds due to the amount of funds recently spent.

Chair Kalkofen asked if, on the 2016 budget, line items G, H, and I (Picnic tables, garbage/recycling containers and benches) were added or if they have always been there. CD Director Doty indicated that they are in the budget each year. Chair Kalkofen questioned why these items would be coming out of the park dedication fund when they are replacement items. CD Director Doty indicated that the funds are supposed to be for new park benches etc. Commissioner Brecht stated that if an item is over \$10,000.00 then the Commission should receive a breakdown at the end of the year explaining where the money was allocated and how it was spent. CD Director Doty indicated that he will request a list from the Parks Department.

The Commission reviewed the 2017 CIP and discussed the \$60,000.00 study to determine the cost of building a pedestrian bridge over Hwy 371. CD Director Doty indicated that there are varying levels of studies that could be completed to determine the feasibility of a pedestrian bridge over 37. Doty stated that \$60,000 is an approximate cost of a complete study that would show what the costs and consideration of different locations to build the bridge and outline what exactly the plan would be to build the bridge. The Commission discussed various organizations that might be interested in being involved with this project as the bridge would link to other communities and trails. CD Director Doty informed the Commission that the 2016 multi-modal design study has been moved forward of the Hwy. 371 bridge crossing since this study will analyze complete streets are needed, where trails are needed and where no trails are needed. Commissioner Hasskamp stated that he was surprised at how many people today do not have motorized transportation and indicated a need for trails.

Chair Kalkofen indicated that he had seen an article in the paper regarding the Fairview trail but was not sure of the outcome. Commissioner Brecht indicated that the neighborhood had rejected the alternative trail. CD Director Doty indicated that the separated trail was removed and the reconstruction would allow for a 6 foot bike lane on each side of the road. The Commission held conversation regarding how the road and bike lanes would be worked into the reconstruction.

CD Director Doty briefly noted that staff also applied for the Safe Routes to School grant. The funding would be for improvements near Forestview Middle School.

The Commission and staff agreed that the CIP should be reviewed at least once annually and that adjustments to it may be needed depending on the park dedication funds available each year.

Commissioner Brecht asked about the disk golf. CD Director Doty indicated that nothing is currently taking place or being discussed regarding disc golf. It was noted that discussion of this item is listed in the comprehensive plan under the mid-range time frame.

Chair Kalkofen stated that the Commission should look at the plan twice a year, once in January and then again in July to see where the funding stands.

The Commission held a brief conversation regarding a dog park.

Other Business

The next scheduled meeting is February 22, 2016 at 4:00 pm.

Adjournment

MOTION by Commissioner Hasskamp, seconded by Commissioner Holderness to adjourn the meeting at 5:09 p.m. Motion carried unanimously.

Approved by:

Respectfully submitted,

Chair Kalkofen

Shanna Newman, CD Administrative Assistant

**LONG RANGE PLANNING COMMISSION MEETING
January 25, 2016**

The Long Range Planning Commission meeting was called to order at 6:00 p.m. by Chair Donnay.

MEMBERS PRESENT: Chair Kevin Donnay, Commissioners Rock Ylimeini, Bob Ryan, Mark Cross, Jim Kalkofen, Cathy Clark and Council Liaison Todd Holman

MEMBERS ABSENT: Lori Rubin

STAFF PRESENT: Community Development (CD) Director Josh Doty, City Administrator Gordon Heitke and Planner Matthew Gindele

OTHERS: Dave & Carolyn Foss, Dean Hanson, Cheryl & Gary Andres, Christine Reisz, Dave Olfers and Rod Osterloh

Approval of Minutes

Motion by Commissioner Ryan, second by Commissioner Ylimeini to approve the minutes of the December 7, 2015 meetings. Motion carried unanimously.

Inglewood Drive Planning Area-Comprehensive Plan Amendment

CD Director Doty stated the neighborhood meeting was held at the last meeting, tonight is the public hearing to determine the land use for the newly annexed property. CD Director Doty gave the history of the annexation with the Inglewood road project being completed and turned over to the City from the County. He reviewed the feedback received from the neighborhood meeting.

CD Director Doty stated that there are three land use options, they were:

1-Commercial/Industrial district for the north portion of the land and low density residential for the remaining land. The existing businesses are that of light industrial nature, with this commercial/industrial zone it would allow the use and not become a non-conforming use.

2-Commercial/Industrial for the north portion of the land, with medium density and low density residential for the remaining land.

3- Commercial/Industrial for the north portion of the land, with medium density in two different location, including the land north of the water tower and low density residential for the remaining land. At the previous meeting the landowner of the 11 acres requested medium or high density residential for the property located north of the water tower, this option would allow for medium density, as requested.

CD Director Doty noted that the Commercial/Industrial District is a new district and that the Zoning Code would need to be amended in addition to the Comprehensive Plan and that a public hearing would need to be held at the Planning Commission to zone the property. The City does have both commercial and industrial zones, however, not one that is a shared zone. He further explained that this district

would recognize the existing structures on site and allow for a 20% expansion of those structures on the existing well and septic systems within the commercial/industrial zone. However, any new developments in this area would need to have city water and sewer.

CD Director Doty reviewed the additional items required for the comprehensive plan amendment. The amendments would be to the City's Functional Classification and Long Range Transportation Plan, Water Plan and Sanitary Sewer Plan to incorporate the annexed area.

CD Director Doty asked for any questions regarding his presentation and noted that staff is looking for approval of the items discussed tonight. He did note that Mr. Tom Bercher, landowner, called and asked that his concerns were included in the meeting. Mr. Bercher's concerns were that development cannot occur without city water and sewer; he also asked the Commission to consider including his property that is shown as low density residential along Inglewood Drive for a commercial/industrial land use instead. Staff noted that the land shown as low density residential has a wetland on it and would make it difficult to support a business. Mr. Bercher informed staff that he has documentation indicating that the wetland is incidental and is not a true wetland and can be filled.

Chair Donnay asked if there were any questions of staff. Commissioner Ylimeini asked what an "incidental wetland" is. CD Director Doty stated that an incidental wetland is a wetland that was created as an unintentional result of some sort of development. Doty indicated that the owner had not provided the paperwork for staff to review, however his understanding is that the former owner dug up the ground for fill for a roadway, which created the wetland. CD Director Doty would check with the County for guidance after reviewing the paperwork, if received.

Commissioner Kalkofen asked how staff came up with the 20% allowed expansion. CD Director Doty replied that the concept was to allow some expansion but also consider the growth plan the city currently has for city services to this area. 20% was what staff determined to be reasonable, however that number can be changed.

Chair Donnay stated that the floor was now open at 6:22 p.m. for the public hearing and asked those present if they would like to speak.

Rod Osterloh approached the Commission in representation of Mr. Tom Bercher's property. Mr. Osterloh stated that everyone agreed the road needed to be updated. The concern is that now that the annexation has taken place there is hardship placed on a few of the land owners whom originally thought this land was going to stay in the county. The landowner is now concerned because the land is unsellable and unbuildable until City services are available. Mr. Osterloh stated that it could be 20 years before that land sees city services. Commissioner Cross asked for clarification regarding the lot that Mr. Osterloh is deeming unsellable and unbuildable; Mr. Osterloh pointed it out on the map. Mr. Osterloh was asked by Chair Donnay how long Mr. Bercher owned the property in question; Mr. Osterloh indicated over 20 years. Mr. Osterloh asked that the other three parcels that Mr. Bercher owns also be considered for commercial. Commissioner Ylimeini asked what the county had that land previously listed as, CD Director Doty indicated that it was rural residential. Mr. Osterloh asked if it was surrounded by commercial, it was in fact surrounded by commercial. It was asked what the AUAR map listed this property, it was considered office area, however the land was not developed based on the AUAR and has since expired.

Mr. Osterloh asked for an explanation of why a bank, convenience store or drug store with a drive-thru are prohibited uses as all are typically built with drive-thru features. He also asked for clarification on "ministorage" in the language for the proposed commercial/industrial zoning district; Item F seemed contradictory when it calls out allowed septic or city water/sewer. Chair Donnay asked CD Director Doty to explain why drive-throughs are not a permitted use with businesses that almost always include them. CD Director Doty indicated that they are allowed in other districts in the city as conditional uses rather than permitted uses but that staff didn't think this area was suitable for businesses with drive-throughs since it has a rural residential character to it. Doty stated that CUP requirements for drive-throughs are in place due to stacking of the vehicles and allowing them only by conditional use permit allows the city to make sure they are properly designed and screened so as to minimize negative effects on neighboring properties and roadways. CD Director Doty stated that if the Commission had thoughts one way or the other about allowing drive-throughs their input was certainly welcome but the Planning Commission will ultimately hold the public hearing to adopt the language for this new zoning district; any input the LRPC has regarding the issue would be forwarded to the Planning Commission.

Mr. Dean Hanson, Brainerd Area Investments has land along County Road 77 that is proposed as commercial which he agrees with. His concern is that there are no city services to those properties. He asked if he can sell them as they are or if he has to wait until city water and sewer is available. CD Director Doty explained that the property is vacant land and would require city water and sewer prior to a new building being placed on the property. The property is close to the Dondelinger Car dealerships and services could be extended, however, there is no plan to extend services at this time. Mr. Hanson stated that anyone who purchased this property and wished to build on it prior to city services being extended would need to pay for new services; CD Director Doty stated that was correct. Mr. Hanson expressed concern about losing value in the land due to the cost of city services. Council Liaison Holman stated that this area was on the list to receive services in the future but a date has not been assigned.

No other comments, Chair Donnay closed the public hearing at 6:36 p.m. CD Director Doty reiterated that the City does not have a practice of allowing well and septic versus city services, as the intent is to have the commercial properties on city services.

Commissioner Ryan asked what the weight restrictions were on the completed portion of Inglewood Dr. The road was constructed to be a 10 ton road. Commissioner Ryan asked if staff had analyzed a maximum buildout scenario for the commercial and residential areas on this road in terms of acreage. CD Director Doty indicated that staff had not done the calculations as there were three different options. CD Director Doty stated that medium density could vary but the maximum allowed density is 7 units per acre and there is roughly 100 gross acres. Doty also noted that other medium density developments developed at a lesser density than the maximum allowed.

Chair Donnay indicated that the Commission has a few choices to choose from: approve the recommendation of staff, approve other options, or table this for additional information as requested by Commissioner Ryan. Commissioner Ylimeini indicated that he had a tough time with commercial land not being able to be constructed on due to the lack of city services, as it does put a hardship on the landowner. However, he also understands the need for city services as he is on the Utilities Commission. Commissioner Cross stated that there are other properties that do not have well and septic

and that does not keep developers from building a commercial property and being required to hook up, such as Menards did as a developer driven project. Commission Ylimeini's main concern was that this was an annexed area, where previously they could have built without hooking up. Commissioner Ylimeini asked if this was a forced annexation; CD Director Doty indicated that it was an orderly annexation that was spurred by the Inglewood Road improvement project. CD Director Doty gave a brief background of how the annexation. Inglewood Drive needed to be improved and the only way for the City to get upgrades to the roadway was to take over the road from the County, which resulted in an annexation. The City and County agreed to the annexation. Commissioner Cross indicated that the same process will be taking place with the Dellwood Drive project near HART. Commissioner Ryan asked if anyone opposed the annexation, CD Director Doty indicated that he was not at the meeting and did not have the information available at this time. Council Liaison Holman indicated that he was present and Mr. Bercher was opposed to being annexed as were a few others. He further explained that the conversation was similar to the conversation currently taking place as not everyone would be happy with the outcome.

Commissioner Ryan confirmed that staff is asking for Option 3 to be approved. He asked CD Director Doty to return to Option 3, he then asked, as a current tax paying resident, would a person really want to live across from the 31 acres that could be developed to a maximum build-out with an apartment building instead of single family homes and more potential for a maximum build-out with additional apartment buildings to the south and commercial to the north of the property. Commissioner Ryan stated that there is going to be a lot more traffic that is going to go through the neighborhoods to the south. He understands Commissioner Ylimeini's concern but also agrees with the way the city is currently moving with commercial property. Chair Donnay asked why this is proposed the way it currently is. CD Director Doty indicated that medium density would not support apartment buildings, they would have to request a higher density zoning and land use for apartment use. CD Director Doty indicated that staff looked at the surrounding areas and the existing wetlands on this property suggested that residential use would be more viable than commercial. CD Director Doty stated that residential neighbors can be good neighbors to a business if developed right. CD Director Doty asked if he was hearing more support for Option 1 verses Option 3, which allows for more single family residential.

CD Director Doty clarified the residential ordinances by stating that a low density residential allows for a single home to be constructed with well and septic on each lot guided as such regardless of how many acres it is as long as it meets the minimum lot size for the R-1 zoning district. It's when there are additional lots created from a subdivision, the subdivision requires city services. If a property is zoned medium density then a single family home cannot be placed on the property as it is intended for multi-family use and would not be allowed with well and septic.

Chair Donnay stated that there are enough questions that a motion to table this may be in order to allow more options.

Motion by Commissioner Ylimeini, seconded by Commissioner Kalkofen to table the Inglewood Planning area until the next meeting.

CD Director Doty stated that he would like the Commission to give staff more direction for staff to move in and research. The Commission and staff reviewed the map and discussed the requirements to hook-up to city services in the regulations.

Chair Donnay would like to see proposed utilities around the site and when they would be extended, layout for medium and low density residential developments on the east side, what it would look like with additional commercial on the property to the northwest and why it would or why it would not work (Bercher's 3 properties). Commissioner Cross noted that when Inglewood was being rebuilt, utilities were not going to be put in place for 15 years or so. He is leaning on Option 1, knowing the cost of services. He stated that if someone bought the 40 acres in the northeast portion of the annexed area, they already have the potential to hook up to city services.

The Commission reviewed the wetland map and showed understanding as to why the property that staff recommended for medium density would be better served as medium density rather than as low density or commercial. There is a thin draw of land between two wetlands that is not wide enough to fit a public street with single family lots or commercial lots on both sides of the road but. It was noted that the wetland could also be used as a commercial buffer.

CD Director Doty stated that when you are talking about creating larger new commercial area, there are additional items to consider, such as additional roads needed, the marketability of property if there is not visible from any major roadway. Those items need to be considered as well.

Motion carried unanimously.

Wildlife Management Areas

CD Director Doty gave a brief update to the Commission regarding the Department of Natural Resources' (DNR) request to establish up to two new Wildlife Management Areas (WMAs) within the City of Baxter in the southwest corner of the city. During a recent Council work session, the Council received a presentation from Ms. Christine Reisz with the DNR. The City Council directed staff to present this information to the Long Range Planning Commission for recommendation. CD Director Doty reviewed the information in the packet with the Commission. CD Director Doty stated the two primary areas of interest are off Mapleton Rd. with two small shallow water lakes (Island Lake to the south and unnamed Lake 18-382 to the north, also known as Rice Lake), each lake having a single property owner and both owners are willing to sell the property. He also stated that hunting areas were of concern being that the City has minimum distance requirements from occupied structures in which citizens are allowed to discharge firearms. As such, it was determined that, at a minimum, only archery hunting would be allowed at the proposed Rice Lake site and no firearms including shotguns, rifles, and muzzleloaders.

CD Director Doty reviewed a map showing the potential growth in the area requested for WMAs in Baxter. He spoke of how WMAs can affect the growth of these areas with a positive and negative impact.

Ms. Reisz stated that the Potlatch land surrounding the proposed southern site on Island Lake is of interest as it goes all the way to Mapleton Rd. and a small gravel parking lot would likely be located off Mapleton Rd. but that deal would have to be made with Potlatch. CD Director Doty noted that there is a trail proposed to go through the potential WMA area. The question is how trails work around a WMA area, noting that a trail could be placed along the perimeter. CD Director Doty noted that there are a lot

of positives to WMAs such as green space and wildlife habitat preservation, however, there is also a loss in tax base that comes along with them. Chair Donnay asked how many acres were being proposed for a WMA. Ms. Reisez stated that the northern site was 190 and the southern site was 120 acres with the potential to add up to 551 additional acres of land that Potlatch currently owns.

Commissioner Kalkofen and CD Director Doty indicated that there is a lot of interest in the powerline corridor for a motorized and non-motorized trail. This area is in the parks portion of the comprehensive plan.

Chair Donnay asked the DNR to share their presentation with the Commission. Ms. Christine Reisz and Mr. Dave Olfers, with the DNR, approached the podium and introduced themselves to the Commission. Ms. Reisz stated that many people do not know what a WMA is or why they are established. She referenced the informational piece included in the packet. Ms. Reisz stated that it is an area to maintain wildlife and is open to hunting, berry picking, mushroom picking, snowshoeing, bird viewing and walking. The WMA does not typically allow motorized vehicles. The DNR will place signs indicating that the area is a WMA with the rules and regulations posted. The WMA would protect the wild rice population around/in the lakes. Ms. Reisz indicated that they only approach those that are interested in selling property. She stated that the DNR would like the City's support in requesting a WMA. She indicated that they still have to gain the County approval as well, prior to purchasing the property.

Commissioner Kalkofen stated that the Parks Commission has been looking to expand the Mississippi Overlook Park (MOP) and this WMA would fit in nicely with the park, less the hunting piece. CD Director Doty stated that in the comprehensive plan there are three goals for the MOP area, expand the park to improve access, expand the park to preserve Mississippi River frontage and develop trail access from the Forestview Middle School to the park.

Commissioner Cross stated that he has a concern with taking a large area of land out of City control and giving the control to the state. He understands the reason behind wanting a WMA and is a hunter himself, however he is questioning what else, other than deer, could be hunted on that land. He questioned whether birds could be hunted. CD Director Doty stated that any animal could be hunted as long as it is in season and is harvested in a legal manner. Currently it would be up to the property owners to grant permission to citizens to hunt on their property. Commissioner Cross also noted that if utilities were added, that area could potentially be a rural residential area in the future when Baxter has infilled and needs to expand.

Commissioner Ylimeini asked about the number of WMA's in other cities. Mr. Olfers stated that there are not many but there are a few. Grand Rapids has a 300-acre WMA that functions more like a park. He stated that down in the cities, Dakota County is trying to preserve green space. Mr. Olfers stated that they would like to work with the City to make sure the City is interested in a WMA and that items like roads and trails are worked out up front. Chair Donnay asked if there is a way to "undo" a WMA if, in the future the City finds that it just isn't working or that the southern area is ready for development. Mr. Olfers stated that it can be undone however it is not an easy process and does take time.

Council Liaison Holman stated that there has been conversation about how big a WMA area really needs to be to be a viable WMA. Ms. Reisz stated that there is not a definite size, however, 120 acres is not big enough to support the upland hunting.

Commissioner Clark stated that she echo's Commissioner Cross's concern with the land being turned over to the state, taken off the tax roll and being painful to undo and return the land to the city, especially when she just read an article this past weekend regarding hunting and that it is on a downward turn. She stated her concern about missing potential growth of the City and that she could not support the process without more demographics.

Commissioner Ryan asked what it would take in the future if a road or power line would need to run through the WMA. Mr. Olfers stated that a permit would be required and the cost would fall on the entity requesting the permit. Mr. Olfers stated that the road(s) would be difficult because it would take away from the wildlife habitat. Olfers stated that the DNR, and he assumes the City as well, is not real interested in wasting a lot of time and money in the future to cut up a WMA with lots of trails and roads as it would diminish the purpose of the WMA. He stated that it would be beneficial to all parties to flush those issues out ahead of time when the WMA is being planned.

Commissioner Ylimeini asked that the wetland overlay map be placed over the property in question. Commissioner Ylimeini stated that it is more expensive to run utilities through a wetland. He also stated that he couldn't see that area developing for 50 years. Commissioner Ylimeini stated that he is torn, because the reason for the decline in hunting is the lack of public land but the flip side is the limitations placed on the City for growth with a WMA in place.

Commissioner Cross stated that once the wetland map was overlaid it was easier for him to understand the request. The wetland boundary doesn't cover the entire WMA boundary and he would have a better feeling for the request if it was just wetlands. The Commission discussed the upland areas and the wetland areas proposed for the WMA and the potential development areas.

Council Liaison Holman asked if the two proposed WMAs are tied together or if one could be approved without the other if the City needed more time to discuss the other one. Mr. Olfers stated that nothing is tied together at this point and stated that he doesn't have a good answer for that question. Council Liaison Holman stated that it sounds to him like the southern piece is the main area of concern. Commissioner Kalkofen added that he likes the WMA areas closer to the school as it could be a teaching tool for hunting and trapping.

Commissioner Cross asked if there would be the ability to trap on the WMA, if so how would that affect those that would like to walk their dogs in that area. Ms. Reisz stated that the owners would need to keep their pets on a leash as to keep from having the dog end up in a trap.

Chair Donnay asked CD Director Doty for direction regarding this topic. CD Director Doty stated that the Council was looking for a recommendation on this item. There are several options: the Commission could identify if there is or is not support for WMA's in Baxter or we need more time and information. CD Director Doty stated that if the Commission wants a road/utility study it would take more time and there would be a cost for the study. He indicated that a complete study of the southern portion of Baxter would require an engineering firm to undertake the project and that having it done by June would be challenging. Chair Donnay stated that the Commission could agree to the north area and not the south area.

Motion by Commissioner Kalkofen, second by Commissioner Ylimeini to approve the Rice Lake (north area) WMA and require additional information/study for the remaining southern Island lake area of Baxter.

Discussion:

Commissioner Ryan asked for clarification regarding information for the southern area. He stated that if there is any cost associated with the answers on the City's behalf he is not in favor of the motion. Commissioner Ryan indicated that he is a huge hunter but does not see this area being viable hunting ground. CD Director Doty added that the northerly piece could impact cost to the city because Mapleton Road will need to be widened and additional cost could be incurred to obtain right of way and easements.

Commissioner Ylimeini asked if the 315 acres is a viable wildlife area and if there could be an unpaved trail for use throughout the WMA area. Mr. Olfers stated that trails are typically not cohesive with a WMA and that if the City has any intention of a trail in the area it should be talked about ahead of approving a WMA.

Council Liaison Holman stated that when this came forward to the Council, it was asked if there was going to be a neighborhood meeting, as the city has done this in the past to let the residents know what is going on around them and to get their input. This Commission needs to acknowledge the area in order to inform the public.

Commissioner Clark asked if she could clarify the request. Currently there are willing sellers, an opportunity of convenience, a number of interest groups would be willing to get behind this type of activity but what is the intended purpose, what goals are expected of the "yellow box" (area in question), what are advantages and disadvantages of a WMA in the long run? She indicated that a few people will make money off the sale of the land, but what does that leave the greater good. Chair Donnay understood where Commission Clark was coming from and asked if those questions were to be added to the request for answers. Chair Donnay asked the DNR if there are options other than the WMA program but short of calling it a state park. Mr. Olfers stated that it would take some time to pull that information together.

Commissioner Ryan asked if the DNR representatives have run into easement/right of way issues in the past. Mr. Olfers indicated that he had not run into this situation in the past and did not know the timeframe for this type of situation. Commissioner Ryan stated that in past practice with the DNR the city has waited months for an answer and would like to know the timeframe for the right of way issue to be resolved.

Motion to amend the original motion by Commissioner Cross, second by Commissioner Ylimeini to approve the Rice Lake (north area) WMA with a stipulation that additional right of way for the future expansion of Mapleton Rd is dedicated; additional information/study for the remaining southern WMA areas shall still be required. Motion carried with Ryan and Clark opposed (5-2)

Chair Donnay asked if there is enough time for staff to complete the task and answer all of the questions. CD Director Doty stated that staff will try to cover all that they can however there are limits when cost is involved. He stated that staff would bring back as much information as possible without cost being

incurred. Commissioner Ylimeini stated that the Public Works Department might have a few studies for the southern part of Baxter that may be of some assistance.

City Land Sale-Property located at Conservation Drive and Excelsior Road

CD Director Doty stated that this is a request to consider a city land sale to the Northland Arboretum in order to place a permanent sign on the property located on the corner of Conservation Drive and Excelsior Road. This would give the Arboretum a sign at the entrance to the Arboretum. Currently the sign ordinance does not allow for offsite signage, therefore, the a land sale is required to allow the sign. Per ordinance, it is the Long Range Planning Commission's task to make sure the land sale meets the comprehensive plan guidelines. The City would sell the land to the County since the County also owns the land that the Northland Arboretum building is on. The City would keep all easements and ponding in place and only allow a sliver of land that the Arboretum would be able to place a sign on the property. Staff felt that if the Commission is supportive of the land sale and is consistence with the comprehensive plan, then staff would move forward with a resolution and Council approval. Staff is supportive of the land sale.

Commissioner Cross is concerned about selling a piece of land that has a large city holding pond and would like to see what is left of the land after all of the easements are taken into consideration. Commissioner Ylimeini expressed concern over the need for signage, as they could place a state regulated type sign verses a pylon type sign. CD Director Doty stated that this is not a city park and would have to address that question to the City Attorney. CD Director Doty stated that the request is for more than a directional sign, they wish to have a reader board/LED sign indicating events at their location.

Motion by Commissioner Cross, seconded by Commissioner Ylimeini to table the City land sale to the County for further information/discussion.

Chair Donnay asked if there is an opportunity to have a workshop type setting other than a public meeting in order to discuss items more thoroughly and ask questions without feeling awkward. Commissioner Ryan clarified if Chair Donnay was asking if there is a way to hammer out some of the details prior to a hearing. Commissioner Cross indicated that Council does have workshop settings in order for staff to provide information prior to the meeting; however, it is still a public meeting and is open to the public. Commissioner Clark agreed that it is a tough situation to be in when there are members in the audience pleading their case.

Other Business

The next meeting is scheduled for February 25, 2016 at 6:00 p.m.

Adjournment

Motion by Commissioner Clark, second by Commissioner Cross to adjourn the meeting at 9:00 p.m.

Approved By:

Submitted By:

Chair Kevin Donnay

Shanna Newman

CD Administrative Assistant

**CITY OF BAXTER MINNESOTA
RESOLUTION 2016-006**

**RESOLUTION ORDERING IMPROVEMENT AND PREPARATION OF PLANS FOR
THE 2016 FAIRVIEW ROAD IMPROVEMENT PROJECT**

WHEREAS, pursuant to a resolution the council adopted January 5, 2016, a fixed date for a council hearing on Improvement No. 4113, the proposed improvement of Fairview Road from approximately 300 feet west of Memorywood Drive to Inglewood Drive; and

WHEREAS, ten days' mailed notice and two weeks' published notice of the hearing was given, and the hearing was held thereon the 1st day of February, 2016, at which all persons desiring to be heard were given an opportunity to be heard thereon,

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF BAXTER, MINNESOTA:

1. Such improvement is necessary, cost-effective, and feasible as detailed in the feasibility report.
2. Such improvement is hereby ordered as proposed in the council resolution adopted 5th day of January, 2016.
3. Such improvement has no relationship to the comprehensive municipal plan.
4. SEH, Inc. is hereby designated as the engineer for this improvement. The engineer shall prepare plans and specifications for the making of such improvement.
5. The city council declares it official intent to reimburse itself for the costs of the improvement from the proceeds of tax exempt bonds.

Whereupon, said Resolution is hereby declared adopted on this 2nd day of February, 2016.

Darrel Olson, Mayor

ATTEST:

Kelly Steele, Assistant City Administrator/Clerk

City Seal

**CITY OF BAXTER MINNESOTA
RESOLUTION 2016-007**

**RESOLUTION ORDERING PREPARATION OF REPORT ON 2016 GOLF COURSE
DRIVE IMPROVEMENT PROJECT**

WHEREAS, it is proposed to improve Golf Course Drive from Excelsior Road to Woida Road and complete storm sewer improvements along Universal Road from Golf Course Drive to 220' west and to assess benefited property for all or a portion of the cost of the improvement, pursuant to Minnesota Statutes, Chapter 429,

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF BAXTER, MINNESOTA:

That the proposed improvement, called Improvement No. 4110, 2016 Golf Course Drive Improvement Project, be referred to Widseth, Smith and Nolting (WSN) for study and WSN is instructed to report to the council with all convenient speed advising the council in a preliminary way as to whether the proposed improvement is necessary, cost-effective, and feasible; whether it should best be made as proposed or in connection some other improvement; the estimated cost of the improvement as recommended; and a description of the methodology used to calculate individual assessments for affected parcels.

Whereupon, said Resolution is hereby declared adopted on this 2nd day of February, 2016.

Darrel Olson, Mayor

ATTEST:

Kelly Steele, Assistant City Administrator/Clerk

City Seal

**CITY OF BAXTER MINNESOTA
RESOLUTION 2016-008**

**RESOLUTION ORDERING PREPARATION OF REPORT ON EXCELSIOR ROAD,
FAIRVIEW ROAD, AND EDGEWOOD DRIVE IMPROVEMENT PROJECT**

WHEREAS, it is proposed to improve Excelsior Road from Forest Drive to TH 371, Fairview Road from 700' east of Elder Drive to Excelsior Road and Edgewood Drive from Excelsior Road to 330' north of Excelsior Road and to assess benefited property for all or a portion of the cost of the improvement, pursuant to Minnesota Statutes, Chapter 429,

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF BAXTER, MINNESOTA:

That the proposed improvement, called Improvement No. 4097, Excelsior Road, Fairview Road, and Edgewood Drive Improvements, be referred to Widseth, Smith and Nolting (WSN) for study and WSN is instructed to report to the council with all convenient speed advising the council in a preliminary way as to whether the proposed improvement is necessary, cost-effective, and feasible; whether it should best be made as proposed or in connection some other improvement; the estimated cost of the improvement as recommended; and a description of the methodology used to calculate individual assessments for affected parcels.

Whereupon, said Resolution is hereby declared adopted on this 2nd day of February, 2016.

Darrel Olson, Mayor

ATTEST:

Kelly Steele, Assistant City Administrator/Clerk

City Seal

**CITY OF BAXTER, MINNESOTA
RESOLUTION NO. 2016-009**

**RESOLUTION APPROVING CROW WING COUNTY HIGHWAY DEPARTMENT
PLANS AND SPECIFICATIONS FOR 2016 DELLWOOD DRIVE IMPROVEMENT
PROJECT**

WHEREAS, plans and specifications for Crow Wing County Highway Department Project No. SAP 018-592-003 showing proposed alignment, profiles, grades and cross-sections for the construction, reconstruction and improvement of Dellwood Drive from Novotny Road to County State Aid Highway 49 (Wise Road) within the limits of the City of Baxter as a State Aid Project have been prepared and presented to the City.

NOW, THEREFORE, BE IT RESOLVED: That said plans be in all things approved.

Dated this 2nd day of February, 2016.

Darrel Olson, Mayor

CERTIFICATION

I hereby certify that the foregoing Resolution is a true and correct copy of a resolution presented to and adopted by the City Council of Baxter, Minnesota. On the 2nd day of February, 2016, as disclosed by the records of said City in my possession.

Kelly Steele
Assistant City Administrator/Clerk

(Seal)

**CITY OF BAXTER, MINNESOTA
RESOLUTION 2016-010**

**A RESOLUTION RELATING TO PARKING RESTRICTIONS ON
DELLWOOD DRIVE FROM NOVOTNY ROAD TO COUNTY STATE AID HIGHWAY
49 (WISE ROAD), IN THE CITY OF BAXTER, MINNESOTA**

WHEREAS, THIS RESOLUTION, was passed this 2nd day of February, 2016 by the City of Baxter in Crow Wing County, Minnesota. The Municipal Corporation shall hereinafter be called the "City"; and

WHEREAS, Crow Wing County has planned the improvement of Dellwood Drive, from Novotny Road to County State Aid Highway 49 (Wise Road) in the City of Baxter, City of Brainerd and the First Assessment District, Crow Wing County, Minnesota; and

WHEREAS, the County will be expending Local Road Improvement Funds on the improvements of this Street; and

WHEREAS, this improvement provides for a bike lane on the paved shoulders and does not provide for parking on both sides of the street; and approval of the proposed construction as a Municipal State Aid Street and a town road utilizing state funds project must therefore be conditioned upon parking restrictions.

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF BAXTER, MINNESOTA:

The City shall ban the parking of motor vehicles on both sides of Dellwood Drive from Novotny Road to County State Aid Highway 49 (Wise Road) in the city limits of Baxter, Crow Wing County, Minnesota at all times and designate the six (6) foot paved shoulder as a bike lane and direct staff to install the appropriate signage with the Crow Wing County Highway Department Project No. SAP 018-592-003.

Whereupon, said resolution is hereby declared adopted on this 2nd day of February, 2016.

Darrel Olson, Mayor

ATTEST:

Kelly Steele, Assistant City Administrator/Clerk

**CITY OF BAXTER, MINNESOTA
RESOLUTION 2016-011**

**A RESOLUTION RELATING TO BIKE LANES ON INGLEWOOD DRIVE FROM
EXCELSIOR ROAD TO TRUNK HIGHWAY 210, IN THE CITY OF BAXTER,
MINNESOTA.**

WHEREAS, THIS RESOLUTION was passed this 2nd day of February 2016, by the City of Baxter in Crow Wing County, Minnesota. The Municipal Corporation shall hereinafter be called the "City"; and

WHEREAS, the City, has completed the improvement of Inglewood Drive, State Aid Route No. 107 from Excelsior Road to Trunk Highway 210 in the City of Baxter, Minnesota; and

WHEREAS, this improvement did not provide adequate width for parking on both sides of the street; and approval of the proposed construction as a Municipal State Aid Street project must therefore be conditioned upon certain parking restrictions; and

WHEREAS, the City did ban the parking of motor vehicles on both sides of Inglewood Drive from Excelsior Road to Trunk Highway 210 at all times per Municipal State Aid Street requirements.

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF BAXTER, MINNESOTA:

The City shall designate the paved shoulder as a bike lane and direct staff to install the appropriate signage on Inglewood Drive from Excelsior Road to Trunk Highway 210 in the City of Baxter, Minnesota.

Whereupon, said Resolution is hereby declared adopted on this 2nd day of February, 2016.

Darrel Olson, Mayor

ATTEST:

Kelly Steele, Assistant City Administrator/Clerk

City Seal

**CITY OF BAXTER, MINNESOTA
RESOLUTION 2016-012**

**A RESOLUTION RELATING TO BIKE LANES ON WOIDA ROAD FROM
INGLEWOOD DRIVE TO LYNWOOD DRIVE**

WHEREAS, THIS RESOLUTION was passed this 2nd day of February, 2016, by the City of Baxter in Crow Wing County, Minnesota. The Municipal Corporation shall hereinafter be called the "City",

WHEREAS, the City, has completed the improvement of Woida Road, State Aid Route No. 108 from Inglewood Drive to Lynwood Drive in the City of Baxter, Minnesota; and

WHEREAS, this improvement did not provide adequate width for parking on both sides of the street; and approval of the proposed construction as a Municipal State Aid Street project must therefore be conditioned upon certain parking restrictions; and

WHEREAS, the City did ban the parking of motor vehicles on both sides of Woida Road from Inglewood Drive to Trunk Highway 210 at all times per Municipal State Aid Street requirements.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF BAXTER, MINNESOTA:

The City shall designate the paved shoulder as a bike lane and direct staff to install the appropriate signage on Woida Road from Inglewood Drive to Lynwood Drive in the City of Baxter, Minnesota.

Whereupon, said Resolution is hereby declared adopted on this 2nd day of February, 2016.

CITY OF BAXTER, MINNESOTA

By _____
Darrel Olson, Mayor

ATTEST:

Kelly Steele, Assistant City Administrator/ Clerk

City Seal

**CITY OF BAXTER, MINNESOTA
RESOLUTION 2016-013**

**A RESOLUTION RELATING TO BIKE LANES ON DELLWOOD DRIVE FROM
NOVOTNY ROAD TO WHISPERING WOODS LANE, IN THE CITY OF BAXTER,
MINNESOTA.**

WHEREAS, THIS RESOLUTION was passed this 2nd day of February 2016, by the City of Baxter in Crow Wing County, Minnesota. The Municipal Corporation shall hereinafter be called the "City"; and

WHEREAS, the City, has completed the improvement of Dellwood Drive, State Aid Route No. 116 from Novotny Road to Whispering Woods Lane in the City of Baxter, Minnesota; and

WHEREAS, this improvement does not provide adequate width for parking on both sides of the street; and approval of the proposed construction as a Municipal State Aid Street project must therefore be conditioned upon certain parking restrictions; and

WHEREAS, the City did ban the parking of motor vehicles on both sides of Dellwood Drive from Novotny Road to Whispering Woods Lane at all times as per Municipal State Aid Street requirements.

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF BAXTER, MINNESOTA:

The City shall designate the paved shoulder as a bike lane and direct staff to install the appropriate signage on Dellwood Drive from Novotny Road to Whispering Woods Lane in the City of Baxter, Minnesota.

Whereupon, said Resolution is hereby declared adopted on this 2nd day of February, 2016.

Darrel Olson, Mayor

ATTEST:

Kelly Steele, Assistant City Administrator/Clerk

City Seal

**CITY OF BAXTER, MINNESOTA
RESOLUTION 2016-014**

**A RESOLUTION RELATING TO BIKE LANES ON NOVOTNY ROAD FROM
TRUNK HIGHWAY 371 TO DELLWOOD DRIVE, IN THE CITY OF BAXTER,
MINNESOTA.**

WHEREAS, THIS RESOLUTION was passed this 2nd day of February 2016, by the City of Baxter in Crow Wing County, Minnesota. The Municipal Corporation shall hereinafter be called the "City"; and

WHEREAS, the City, has completed the improvement of Novotny Road, State Aid Route No. 114 from Trunk Highway 371 to Dellwood Drive in the City of Baxter, Minnesota; and

WHEREAS, this improvement does not provide adequate width for parking on both sides of the street; and approval of the proposed construction as a Municipal State Aid Street project must therefore be conditioned upon certain parking restrictions; and

WHEREAS, the City did ban the parking of motor vehicles on both sides of Novotny Road from Trunk Highway 371 to Dellwood Drive at all times per Municipal State Aid Street requirements.

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF BAXTER, MINNESOTA:

The City shall designate the paved shoulder as a bike lane and direct staff to install the appropriate signage on Novonty Road from Trunk Highway 371 to Dellwood Drive in the City of Baxter, Minnesota.

Whereupon, said Resolution is hereby declared adopted on this 2nd day of February, 2016.

Darrel Olson, Mayor

ATTEST:

Kelly Steele, Assistant City Administrator/Clerk

City Seal

REQUEST FOR COUNCIL ACTION

02/02/2016

Department Origination: Administration **Agenda Section:** Consent Agenda

Agenda Item: Agreement Extending the Annexation Agreement, City of Brainerd and City of Baxter, 2000

Approval Required: Simple Majority of Vote of the Council

BACKGROUND

In early 2000, both the City of Brainerd and City of Baxter petitioned for the annexation of lands to their respective cities. The Director of Minnesota Planning directed the cities to meet to avoid conflicting petitions and to coordinate planning between the two cities prior to the Minnesota Planning Office approving annexation petitions. The cities conducted a series of meetings which resulted in the Annexation Agreement between the cities establishing the "Brainerd Potential Future Territory and Baxter Potential Future Territory", which is the land to be annexed into each city in the future, resulting in the future common boundary between the cities of Brainerd and Baxter.

The stated purpose of the Annexation Agreement is *"to provide certainty to each city, affected landowners and others concerning which property is appropriate to be annexed into each city so that public services can be provided cost-effectively..."* The Annexation Agreement further states *"that for each city to appropriately plan for the delivery of necessary public services to the respective potential future territory assigned to each city and for property owners and others to plan appropriately, a reasonable and appropriate term of this Agreement is ten (10) years..."*

Due to the large areas identified in the Annexation Agreement as "Brainerd Potential Future Territory" and "Baxter Potential Future Territory", neither city has fully implemented the agreement in terms of completing plans for the delivery of municipal public services and/or annexing their entire respective future territory.

FINANCIAL IMPLICATIONS

There are no financial implications associated with the act of extending this agreement; however, the effect of the agreement is expected to have positive long term financial implications resulting from the planned orderly and timely expansion of the cities, allowing for the efficient extension of municipal services into the identified future territories.

STAFF RECOMMENDATION

Staff recommends the approval of this Agreement, extending the Annexation Agreement, City of Brainerd and City of Baxter, 2000 as it continues to be in the best interest of all parties and is not expected to be fully implemented for many years.

COUNCIL ACTION REQUESTED

A motion to approve the Agreement extending the Annexation Agreement, City of Brainerd and City of Baxter, 2000 is requested.

Attachments:

1. Agreement extending the Annexation Agreement
2. Enhanced Map of Potential Future Territories and common boundary established in the Annexation Agreement, City of Brainerd and City of Baxter, 2000
3. Annexation Agreement, City of Brainerd and City of Baxter, 2000

AGREEMENT

This Agreement entered into _____, 2016 is by and between the cities of Baxter and Brainerd hereinafter referred to as "Baxter", "Brainerd" and collectively "Cities".

WHEREAS, the Cities entered into an Annexation Agreement dated July 14, 2000; and

WHEREAS, the purpose of the Annexation Agreement to provide certainty to each city, affected landowners and others concerning which property is appropriate to be annexed into each city so that public services can be provided cost-effectively continues to be in the best interest of all parties; and

WHEREAS, the Cities have yet to fully implement the Annexation Agreement as the remaining unincorporated land within each city's designated "Potential Future Territory" will accommodate the growth of each city for many years; and

WHEREAS, the Cities have continued to abide by this Annexation Agreement; and

WHEREAS, said Annexation Agreement had a 10 year term; and

WHEREAS, the Cities would like to renew said Annexation Agreement.

NOW, THEREFORE, THE CITIES AGREE AS FOLLOWS:

The term of said Annexation Agreement shall be extended to 10 years from the date this Agreement is executed by both Cities.

CITY OF BRAINERD

CITY OF BAXTER

Mayor

Mayor

ATTEST:

ATTEST:

Its City Administrator

Its City Administrator

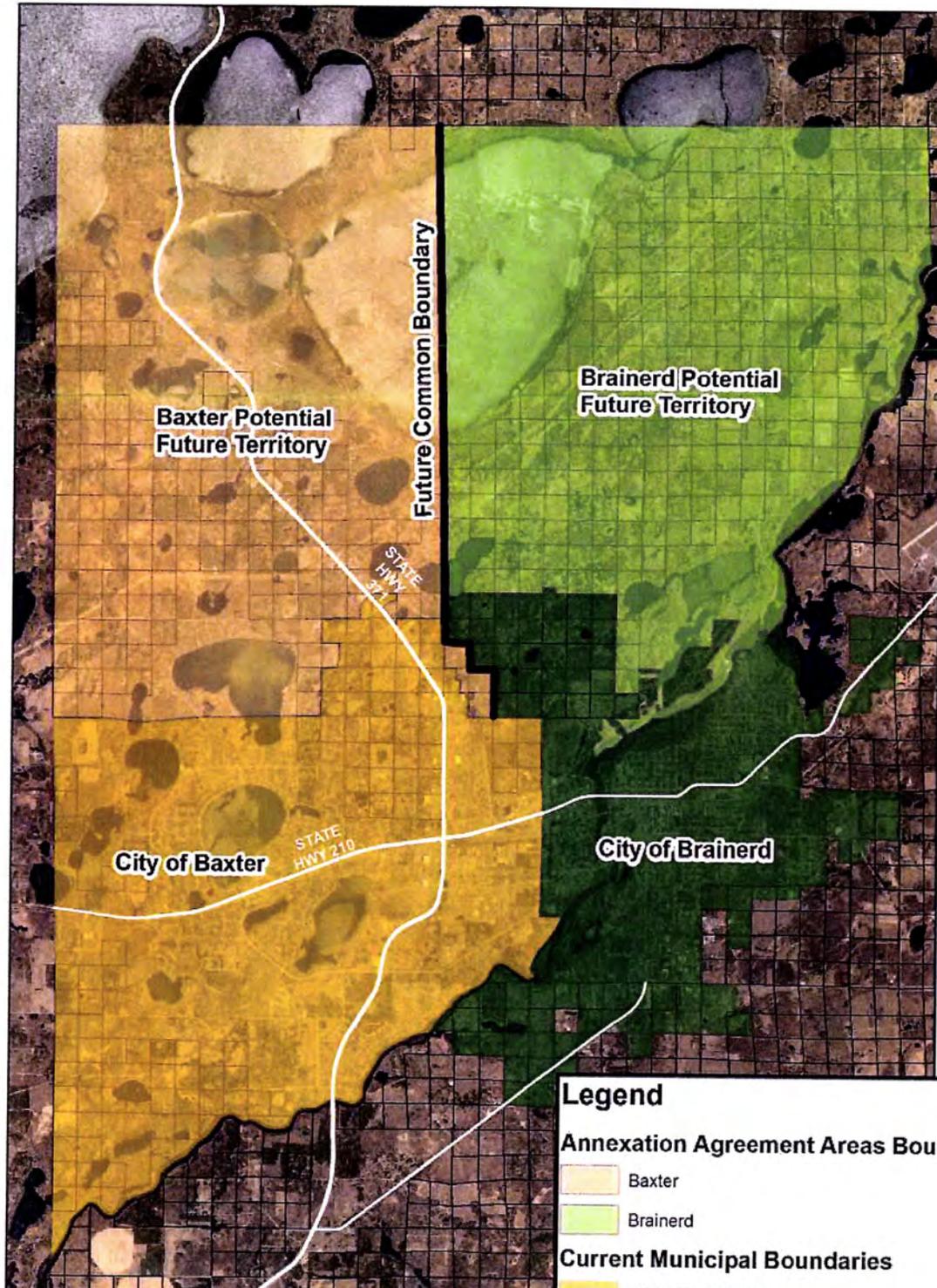
APPROVED AS TO FORM:

APPROVED AS TO FORM:

City Attorney

City Attorney

Annexation Agreement Area Boundary



Legend

Annexation Agreement Areas Boundary

- Baxter
- Brainerd

Current Municipal Boundaries

- CITY OF BAXTER
- CITY OF BRAINERD

ANNEXATION AGREEMENT

CITY OF BRAINERD AND CITY OF BAXTER

THIS is an Annexation agreement ("Agreement") entered into this 14th day of July, 2000, by and between the City of Baxter, a Minnesota statutory city ("Baxter") and the City of Brainerd, a Minnesota home rule charter city ("Brainerd"), (collectively the "Cities") for the purpose of resolving a dispute concerning the annexation of certain territory contiguous to the Cities.

RECITALS

1. It is important to the health, safety and welfare of the Cities and the surrounding region that Baxter and Brainerd work cooperatively on planning, development and environmental protection and enhancement issues and that necessary governmental services be provided to citizens and taxpayers as cost-effectively as possible.
2. A key element of this necessary cooperative work is understanding the urban and suburban growth pressures and opportunities that each city and the region are experiencing and determining which City can most appropriately and cost-effectively deliver public services to areas experiencing these pressures and, consequently, in to which city various areas should be annexed.
3. Brainerd adopted Resolution No. 25:00 under Minnesota Statutes Section 414.031 requesting annexation of approximately 1835 acres of territory experiencing urban and suburban growth pressures on May 1, 2000, which was filed with the Minnesota Planning Municipal Boundary Adjustments Office on May 4, 2000, as Docket A-6285 (the "Brainerd Resolution").
4. Baxter adopted a resolution under Minnesota Statutes Section 414.031 requesting annexation of approximately 560 acres of property experiencing urban and suburban growth pressures on April 17, 2000, which was filed with Minnesota Planning on April 17, 2000, as Docket No. 6279 (the "Baxter Resolution").
5. Certain territory is included both within the Baxter Resolution and the Brainerd Resolution, and consequently such property cannot be annexed into both cities.
6. The Cities have discussed and negotiated in good faith the issues raised by the Brainerd Resolution, the Baxter Resolution, and other areas contiguous to both cities which are experiencing urban and suburban growth pressures, and the Cities desire to enter into this Agreement to provide certainty to each city, affected landowners, and others concerning which property is appropriate to be

annexed into each city so that public services can be provided cost-effectively and so that the health, safety and general welfare of the Cities and the region can be promoted and protected.

NOW, THEREFORE, in consideration of the mutual promises and consideration contained in this Agreement, the sufficiency of which each party acknowledges, the Cities agree as follows:

1. Baxter agrees to withdraw the Baxter Resolution or amend it consistent with this Agreement, and Brainerd agrees to withdraw the Brainerd Resolution or amend it consistent with this Agreement by formally notifying Minnesota Planning in writing of such withdrawal or amendment no later than five (5) days from the date of this Agreement. Baxter and Brainerd will each provide a copy to the other city of the notice of withdrawal or amendment sent to Minnesota Planning.
2. The Cities agree that the description and map of the Brainerd Potential Future Territory and the Baxter Potential Future Territory set forth in Exhibit A, which is attached hereto and made a part of this Agreement, shall provide the basis for this Agreement.
3. Baxter agrees that during the term of this Agreement, it will not (i) oppose or otherwise intervene in any effort by Brainerd or any other person to annex territory in the Brainerd Potential Future Territory into Brainerd; or (ii) initiate or in any way support any effort to annex property in the Brainerd Potential Future Territory into Baxter; or (iii) initiate or in any way support any effort to provide municipal services in the Brainerd Future Territory. Brainerd agrees that during the term of this Agreement, it will not (i) oppose or otherwise intervene in any effort by Baxter or any other person to annex territory in the Baxter Potential Future Territory into Baxter; or (ii) initiate or in any way support any effort to annex property in the Baxter Potential Future Territory into Brainerd; or (iii) initiate or in any way support any effort to provide municipal services in the Baxter Potential Future Territory. Brainerd specifically agrees that it will not oppose or otherwise intervene in the annexation of the territory annexed into Baxter by its ordinances 71.8 (Minnesota Planning Docket A-6300); 71.9 as amended by 71.11 (Minnesota Planning Docket A-6302); 71.10 (Minnesota Planning Docket A-6303), and the territory for which a petition has been filed under Minnesota Statutes Section 414.031, Subd. 5 (Minnesota Planning Docket A-6278) with the exception that all land east of Danielson Road shall be removed from said Petition. Baxter specifically agrees that it will not oppose or otherwise intervene in the annexation of the territory for which a petition has been filed under Minnesota Statutes Section 414.031, Subd. 5 (Minnesota Planning Docket A-6285), with the

exception that all land in the Baxter Potential Future Territory shall be removed from said petition.

- 4. The Cities understand and agree that each City may pursue annexation of the potential future territory assigned to it under this Agreement by all appropriate and lawful means. The Cities agree to use best efforts to explore means by which the Cities can most effectively annex the future potential future territory assigned to each City under this Agreement, including the entering into orderly annexation agreements under Minnesota Statutes Section 414.0325, and to take reasonable and lawful actions to implement the annexation of such territory into each respective City.
- 5. The Cities agree that for each city to appropriately plan for the delivery of necessary public services to the respective potential future territory assigned to each City and for property owners and others to plan appropriately, a reasonable and appropriate term of this Agreement is ten (10) years from the date of this Agreement. The Cities may mutually agree to amend this Agreement in writing before its term expires; and upon expiration they will work together in good faith to determine to what extent, if any, this Agreement should be renewed or amended.
- 6. Each City warrants to the other that it has the authority to enter into this Agreement and to carry out its terms. The Cities agree that each City is entitled to seek equitable relief to enforce the terms of this Agreement, including injunctive relief and specific performance, provided that such remedies shall not be exclusive, but shall be in addition to all others available at law or in equity.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives effective as of the date first written above.

CITY OF BAXTER

By Larry Muehlhausen
Its Mayor

ATTEST:

Larry R. Korns
Its City Administrator

APPROVED AS TO FORM;

John W. Turn
City Attorney

CITY OF BRAINERD

By James E. Waller
Its Mayor

ATTEST:

David [Signature]
Its City Administrator

APPROVED AS TO FORM.

Thomas [Signature]
City Attorney

EXHIBIT A

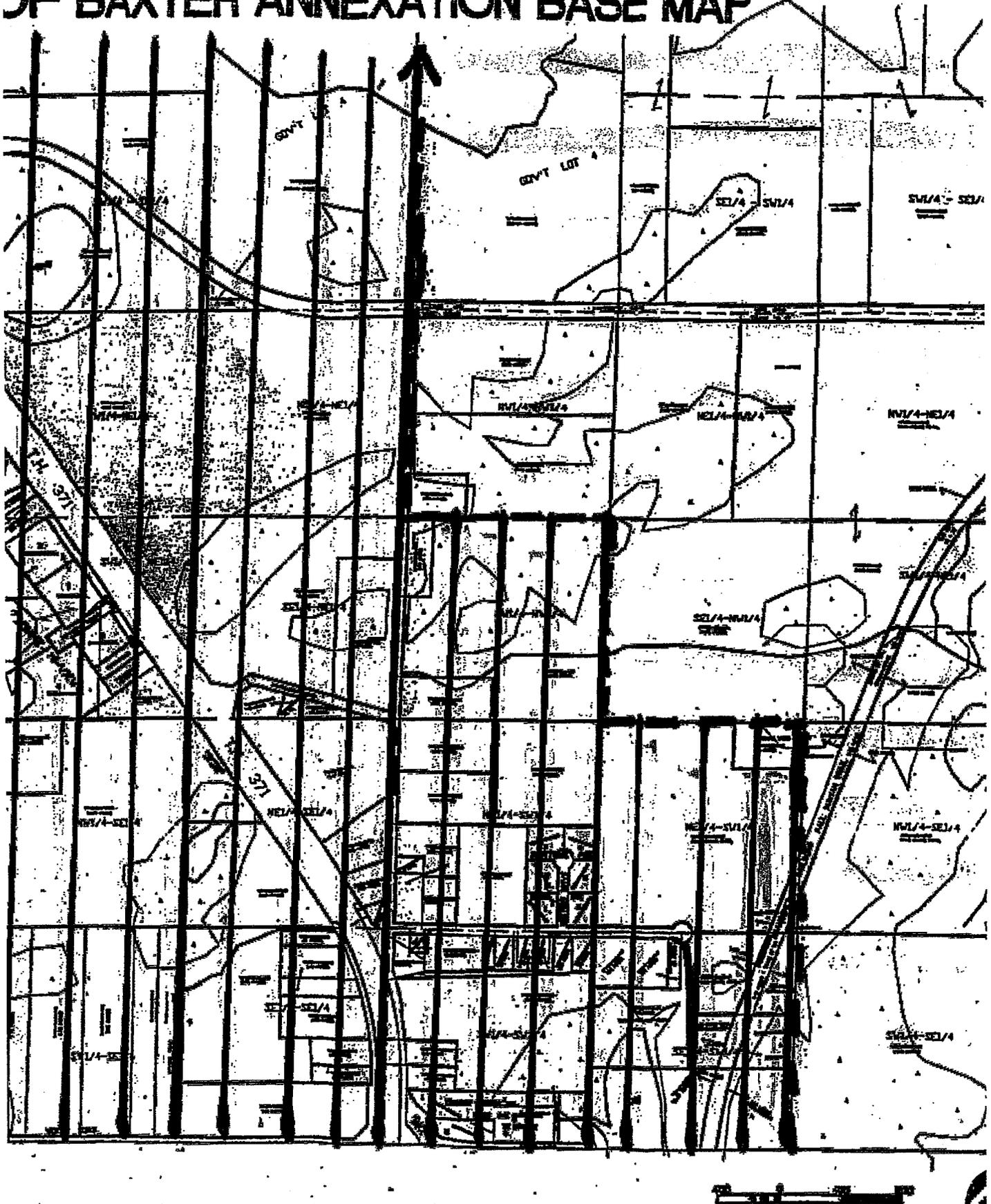
CITY OF BRAINERD AND CITY OF BAXTER ANNEXATION AGREEMENT
POTENTIAL FUTURE TERRITORY FOR BRAINERD AND BAXTER

For the purposes of the Annexation Agreement entered into by the cities of Brainerd and Baxter, the following terms have the meaning given and are associated with territory as described below:

BRAINERD POTENTIAL FUTURE TERRITORY: All that territory in Unorganized Territory in the County of Crow Wing that is not within the boundaries or limits of any city or township that is either North or East of a line, the Southerly point of which line begins at the Southwest corner of the Southwest Quarter of the Southeast Quarter of Section 32, Township 134 North, Range 28 West of the 5th P.M., then goes North along the quarter section lines to the Northwest corner of the Northwest Quarter of the Southeast Quarter of Section 32, Township 134 North, Range 28 West of the 5th P.M., then goes West along the quarter section line to the Northwest corner of the Northeast Quarter of the Southwest Quarter of Section 32, Township 134 North, Range 28 West of the 5th P.M., then goes North along the quarter section line to the Northwest corner of the Southeast Quarter of the Northwest Quarter of Section 32, Township 134 North, Range 28 West of the 5th P.M., then goes West along the quarter section line to the Southwest corner of the Northwest Quarter of the Northwest Quarter of Section 32, Township 134 North, Range 28 West of the 5th P.M., then goes North along the section lines and ends at the North line of the Unorganized Territory. The Brainerd Potential Future Territory is labeled with horizontal yellow lines on the attached map which is part of this Exhibit A.

BAXTER POTENTIAL FUTURE TERRITORY: All that territory in Unorganized Territory in the County of Crow Wing that is not within the boundaries or limits of any city or township that is either South or West of a line, the Southerly point of which line begins at the Southwest corner of the Southwest Quarter of the Southeast Quarter of Section 32, Township 134 North, Range 28 West of the 5th P.M., then goes North along the quarter section line to the Northwest corner of the Northwest Quarter of the Southeast Quarter of Section 32, Township 134 North, Range 28 West of the 5th P.M., then goes West along the quarter section line to the Northwest corner of the Northeast Quarter of the Southwest Quarter of Section 32, Township 134 North, Range 28 West of the 5th P.M., then goes North along the quarter section line to the Northwest corner of the Southeast Quarter of the Northwest Quarter of Section 32, Township 134 North, Range 28 West of the 5th P.M., then goes West along the quarter section line to the Southwest corner of the Northwest Quarter of the Northwest Quarter of Section 32, Township 134 North, Range 28 West of the 5th P.M., then goes North along the section lines and ends at the North line of the Unorganized Territory. The Baxter Potential Future Territory is labeled with vertical green lines on the attached map which is part of this Exhibit A.

OF BAXTER ANNEXATION BASE MAP



**CITY OF BAXTER, MINNESOTA
ORDINANCE 2016-002**

SUMMARY OF ORDINANCE NO. 2016-001

**AN ORDINANCE AMENDING THE TEXT OF TITLE 5, CHAPTER 6 (TOBACCO AND
TOBACCO RELATED DEVICES AND PRODUCTS) OF THE BAXTER CITY CODE**

This ordinance amends the text of the Tobacco and Tobacco Related Devices and Products Regulations (Title 5, Chapter 6 of the City Code). The ordinance consists of amendments to definitions and licensing.

A printed copy of the entire amended ordinance is available for inspection by any person at City Hall during the City Clerk's regular office hours.

Whereupon, said Ordinance is hereby declared adopted on this 2nd day of February, 2016.

Darrel Olson, Mayor

ATTEST:

Kelly Steele, Assistant City Administrator/Clerk

City Seal

ORDINANCE NO. 2016-007

AN ORDINANCE AMENDING ORDINANCE NO. 2016-003 REGULATING THE USE OF ELECTRONIC DELIVERY DEVICES WITHIN THE CITY OF BAXTER MINNESOTA

THE CITY COUNCIL OF THE CITY OF BAXTER, MINNESOTA DOES ORDAIN:

The text of Ordinance No. 2016-03 Regulating the use of Electronic Delivery Devices within the City of Baxter Minnesota of the Baxter City Code is hereby amended by deleting the ~~stricken~~ material and adding the underlined material as follows:

SECTION 1. PURPOSE AND INTENT

Unregulated electronic delivery devices, commonly referred to as electronic cigarettes, or e-cigarettes, closely resemble and purposefully mimic the act of smoking by having users inhale vaporized liquid nicotine or other substances created by heat through an electronic ignition system. After testing a number of e-cigarettes from two leading manufacturers, the Food and Drug Administration (FDA) determined that various samples tested contained not only nicotine but also detectable levels of known carcinogens and toxic chemicals, including tobacco-specific nitrosamines and diethylene glycol, a toxic chemical used in antifreeze. The FDA's testing also suggested that quality control processes used to manufacture these products are inconsistent or non-existent. ("Summary of results: Laboratory analysis of electronic cigarettes conducted by FDA, "Food and Drug Administration (FDA), July 22, 2009; <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm173146.htm>)

Electronic delivery devices produce a vapor of undetermined and potentially harmful substances, which may appear similar to smoke emitted by traditional tobacco products. Their use in workplaces and public places where smoking of traditional tobacco products is prohibited creates concern and confusion and leads to difficulties in enforcing the smoking prohibitions.

SECTION 2. DEFINITIONS

Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. For the purpose of this Ordinance, the following definitions shall apply:

Electronic Delivery Device. Any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of aerosol or vapor from the product. The term includes any such devices, whether they are manufactured, distributed, marketed or sold as e-cigarettes, e-cigars, e-pipes, or under any other product name or descriptor.

Indoor Area. All space between a floor and a ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent. A 0.011 gauge window screen with an 18 by 16 mesh count is not considered a wall.

Use. The inhaling or exhaling of aerosol or vapor from any electronic delivery device. Use shall also mean being in possession of an electronic delivery device that is turned on or otherwise activated.

Retail Tobacco Shop. Tobacco Products Shop shall mean any licensed retail establishment that derives at least 90 percent of its revenue from the sale of tobacco or electronic delivery devices and where no person under the age of eighteen is present, or permitted to enter, at any time unless accompanied by a parent or legal guardian.

SECTION 3. PROHIBITION

The use of any electronic delivery device is prohibited anywhere smoking is prohibited by the Minnesota Clean Indoor Act, as it may be amended from time to time.

SECTION 4. OTHER APPLICABLE LAWS

This Ordinance is intended to complement the Minnesota Clean Indoor Air Act, Minnesota Statutes sections 144.411 to 144.417, as it may be amended from time to time. Nothing in this Ordinance authorizes smoking or the use of an electronic delivery device in any location that is regulated by other applicable laws or regulations.

SECTION 5. SAMPLING

Smoking is prohibited within the indoor area of any retail establishment with a tobacco retailer license. This prohibition does not apply to the use of electronic delivery devices for the purposes of sampling in a tobacco products shop as defined in section 2.

SECTION 6. VIOLATION AND PENALTIES

Subd. 1. Use Where Prohibited. It is a violation of this Ordinance for any person to use an electronic delivery device in an area where prohibited by this Ordinance, or to use an electronic delivery device in an area where prohibited by a private policy established by the proprietor or other person in charge of the area.

Subd. 2. Proprietors. It is a violation of this Ordinance for the proprietor, person, or entity that owns, leases, manages, operates, or otherwise controls the use of an area in which the use of an electronic delivery device is prohibited under this Ordinance to knowingly fail to comply with the provisions of this Ordinance.

Subd. 3. Penalties. A person who violates any provision of this Ordinance is guilty of a petty misdemeanor. Each day of violation constitutes a separate offense.

SECTION 7. EFFECTIVE DATE

This ordinance becomes effective on the date of its publication, or upon the publication of a summary of the ordinance as provided by Minn. Stat. § 412.191, subd. 4, as it may be amended from time to time, which meets the requirements of Minn. Stat. § 331A.01, subd. 10, as it may be amended from time to time.

Darrel Olson, Mayor

ATTEST:

Kelly Steele, Assistant City Administrator

City Seal

Published in the Brainerd Daily Dispatch on _____, 2016

**CITY OF BAXTER, MINNESOTA
ORDINANCE 2016-008**

SUMMARY OF ORDINANCE NO. 2016-007

**AN ORDINANCE REGULATING THE USE OF ELECTRONIC DELIVERY DEVICES WITHIN
THE CITY OF BAXTER**

This ordinance regulates the use of electronic delivery devices within the City of Baxter Minnesota. The ordinance prohibits the use of electronic delivery devices in all public spaces the Minnesota Clean Indoor Air Act covers with a specific description allowing e-cigarette sampling in tobacco product shop and allowing minors to enter the tobacco product show when accompanied by a parent or legal guardian.

A printed copy of the entire amended ordinance is available for inspection by any person at City Hall during the City Clerk's regular office hours.

Whereupon, said Ordinance is hereby declared adopted on this 2nd day of February, 2016.

Darrel Olson, Mayor

ATTEST:

Kelly Steele, Assistant City Administrator/Clerk

City Seal

REQUEST FOR COUNCIL ACTION

02.02.2016

Department Origination:
Public Works

Agenda Section:
Consent

Agenda Item: Excelsior Road, Fairview Road and Edgewood Drive Improvements
Feasibility Study WSN Contract Amendment

Approval Required: Simple Majority Vote of the Council

BACKGROUND

In advance of the January 6, 2016 Utilities Commission meeting, WSN prepared a draft Feasibility Study for the Excelsior Road, Fairview Road and Edgewood Drive project. Staff notes this project is extremely complex due to the consideration the existing development pattern, potential development projects and how both impact the roadway improvements. With the initial draft feasibility study, staff and WSN had the understanding that there would be a change in building footprint of Cub Foods.

However, staff recently learned from the owner of Cub Foods that they do not wish to modify the Cub Food building at this time. Staff also learned that they support the project moving forward with the new roundabout and the reconstruction of Edgewood Drive between the Cub Foods building and the strip mall building to the south.

To reconstruct Edgewood Drive between the buildings impacts the existing development layout. Staff finds that additional analysis and plans are needed to show how the private improvements (parking lots, drive aisles, access points, etc.) should be re-constructed. Because there are many existing improvements in this area, it is important to propose a plan that not only considers traffic, but also considers a functional re-design of the private property on both sides of Edgewood Drive.

FINANCIAL IMPLICATIONS

WSN finds that to provide the additional analysis requires a revision to the scope of the feasibility study (see attached proposal). Specifically, WSN finds that \$4,200 is needed to complete the following additional tasks:

- Realign Edgewood Drive to the south farther away from the existing Cub Foods building.
- Layout potential strip mall parking (57 total spaces) and entrance.
- Layout new Cub Foods entrance and drive aisle (shifted to east to match up with strip mall entrance).

STAFF RECOMMENDATION

Staff recommends approving the contract amendment and directing WSN to move forward with the additional analysis in accordance with the following schedule:

- Friday Jan 22nd - Draft layout to City staff
- Monday Jan 25th - City staff comments complete
- Wednesday Jan 27th - Draft study complete
- Jan 28th - Feb 5th - Staff and financial review
- Feb 8th - Feb 10th - Final modifications
- Feb 16th - Council Workshop and Meeting

COUNCIL ACTION REQUESTED

Motion to approve the WSN contract amendment in the not to exceed amount of \$4,200.



Baxter/Brainerd
7804 Industrial Park Road
PO Box 2720
Baxter, MN 56425-2720

218.829.5117
218.829.2517
Brainerd@wsn.us.com
WidsethSmithNolting.com

January 26, 2016

Mayor and City Council
City of Baxter
P.O. Box 2626
Baxter, MN 56425

**RE: Agreement for Professional Engineering Services
Excelsior Road, Fairview Road and Edgewood Drive Feasibility Study Amendment
Baxter, MN**

Dear Mayor and City Council:

We are currently under contract with the City of Baxter for preliminary engineering services related to improvements to Excelsior Road, Fairview Road and Edgewood Drive. Our existing agreement for the "Not To Exceed" amount of \$12,500 was dated November 23, 2015, and was approved and signed by the City on December 15, 2015.

Recent changes in project scope have resulted in requests for additional services. Please consider this proposal as an amendment to our original proposal, adding the following tasks:

- Realign Edgewood Drive to the south Center farther away from the existing Cub Foods building.
- Layout potential strip mall parking (57 total spaces required) and entrance.
- Layout new Cub Foods entrance and drive aisle (shifted to the east to match up with strip mall entrance).
- Update the report to reflect the requested revisions

WSN proposes to perform the services described above on an hourly basis in accordance with the attached fee schedule for the "Not To Exceed" amount of \$4,200. The total agreement will then be increased to a "Not To Exceed" amount of \$16,700.

We propose to complete the work in accordance with the following schedule:

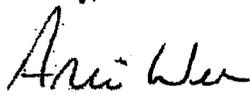
- Friday Jan 22nd - Draft layout to City staff
- Monday Jan 25th - City staff comments complete
- Wednesday Jan 27th - Draft study complete
- Jan 28th - Feb 5th - Staff and financial review
- Feb 8th - Feb 10th - Final modifications
- Feb 16th - Council Workshop and Meeting

Excelsior Road, Fairview Road and Edgewood Drive Improvements Feasibility Study Amendment
January 28, 2016
Page 2

We realize this is an important project to the City and welcome the opportunity to sit down with you and your staff to go over this proposal and review the approach and work tasks we have listed. If necessary, we will revise the proposal to better conform to the needs of the City for this project.

We thank you for giving us the opportunity to submit this proposal and look forward to working with City staff to make this proposed project a reality.

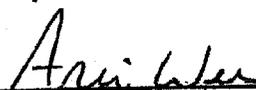
Sincerely,



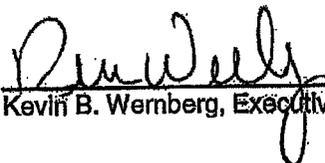
Aric Welch, P.E.



Proposed by Widseth Smith Nolting



Aric Welch, Vice President



Kevin B. Wernberg, Executive Vice President

Approved as to form and content by the Baxter City Attorney

J. Brad Person

Date

Accepted by the City of Baxter: The above proposal and previously submitted General Provisions of Professional Services Agreement are satisfactory and WSN is authorized to do the work as specified. Payment will be made monthly in accordance with the terms on the fee schedule.

Date

Date

WIDSETH SMITH NOLTING



2016 FEE SCHEDULE

CLASSIFICATION	HOURLY RATE
Engineer/Architect/Surveyor/Scientist/Wetland Specialist/Crop Planner	
Level I	\$ 92.00
Level II	\$110.00
Level III	\$135.00
Level IV	\$145.00
Level V	\$150.00
Technician	
Level I	\$ 60.00
Level II	\$ 74.00
Level III	\$ 90.00
Level IV	\$107.00
Level V	\$112.00
Computer Systems Specialist	\$120.00
Senior Funding Specialist	\$105.00
Marketing Specialist	\$ 95.00
Funding Specialist	\$ 75.00
Administrative Assistant	\$ 53.00

OTHER EXPENSES	RATE
Mileage (Federal Standard Rate) <i>subject to change</i>	\$0.56/mile
Meals/Lodging	Cost
Stakes & Expendable Materials	Cost
Wash Water Sampler	\$40.00/Day
ISOC Flow Recorder	\$60.00/Day
Photokinzation Detection Meter	\$80.00/Day
Explosimeter	\$50.00/Day
Product Recovery Equipment	\$35.00/Day
Survey Grade GPS (Global Positioning System)	\$75.00/Hour
Mapping GPS (Global Positioning System)	\$150.00/Day
Soil Drilling Rig	\$35.00/Hour
Groundwater Sampling Equipment	\$75.00/Day
Subcontractors	Cost Plus 10%

Reproduction Costs	RATE
Black & White Copies: 8 1/2 x 11	\$0.10
Black & White Copies: 11 x 17	\$1.50
Black & White Copies: 24 x 36	\$3.00
Color Copies: 8 1/2 x 11	\$2.00
Color Copies: 11 x 17	\$4.00
Color Copies: 24 x 36	\$12.00
Color Prints: 42 x 49	\$22.00

All Accounts due and payable within 30 days of billing. A finance charge is computed on a periodic rate of 1% per month which is an annual percentage rate of 12% on any previous balance not paid within 30 days.

These rates are effective for only the year indicated and are subject to yearly adjustments which reflect equitable changes in the various components.

General Provisions of Professional Services Agreement

These General Provisions are intended to be used in conjunction with a letter-type Agreement or a Request for Services between Widseth Smith Nolting, a Minnesota Corporation, hereinafter referred to as WSN, and a CLIENT, wherein the CLIENT engages WSN to provide certain Architectural, and/or Engineering services on a Project.

As used herein, the term "this Agreement" refers to (1) the WSN Proposal Letter which becomes the Letter Agreement upon its acceptance by the Client, (2) these General Provisions and (3) any attached Exhibits, as if they were part of one and the same document. With respect to the order of precedence, any attached Exhibits shall govern over these General Provisions, and the Letter Agreement shall govern over any attached Exhibits and these General Provisions. These documents supersede all prior communications and constitute the entire Agreement between the parties. Amendments to this Agreement must be in writing and signed by both CLIENT and WSN.

ARTICLE 1. PERIOD OF SERVICE

The term of this Agreement for the performance of services hereunder shall be as set forth in the Letter Agreement. In this regard, any lump sum or estimated maximum payment amounts set forth in the Letter Agreement have been established in anticipation of an orderly and continuous progress of the Project in accordance with the schedule set forth in the Letter Agreement or any Exhibits attached thereto. WSN shall be entitled to an equitable adjustment to its fee should there be an interruption of services, or amendment to the schedule.

ARTICLE 2. SCOPE OF SERVICES

The scope of services covered by this Agreement shall be as set forth in the Letter Agreement or a Request for Services. Such scope of services shall be adequately described in order that both the CLIENT and WSN have an understanding of the expected work to be performed.

If WSN is of the opinion that any work they have been directed to perform is beyond the Scope of this Agreement, or that the level of effort required significantly exceeds that estimated due to changed conditions and thereby constitutes extra work, they shall notify the CLIENT of that fact. Extra work, additional compensation for same, and extension of time for completion shall be covered by a revision to the Letter Agreement or Request for Services and entered into by both parties.

ARTICLE 3. COMPENSATION TO WSN

A. Compensation to WSN for services described in this Agreement shall be on a Lump Sum basis, Percentage of Construction, and/or Hourly Rate basis as designated in the Letter Agreement and as hereinafter described.

1. A Lump Sum method of payment for WSN's services shall apply to all or parts of a work scope where WSN's tasks can be readily defined and/or where the level of effort required to accomplish such tasks can be estimated with a reasonable degree of accuracy. The CLIENT shall make monthly payments to WSN within 30 days of date of invoice based on an estimated percentage of completion of WSN's services.
2. A Percentage of Construction or an Hourly Rate method of payment of WSN's services shall apply to all or parts of a work scope where WSN's tasks cannot be readily defined and/or where the level of effort required to accomplish such tasks cannot be estimated with any reasonable degree of accuracy. Under an Hourly Rate method of payment, WSN shall be paid for the actual hours worked on the Project by WSN technical personnel times an hourly billing rate established for each employee. Hourly billing rates shall include compensation for all salary costs, payroll burden, general, and administrative overhead and professional fee. In a Percentage of Construction method of payment, final compensation will be based on actual bids if the project is bid and WSN's estimate to the CLIENT if the project is not bid. A rate schedule shall be furnished by WSN to CLIENT upon which to base periodic payments to WSN.
3. In addition to the foregoing, WSN shall be reimbursed for items and services as set forth in the Letter Agreement or Fee Schedule and the following Direct Expenses when incurred in the performance of the work:
 - (a) Travel and subsistence.
 - (b) Specialized computer services or programs.
 - (c) Outside professional and technical services with cost defined as the amount billed WSN.
 - (d) Identifiable reproduction and reprographic costs.
 - (e) Other expenses for items such as permit application fees, license fees, or other additional items and services whether or not specifically identified in the Letter Agreement or Fee Schedule.
4. The CLIENT shall make monthly payments to WSN within 30 days of date of invoice based on computations made in accordance with the above charges for services provided and expenses incurred to date, accompanied by supporting evidence as available.

B. The CLIENT will pay the balance stated on the invoice unless CLIENT notifies WSN in writing of the particular item that is alleged to be incorrect within 15 days from the date of invoice, in which case, only the disputed item will remain undue until resolved by the parties. All accounts unpaid after 30 days from the date of original invoice shall be subject to a service charge of 1% per month, or the maximum amount authorized by law, whichever is less. WSN shall be entitled to recover all reasonable costs and disbursements, including reasonable attorneys fees, incurred in connection with collecting amount owed by CLIENT. In addition, WSN may, after giving seven days written notice to the CLIENT, suspend services and withhold deliverables under this Agreement until WSN has been paid in full for all amounts then due for services, expenses and charges. CLIENT agrees that WSN shall not be responsible for any claim for delay or other consequential damages arising from suspension of services hereunder. Upon payment in full by Client and WSN's resumption of services, the time for performance of WSN's services shall be equitably adjusted to account for the period of suspension and other reasonable time necessary to resume performance.



ARTICLE 4. ABANDONMENT, CHANGE OF PLAN AND TERMINATION

Either Party has the right to terminate this Agreement upon seven days written notice. In addition, the CLIENT may at any time, reduce the scope of this Agreement. Such reduction in scope shall be set forth in a written notice from the CLIENT to WSN. In the event of unresolved dispute over change in scope or changed conditions, this Agreement may also be terminated upon seven days written notice as provided above.

In the event of termination, and upon payment in full for all work performed and expenses incurred to the date of termination, documents that are identified as deliverables under the Letter Agreement whether finished or unfinished shall be made available by WSN to the CLIENT pursuant to Article 5, and there shall be no further payment obligation of the CLIENT to WSN under this Agreement except for payment of an amount for WSN's anticipated profit on the value of the services not performed by WSN and computed in accordance with the provisions of Article 3 and the Letter Agreement.

In the event of a reduction in scope of the Project work, WSN shall be paid for the work performed and expenses incurred on the Project work thus reduced and for any completed and abandoned work, for which payment has not been made, computed in accordance with the provisions of Article 3 and the Letter Agreement.

ARTICLE 5. DISPOSITION OF PLANS, REPORTS AND OTHER DATA

All reports, plans, specifications, field data and notes and other documents, including all documents on electronic media, prepared by WSN or its consultants are Instruments of Service and shall remain the property of WSN or its consultants, respectively. WSN and its subconsultants retain all common law, statutory and other reserved rights, including, without limitation, copyright. WSN and its subconsultants maintain the right to determine if production will be made, and allowable format for production, of any electronic media or data to CLIENT or any third-party. Upon payment in full of monies due pursuant to the Agreement, WSN shall make hard copies available to the CLIENT, of all documents that are identified as deliverables under the Letter Agreement. If the documents have not been finished (including, but not limited to, completion of final quality control), then WSN shall have no liability for any claims expenses or damages that may arise out of items that could have been corrected during completion/quality control. Any Instruments of Service provided are not intended or represented to be suitable for reuse by the CLIENT or others on extensions of the Project or any other project. Any modification or reuse without written verification or adaptation by WSN for the specific purpose intended will be at CLIENT's sole risk and without liability or legal exposure to WSN. CLIENT shall indemnify, defend and hold harmless WSN from any and all suits or claims of third parties arising out of use of unfinished documents, or modification or reuse of finished documents, which is not specifically verified, adapted, or authorized in writing by WSN. This indemnity shall survive the termination of this Agreement.

Should WSN choose to deliver to CLIENT documents in electronic form, CLIENT acknowledges that differences may exist between any electronic files delivered and the printed hard-copy. Copies of documents that may be relied upon by CLIENT are limited to the printed hard-copies that are signed and/or sealed by WSN. Files in electronic form are only for convenience of CLIENT. Any conclusion or information obtained or derived from such electronic documents will be at user's sole risk. CLIENT acknowledges that the useful life of some forms of electronic media may be limited because of deterioration of the media or obsolescence of the computer hardware and/or software systems. Therefore, WSN makes no representation that such media will be fully usable beyond 30 days from date of delivery to CLIENT.

ARTICLE 6. CLIENT'S ACCEPTANCE BY PURCHASE ORDER OR OTHER MEANS

In lieu of or in addition to signing the acceptance blank on the Letter Agreement, the CLIENT may accept this Agreement by permitting WSN to commence work on the project or by issuing a purchase order signed by a duly authorized representative. Such purchase order shall incorporate by reference the terms and conditions of this Agreement. In the event of a conflict between the terms and conditions of this Agreement and those contained in the CLIENT's purchase order, the terms and conditions of this Agreement shall govern. Notwithstanding any purchase order provisions to the contrary, no warranties, express or implied, are made by WSN.

ARTICLE 7. CLIENT'S RESPONSIBILITIES

A. To permit WSN to perform the services required hereunder, the CLIENT shall supply, in proper time and sequence, the following at no expense to WSN:

1. Provide all program, budget, or other necessary information regarding its requirements as necessary for orderly progress of the work.
2. Designate in writing, a person to act as CLIENT's representative with respect to the services to be rendered under this Agreement. Such person shall have authority to transmit instructions, receive instructions, receive information, interpret and define CLIENT's policies with respect to WSN's services.
3. Furnish, as required for performance of WSN's services (except to the extent provided otherwise in the Letter Agreement or any Exhibits attached hereto), data prepared by or services of others, including without limitation, core borings, probes and subsurface explorations, hydrographic and geohydrologic surveys, laboratory tests and inspections of samples, materials and equipment; appropriate professional interpretations of all of the foregoing; environmental assessment and impact statements; property, boundary easement, right-of-way, topographic and utility surveys; property descriptions; zoning, deed and other land use restriction; and other special data not covered in the Letter Agreement or any Exhibits attached hereto.
4. Provide access to, and make all provisions for WSN to enter upon publicly or privately owned property as required to perform the work.
5. Act as liaison with other agencies or involved parties to carry out necessary coordination and negotiations; furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.
6. Examine all reports, sketches, drawings, specifications and other documents prepared and presented by WSN, obtain advice of an attorney, insurance counselor or others as CLIENT deems necessary for such examination and render in writing, decisions pertaining thereto within a reasonable time so as not to delay the services of WSN.
7. Give prompt written notice to WSN whenever CLIENT observes or otherwise becomes aware of any development that affects the scope of timing of WSN's services or any defect in the work of Construction Contractor(s), Consultants or WSN.
8. Initiate action, where appropriate, to identify and investigate the nature and extent of asbestos and/or pollution in the Project and to abate and/or remove the same as may be required by federal, state or local statute, ordinance, code, rule, or regulation now existing or hereinafter enacted or amended. For purposes of this Agreement, "pollution" and "pollutant" shall mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, alkalis, chemicals and hazardous or toxic waste. Hazardous or toxic waste means any substance, waste pollutant or contaminant now or hereafter included within such terms under any federal, state or local statute, ordinance, code, rule or regulation now existing or hereinafter enacted or amended. Waste further includes materials to be recycled, reconditioned or reclaimed.

If WSN encounters, or reasonably suspects that it has encountered, asbestos or pollution in the Project, WSN shall cease activity on the Project and promptly notify the CLIENT, who shall proceed as set forth above. Unless otherwise specifically provided in the Letter Agreement, the services to be provided by WSN do not include identification of asbestos or pollution, and WSN has no duty to identify or attempt to identify the same within the area of the Project.

With respect to the foregoing, CLIENT acknowledges and agrees that WSN is not a user, handler, generator, operator, treator, storer, transporter or disposer of asbestos or pollution which may be encountered by WSN on the Project. It is further understood and agreed that services WSN will undertake for CLIENT may be uninsurable obligations involving the presence or potential presence of asbestos or pollution. Therefore, CLIENT agrees, except (1) such liability as may arise out of WSN's sole negligence in the performance of services under this Agreement or (2) to the extent of insurance coverage available for the claim, to hold harmless, indemnify and defend WSN and WSN's officers, subcontractor(s), employees and agents from and against any and all claims, lawsuits, damages, liability and costs, including, but not limited to, costs of defense, arising out of or in any way connected with the presence, discharge, release, or escape of asbestos or pollution. This indemnification is intended to apply only to existing conditions and not to conditions caused or created by WSN. This indemnification shall survive the termination of this Agreement.

9. Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services as CLIENT may require or WSN may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by Contractor(s), such auditing service as CLIENT may require to ascertain how or for what purpose any Contractor has used the moneys paid under the construction contract, and such inspection services as CLIENT may require to ascertain that Contractor(s) are complying with any law, rule, regulation, ordinance, code or order applicable to their furnishing and performing the work.

10. Provide "record" drawings and specifications for all existing physical features, structures, equipment, utilities, or facilities which are pertinent to the Project, to the extent available.
11. Provide other services, materials, or data as may be set forth in the Letter Agreement or any Exhibits attached hereto.

B. WSN may use any CLIENT provided information in performing its services. WSN shall be entitled to rely on the accuracy and completeness of information furnished by the CLIENT. If WSN finds that any information furnished by the CLIENT is in error or is inadequate for its purpose, WSN shall endeavor to notify the CLIENT. However, WSN shall not be held responsible for any errors or omissions that may arise as a result of erroneous or incomplete information provided by CLIENT.

ARTICLE 8. OPINIONS OF COST

Opinions of probable project cost, construction cost, financial evaluations, feasibility studies, economic analyses of alternate solutions and utilitarian considerations of operations and maintenance costs provided for in the Letter Agreement or any Exhibits attached hereto are to be made on the basis of WSN's experience and qualifications and represent WSN's judgment as an experienced design professional. It is recognized, however, that WSN does not have control over the cost of labor, material, equipment or services furnished by others or over market conditions or contractors' methods of determining their prices, and that any evaluation of any facility to be constructed, or acquired, or work to be performed on the basis of WSN's cost opinions must, of necessity, be speculative until completion of construction or acquisition. Accordingly, WSN does not guarantee that proposals, bids or actual costs will not substantially vary from opinions, evaluations or studies submitted by WSN to CLIENT hereunder.

ARTICLE 9. CONSTRUCTION PHASE SERVICES

CLIENT acknowledges that it is customary for the architect or engineer who is responsible for the preparation and furnishing of Drawings and Specifications and other construction-related documents to be employed to provide professional services during the Bidding and Construction Phases of the Project, (1) to interpret and clarify the documentation so furnished and to modify the same as circumstances revealed during bidding and construction may dictate, (2) in connection with acceptance of substitute or equal items of materials and equipment proposed by bidders and Contractor(s), (3) in connection with approval of shop drawings and sample submittals, and (4) as a result of and in response to WSN's detecting in advance of performance of affected work inconsistencies or irregularities in such documentation. CLIENT agrees that if WSN is not employed to provide such professional services during the Bidding (if the work is put out for bids) and the Construction Phases of the Project, WSN will not be responsible for, and CLIENT shall indemnify and hold WSN, its officers, consultant(s), subcontractor(s), employees and agents harmless from, all claims, damages, losses and expenses including attorneys' fees arising out of, or resulting from, any interpretation, clarification, substitution acceptance, shop drawing or sample approval or modification of such documentation issued or carried out by CLIENT or others. Nothing contained in this paragraph shall be construed to release WSN, its officers, consultant(s), subcontractor(s), employees and agents from liability for failure to perform in accordance with professional standards any duty or responsibility which WSN has undertaken or assumed under this Agreement.

ARTICLE 10. REVIEW OF SHOP DRAWINGS AND SUBMITTALS

WSN may review and approve or take other appropriate action on the contractor's submittals or shop drawings for the limited purpose of checking for general conformance with information given and design concept expressed in the Contract Documents. Review and/or approval of submittals is not conducted for the purpose of determining accuracy and completeness of other details or for substantiating instructions for installation or performance of equipment or systems, all of which remain the exclusive responsibility of the contractor. WSN's review and/or approval shall not constitute approval of safety precautions, or any construction means, methods, techniques, sequences or procedures. WSN's approval of a specific item shall not indicate approval of an assembly of which the item is a component. WSN's review and/or approval shall not relieve contractor for any deviations from the requirements of the contract documents nor from the responsibility for errors or omissions on items such as sizes, dimensions, quantities, colors, or locations. Contractor shall remain solely responsible for compliance with any manufacturer requirements and recommendations.

ARTICLE 11. REVIEW OF PAY APPLICATIONS

If included in the scope of services, any review or certification of any pay applications, or certificates of completion shall be based upon WSN's observation of the Work and on the data comprising the contractor's application for payment, and shall indicate that to the best of WSN's knowledge, information and belief, the quantity and quality of the Work is in general conformance with the Contract Documents. The issuance of a certificate for payment or substantial completion is not a representation that WSN has made exhaustive or continuous inspections, reviewed construction means and methods, verified any back-up data provided by the contractor, or ascertained how or for what purpose the contractor has used money previously paid by CLIENT.

ARTICLE 12. REQUESTS FOR INFORMATION (RFI)

If included in the scope of services, WSN will provide, with reasonable promptness, written responses to requests from any contractor for clarification, interpretation or information on the requirements of the Contract Documents. If Contractor's RFI's are, in WSN's professional opinion, for information readily apparent from reasonable observation of field conditions or review of the Contract Documents, or are reasonably inferable therefrom, WSN shall be entitled to compensation for Additional Services for WSN's time in responding to such requests. CLIENT may wish to make the Contractor responsible to the CLIENT for all such charges for additional services as described in this article.

ARTICLE 13. CONSTRUCTION OBSERVATION

If included in the scope of services, WSN will make site visits as specified in the scope of services in order to observe the progress of the Work completed. Such site visits and observations are not intended to be an exhaustive check or detailed inspection, but rather are to allow WSN to become generally familiar with the Work. WSN shall keep CLIENT informed about the progress of the Work and shall advise the CLIENT about observed deficiencies in the Work. WSN shall not supervise, direct or have control over any Contractor's work, nor have any responsibility for the construction means, methods, techniques, sequences or procedures selected by the Contractor nor for the Contractor's safety precautions or programs in connection with the Work. These rights and responsibilities are solely those of the Contractor. WSN shall not be responsible for any acts or omissions of any Contractor and shall not be responsible for any Contractor's failure to perform the Work in accordance with the Contract Documents or any applicable laws, codes, regulations, or industry standards.

If construction observation services are not included in the scope of services, CLIENT assumes all responsibility for interpretation of the Contract Documents and for construction observation, and the CLIENT waives any claims against WSN that are connected with the performance of such services.

ARTICLE 14. BETTERMENT

If, due to WSN's negligence, a required item or component of the Project is omitted from the construction documents, WSN shall not be responsible for paying the cost required to add such item or component to the extent that such item or component would have been required and included in the original construction documents. In no event, will WSN be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the Project.

ARTICLE 15. CERTIFICATIONS, GUARANTEES AND WARRANTIES

WSN shall not be required to sign any documents, no matter by who requested, that would result in WSN having to certify, guarantee or warrant the existence of conditions whose existence WSN cannot ascertain. CLIENT agrees not to make resolution of any dispute with WSN or payment of any amount due to WSN in any way contingent upon WSN signing such certification.

ARTICLE 16. CONTINGENCY FUND

CLIENT and WSN agree that certain increased costs and changes may be required because of possible omissions, ambiguities or inconsistencies in the plans and specifications prepared by WSN, and therefore, that the final construction cost of the Project may exceed the bids, contract amount or estimated construction cost. CLIENT agrees to set aside a reserve in the amount of 5% of the Project construct costs as a contingency to be used, as required, to pay for any such increased costs and changes. CLIENT further agrees to make no claim by way of direct or third-party action against WSN with respect to any increased costs within the contingency because of such changes or because of any claims made by any Contractor relating to such changes.

ARTICLE 17. INSURANCE

WSN shall procure and maintain insurance for protection from claims against it under workers' compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or of any person other than such employees, and from claims against it for damages because of injury to or destruction of property including loss of use resulting therefrom.

Also, WSN shall procure and maintain professional liability insurance for protection from claims arising out of performance of professional services caused by any negligent act, error, or omission for which WSN is legally liable.

Certificates of insurance will be provided to the CLIENT upon request.

ARTICLE 18. ASSIGNMENT

Neither Party to this Agreement shall transfer, sublet or assign any rights or duties under or interest in this Agreement, including but not limited to monies that are due or monies that may be due, without the prior written consent of the other party. Subcontracting to subconsultants, normally contemplated by WSN as a generally accepted business practice, shall not be considered an assignment for purposes of this Agreement.

ARTICLE 19. NO THIRD-PARTY BENEFICIARIES

Nothing contained in this Agreement shall create a contractual relationship or a cause of action by a third-party against either WSN or CLIENT. WSN's services pursuant to this Agreement are being performed solely for the CLIENT's benefit, and no other party or entity shall have any claim against WSN because of this Agreement.

ARTICLE 20. CORPORATE PROTECTION

It is intended by the parties to this Agreement that WSN's services in connection with the Project shall not subject WSN's individual employees, officers or directors to any personal legal exposure for the risks associated with this Project. Therefore, and notwithstanding anything to the contrary, CLIENT agrees that as the CLIENT's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against WSN, a Minnesota corporation, and not against any of WSN's individual employees, officers or directors.

ARTICLE 21. CONTROLLING LAW

This Agreement is to be governed by the laws of the State of Minnesota.

ARTICLE 22. ASSIGNMENT OF RISK

In recognition of the relative risks and benefits of the project to both the CLIENT and WSN, the risks have been allocated such that the CLIENT agrees, to the fullest extent permitted by law, to limit the liability of WSN, employees of WSN and sub-consultants, to the CLIENT and to all construction contractors, subcontractors, agents and assigns on the project for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, so that total aggregate liability of WSN, employees of WSN and sub-consultants, to all those named shall not exceed \$1,000,000 on this project. Such claims and causes include, but are not limited to negligence, professional errors or omissions, strict liability, breach of contract or warranty.

ARTICLE 23. NON-DISCRIMINATION

WSN will comply with the provisions of applicable federal, state and local statutes, ordinances and regulations pertaining to human rights and non-discrimination.

ARTICLE 24. SEVERABILITY

Any provision or portion thereof in this Agreement which is held to be void or unenforceable under any law shall be deemed stricken and all remaining provisions shall continue to be valid and binding between CLIENT and WSN. All limits of liability and indemnities contained in the Agreement shall survive the completion or termination of the Agreement.

ARTICLE 25. PRE-LIEN NOTICE

Pursuant to the Agreement WSN will be performing services in connection with improvements of real property and may contract with subconsultants or subcontractors as appropriate to furnish labor, skill and/or materials in the performance of the work. Accordingly, CLIENT is entitled under Minnesota law to the following Notice:

- (a) Any person or company supplying labor or materials for this improvement to your property may file a lien against your property if that person or company is not paid for its contributions.
- (b) Under Minnesota law, you have the right to pay persons who supplied labor or materials for this improvement directly and deduct this amount from our contract price, or withhold the amounts due from us until 120 days after completion of the improvement unless we give you a lien waiver signed by persons who supplied any labor or materials for the improvement and who gave you timely notice.

REQUEST FOR COUNCIL ACTION

02.02.2016

Department Origination:
Public Works

Agenda Section:
Consent

Agenda Item: WSN Proposal for Land Survey Services for the Baxter City Cemetery Monumentation Project

Approval Required: Simple Majority Vote of the Council

BACKGROUND

Public Works Administration in 2015 requested from two local engineering firms to provide a quote for land survey services. The survey services are to provide permanent monumentation to assist with the locating of Lots, Blocks and Graves sites in the existing section of the Baxter Cemetery. The two local engineering firms, SEH and WSN, were selected since both companies have done prior survey work in the cemetery.

The proposal for engineering services will establish location and install new aluminum capped monuments designating the respective lot and block numbers. The underground existing steel pins will be utilized to place the locations of the missing monuments.

FINANCIAL IMPLICATIONS

Currently, \$7,000.00 is allocated in the 2016 Cemetery Budget for the cemetery monumentation.

STAFF RECOMMENDATION

Staff recommends the City Council approve the WSN Proposal for Land Survey Services for the Baxter City Cemetery monumentation in the amount of \$6,750.00.

COUNCIL ACTION REQUESTED

Approve the WSN Proposal for Land Survey Services for the Baxter City Cemetery Monumentation in the amount of \$6,750.00.

January 20, 2016



Mary Haugen
Administrative Assistant
City of Baxter
PO Box 2626
Baxter, MN 56425

Brainerd/Baxter
7804 Industrial Park Road
PO Box 2720
Baxter, MN 56425-2720

218.829.5117 ☒
218.829.2517 ☒
Brainerd@wsn.us.com ☒
WidsethSmithNolting.com

Re: **UPDATED 2016 Proposal for Land Survey Services for the Baxter Cemetery**

Dear Ms. Haugen,

Widseth Smith Nolting (WSN) is pleased to submit this proposal letter for Professional Land Survey Services necessary for the monumentation of the existing Baxter Cemetery in accordance with the BAXTER CEMETERY BASE MAP and applicable state statutes. It is our understanding that we will be perpetuating the locations of the existing monuments found during the previous work in 2011 by establishing new aluminum capped monuments on an 18 inch long 1/2 diameter rebar designating the respective lot and block numbers in the same position. An example of the monument stamping is attached. Existing monuments will be utilized to place the locations of the missing monuments. We propose the following scope of services:

Initial field survey services

- Utilize BAXTER CEMETERY BASE MAP as the basis for our work
- Recover existing cemetery monuments indicated on the BAXTER CEMETERY BASE MAP

Monument placement services

- Place 3-inch diameter monument at one lot corner of each lot as required by State Statute that is stamped indicating the lot and block numbers accordingly – approximately 70 monuments as shown on the attached Baxter Cemetery Base Map.
 - o Price per monument is \$5.90 (included in total cost)
- Place 2-inch diameter ancillary monument at all of the remaining lot corners that is stamped indicating the lot and block numbers accordingly – approximately 385 monuments as shown on the attached Baxter Cemetery Base Map.
 - o Price per monument is \$2.60 (included in total cost)

We estimate the cost to provide these monumentation services at **\$6,750.00**. We anticipate the completion of these proposed services within 30 days of your authorization. If you would like to proceed with the services outlined above, please sign, date and return a copy of this letter as our authorization to proceed. If you have any other questions, please feel free to contact me at 218-316-3632 or by email at chad.conner@wsn.us.com Please don't hesitate to call with any questions.

Sincerely,
WIDSETH SMITH NOLTING

Chad M. Conner, LS, CFedS

-59-

General Provisions of Professional Services Agreement

These General Provisions are intended to be used in conjunction with a letter-type Agreement or a Request for Services between Widseth Smith Nolting, a Minnesota Corporation, hereinafter referred to as WSN, and a CLIENT, wherein the CLIENT engages WSN to provide certain Architectural, and/or Engineering services on a Project.

As used herein, the term "this Agreement" refers to (1) the WSN Proposal Letter which becomes the Letter Agreement upon its acceptance by the Client, (2) these General Provisions and (3) any attached Exhibits, as if they were part of one and the same document. With respect to the order of precedence, any attached Exhibits shall govern over these General Provisions, and the Letter Agreement shall govern over any attached Exhibits and these General Provisions. These documents supersede all prior communications and constitute the entire Agreement between the parties. Amendments to this Agreement must be in writing and signed by both CLIENT and WSN.

ARTICLE 1. PERIOD OF SERVICE

The term of this Agreement for the performance of services hereunder shall be as set forth in the Letter Agreement. In this regard, any lump sum or estimated maximum payment amounts set forth in the Letter Agreement have been established in anticipation of an orderly and continuous progress of the Project in accordance with the schedule set forth in the Letter Agreement or any Exhibits attached thereto. WSN shall be entitled to an equitable adjustment to its fee should there be an interruption of services, or amendment to the schedule.

ARTICLE 2. SCOPE OF SERVICES

The scope of services covered by this Agreement shall be as set forth in the Letter Agreement or a Request for Services. Such scope of services shall be adequately described in order that both the CLIENT and WSN have an understanding of the expected work to be performed.

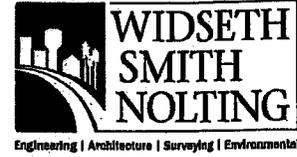
If WSN is of the opinion that any work they have been directed to perform is beyond the Scope of this Agreement, or that the level of effort required significantly exceeds that estimated due to changed conditions and thereby constitutes extra work, they shall notify the CLIENT of that fact. Extra work, additional compensation for same, and extension of time for completion shall be covered by a revision to the Letter Agreement or Request for Services and entered into by both parties.

ARTICLE 3. COMPENSATION TO WSN

A. Compensation to WSN for services described in this Agreement shall be on a Lump Sum basis, Percentage of Construction, and/or Hourly Rate basis as designated in the Letter Agreement and as hereinafter described.

1. A Lump Sum method of payment for WSN's services shall apply to all or parts of a work scope where WSN's tasks can be readily defined and/or where the level of effort required to accomplish such tasks can be estimated with a reasonable degree of accuracy. The CLIENT shall make monthly payments to WSN within 30 days of date of invoice based on an estimated percentage of completion of WSN's services.
2. A Percentage of Construction or an Hourly Rate method of payment of WSN's services shall apply to all or parts of a work scope where WSN's tasks cannot be readily defined and/or where the level of effort required to accomplish such tasks cannot be estimated with any reasonable degree of accuracy. Under an Hourly Rate method of payment, WSN shall be paid for the actual hours worked on the Project by WSN technical personnel times an hourly billing rate established for each employee. Hourly billing rates shall include compensation for all salary costs, payroll burden, general, and administrative overhead and professional fee. In a Percentage of Construction method of payment, final compensation will be based on actual bids if the project is bid and WSN's estimate to the CLIENT if the project is not bid. A rate schedule shall be furnished by WSN to CLIENT upon which to base periodic payments to WSN.
3. In addition to the foregoing, WSN shall be reimbursed for items and services as set forth in the Letter Agreement or Fee Schedule and the following Direct Expenses when incurred in the performance of the work:
 - (a) Travel and subsistence.
 - (b) Specialized computer services or programs.
 - (c) Outside professional and technical services with cost defined as the amount billed WSN.
 - (d) Identifiable reproduction and reprographic costs.
 - (e) Other expenses for items such as permit application fees, license fees, or other additional items and services whether or not specifically identified in the Letter Agreement or Fee Schedule.
4. The CLIENT shall make monthly payments to WSN within 30 days of date of invoice based on computations made in accordance with the above charges for services provided and expenses incurred to date, accompanied by supporting evidence as available.

B. The CLIENT will pay the balance stated on the invoice unless CLIENT notifies WSN in writing of the particular item that is alleged to be incorrect within 15 days from the date of invoice, in which case, only the disputed item will remain undue until resolved by the parties. All accounts unpaid after 30 days from the date of original invoice shall be subject to a service charge of 1% per month, or the maximum amount authorized by law, whichever is less. WSN shall be entitled to recover all reasonable costs and disbursements, including reasonable attorneys fees, incurred in connection with collecting amount owed by CLIENT. In addition, WSN may, after giving seven days written notice to the CLIENT, suspend services and withhold deliverables under this Agreement until WSN has been paid in full for all amounts then due for services, expenses and charges. CLIENT agrees that WSN shall not be responsible for any claim for delay or other consequential damages arising from suspension of services hereunder. Upon payment in full by Client and WSN's resumption of services, the time for performance of WSN's services shall be equitably adjusted to account for the period of suspension and other reasonable time necessary to resume performance.



ARTICLE 4. ABANDONMENT, CHANGE OF PLAN AND TERMINATION

Either Party has the right to terminate this Agreement upon seven days written notice. In addition, the CLIENT may at any time, reduce the scope of this Agreement. Such reduction in scope shall be set forth in a written notice from the CLIENT to WSN. In the event of unresolved dispute over change in scope or changed conditions, this Agreement may also be terminated upon seven days written notice as provided above.

In the event of termination, and upon payment in full for all work performed and expenses incurred to the date of termination, documents that are identified as deliverables under the Letter Agreement whether finished or unfinished shall be made available by WSN to the CLIENT pursuant to Article 5, and there shall be no further payment obligation of the CLIENT to WSN under this Agreement except for payment of an amount for WSN's anticipated profit on the value of the services not performed by WSN and computed in accordance with the provisions of Article 3 and the Letter Agreement.

In the event of a reduction in scope of the Project work, WSN shall be paid for the work performed and expenses incurred on the Project work thus reduced and for any completed and abandoned work, for which payment has not been made, computed in accordance with the provisions of Article 3 and the Letter Agreement.

ARTICLE 5. DISPOSITION OF PLANS, REPORTS AND OTHER DATA

All reports, plans, specifications, field data and notes and other documents, including all documents on electronic media, prepared by WSN or its consultants are Instruments of Service and shall remain the property of WSN or its consultants, respectively. WSN and its subconsultants retain all common law, statutory and other reserved rights, including, without limitation, copyright. WSN and its subconsultants maintain the right to determine if production will be made, and allowable format for production, of any electronic media or data to CLIENT or any third-party. Upon payment in full of monies due pursuant to the Agreement, WSN shall make hard copies available to the CLIENT, of all documents that are identified as deliverables under the Letter Agreement. If the documents have not been finished (including, but not limited to, completion of final quality control), then WSN shall have no liability for any claims, expenses or damages that may arise out of items that could have been corrected during completion/quality control. Any Instruments of Service provided are not intended or represented to be suitable for reuse by the CLIENT or others on extensions of the Project or any other project. Any modification or reuse without written verification or adaptation by WSN for the specific purpose intended will be at CLIENT's sole risk and without liability or legal exposure to WSN. CLIENT shall indemnify, defend and hold harmless WSN from any and all suits or claims of third parties arising out of use of unfinished documents, or modification or reuse of finished documents, which is not specifically verified, adapted, or authorized in writing by WSN. This indemnity shall survive the termination of this Agreement.

Should WSN choose to deliver to CLIENT documents in electronic form, CLIENT acknowledges that differences may exist between any electronic files delivered and the printed hard-copy. Copies of documents that may be relied upon by CLIENT are limited to the printed hard-copies that are signed and/or sealed by WSN. Files in electronic form are only for convenience of CLIENT. Any conclusion or information obtained or derived from such electronic documents will be at user's sole risk. CLIENT acknowledges that the useful life of some forms of electronic media may be limited because of deterioration of the media or obsolescence of the computer hardware and/or software systems. Therefore, WSN makes no representation that such media will be fully usable beyond 30 days from date of delivery to CLIENT.

ARTICLE 6. CLIENT'S ACCEPTANCE BY PURCHASE ORDER OR OTHER MEANS

In lieu of or in addition to signing the acceptance blank on the Letter Agreement, the CLIENT may accept this Agreement by permitting WSN to commence work on the project or by issuing a purchase order signed by a duly authorized representative. Such purchase order shall incorporate by reference the terms and conditions of this Agreement. In the event of a conflict between the terms and conditions of this Agreement and those contained in the CLIENT's purchase order, the terms and conditions of this Agreement shall govern. Notwithstanding any purchase order provisions to the contrary, no warranties, express or implied, are made by WSN.

ARTICLE 7. CLIENT'S RESPONSIBILITIES

- A. To permit WSN to perform the services required hereunder, the CLIENT shall supply, in proper time and sequence, the following at no expense to WSN:
1. Provide all program, budget, or other necessary information regarding its requirements as necessary for orderly progress of the work.
 2. Designate in writing, a person to act as CLIENT's representative with respect to the services to be rendered under this Agreement. Such person shall have authority to transmit instructions, receive instructions, receive information, interpret and define CLIENT's policies with respect to WSN's services.
 3. Furnish, as required for performance of WSN's services (except to the extent provided otherwise in the Letter Agreement or any Exhibits attached hereto), data prepared by or services of others, including without limitation, core borings, probes and subsurface explorations, hydrographic and geohydrologic surveys, laboratory tests and inspections of samples, materials and equipment; appropriate professional interpretations of all of the foregoing; environmental assessment and impact statements; property, boundary easement, right-of-way, topographic and utility surveys; property descriptions; zoning, deed and other land use restriction; and other special data not covered in the Letter Agreement or any Exhibits attached hereto.
 4. Provide access to, and make all provisions for WSN to enter upon publicly or privately owned property as required to perform the work.
 5. Act as liaison with other agencies or involved parties to carry out necessary coordination and negotiations; furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.
 6. Examine all reports, sketches, drawings, specifications and other documents prepared and presented by WSN, obtain advice of an attorney, insurance counselor or others as CLIENT deems necessary for such examination and render in writing, decisions pertaining thereto within a reasonable time so as not to delay the services of WSN.
 7. Give prompt written notice to WSN whenever CLIENT observes or otherwise becomes aware of any development that affects the scope of timing of WSN's services or any defect in the work of Construction Contractor(s), Consultants or WSN.
 8. Initiate action, where appropriate, to identify and investigate the nature and extent of asbestos and/or pollution in the Project and to abate and/or remove the same as may be required by federal, state or local statute, ordinance, code, rule, or regulation now existing or hereinafter enacted or amended. For purposes of this Agreement, "pollution" and "pollutant" shall mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, alkalis, chemicals and hazardous or toxic waste. Hazardous or toxic waste means any substance, waste pollutant or contaminant now or hereafter included within such terms under any federal, state or local statute, ordinance, code, rule or regulation now existing or hereinafter enacted or amended. Waste further includes materials to be recycled, reconditioned or reclaimed.
- If WSN encounters, or reasonably suspects that it has encountered, asbestos or pollution in the Project, WSN shall cease activity on the Project and promptly notify the CLIENT, who shall proceed as set forth above. Unless otherwise specifically provided in the Letter Agreement, the services to be provided by WSN do not include identification of asbestos or pollution, and WSN has no duty to identify or attempt to identify the same within the area of the Project.
- With respect to the foregoing, CLIENT acknowledges and agrees that WSN is not a user, handler, generator, operator, treater, storer, transporter or disposer of asbestos or pollution which may be encountered by WSN on the Project. It is further understood and agreed that services WSN will undertake for CLIENT may be uninsurable obligations involving the presence or potential presence of asbestos or pollution. Therefore, CLIENT agrees, except (1) such liability as may arise out of WSN's sole negligence in the performance of services under this Agreement or (2) to the extent of insurance coverage available for the claim, to hold harmless, indemnify and defend WSN and WSN's officers, subcontractor(s), employees and agents from and against any and all claims, lawsuits, damages, liability and costs, including, but not limited to, costs of defense, arising out of or in any way connected with the presence, discharge, release, or escape of asbestos or pollution. This indemnification is intended to apply only to existing conditions and not to conditions caused or created by WSN. This indemnification shall survive the termination of this Agreement.
9. Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services as CLIENT may require or WSN may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by Contractor(s), such auditing service as CLIENT may require to ascertain how or for what purpose any Contractor has used the moneys paid under the construction contract, and such inspection services as CLIENT may require to ascertain that Contractor(s) are complying with any law, rule, regulation, ordinance, code or order applicable to their furnishing and performing the work.

10. Provide "record" drawings and specifications for all existing physical features, structures, equipment, utilities, or facilities which are pertinent to the Project, to the extent available.
11. Provide other services, materials, or data as may be set forth in the Letter Agreement or any Exhibits attached hereto.

B. WSN may use any CLIENT provided information in performing its services. WSN shall be entitled to rely on the accuracy and completeness of information furnished by the CLIENT. If WSN finds that any information furnished by the CLIENT is in error or is inadequate for its purpose, WSN shall endeavor to notify the CLIENT. However, WSN shall not be held responsible for any errors or omissions that may arise as a result of erroneous or incomplete information provided by CLIENT.

ARTICLE 8. OPINIONS OF COST

Opinions of probable project cost, construction cost, financial evaluations, feasibility studies, economic analyses of alternate solutions and utilitarian considerations of operations and maintenance costs provided for in the Letter Agreement or any Exhibits attached hereto are to be made on the basis of WSN's experience and qualifications and represent WSN's judgment as an experienced design professional. It is recognized, however, that WSN does not have control over the cost of labor, material, equipment or services furnished by others or over market conditions or contractors' methods of determining their prices, and that any evaluation of any facility to be constructed, or acquired, or work to be performed on the basis of WSN's cost opinions must, of necessity, be speculative until completion of construction or acquisition. Accordingly, WSN does not guarantee that proposals, bids or actual costs will not substantially vary from opinions, evaluations or studies submitted by WSN to CLIENT hereunder.

ARTICLE 9. CONSTRUCTION PHASE SERVICES

CLIENT acknowledges that it is customary for the architect or engineer who is responsible for the preparation and furnishing of Drawings and Specifications and other construction-related documents to be employed to provide professional services during the Bidding and Construction Phases of the Project, (1) to interpret and clarify the documentation so furnished and to modify the same as circumstances revealed during bidding and construction may dictate, (2) in connection with acceptance of substitute or equal items of materials and equipment proposed by bidders and Contractor(s), (3) in connection with approval of shop drawings and sample submittals, and (4) as a result of and in response to WSN's detecting in advance of performance of affected work inconsistencies or irregularities in such documentation. CLIENT agrees that if WSN is not employed to provide such professional services during the Bidding (if the work is put out for bids) and the Construction Phases of the Project, WSN will not be responsible for, and CLIENT shall indemnify and hold WSN, its officers, consultant(s), subcontractor(s), employees and agents harmless from, all claims, damages, losses and expenses including attorneys' fees arising out of, or resulting from, any interpretation, clarification, substitution acceptance, shop drawing or sample approval or modification of such documentation issued or carried out by CLIENT or others. Nothing contained in this paragraph shall be construed to release WSN, its officers, consultant(s), subcontractor(s), employees and agents from liability for failure to perform in accordance with professional standards any duty or responsibility which WSN has undertaken or assumed under this Agreement.

ARTICLE 10. REVIEW OF SHOP DRAWINGS AND SUBMITTALS

WSN may review and approve or take other appropriate action on the contractor's submittals or shop drawings for the limited purpose of checking for general conformance with information given and design concept expressed in the Contract Documents. Review and/or approval of submittals is not conducted for the purpose of determining accuracy and completeness of other details or for substantiating instructions for installation or performance of equipment or systems, all of which remain the exclusive responsibility of the contractor. WSN's review and/or approval shall not constitute approval of safety precautions, or any construction means, methods, techniques, sequences or procedures. WSN's approval of a specific item shall not indicate approval of an assembly of which the item is a component. WSN's review and/or approval shall not relieve contractor for any deviations from the requirements of the contract documents nor from the responsibility for errors or omissions on items such as sizes, dimensions, quantities, colors, or locations. Contractor shall remain solely responsible for compliance with any manufacturer requirements and recommendations.

ARTICLE 11. REVIEW OF PAY APPLICATIONS

If included in the scope of services, any review or certification of any pay applications, or certificates of completion shall be based upon WSN's observation of the Work and on the data comprising the contractor's application for payment, and shall indicate that to the best of WSN's knowledge, information and belief, the quantity and quality of the Work is in general conformance with the Contract Documents. The issuance of a certificate for payment or substantial completion is not a representation that WSN has made exhaustive or continuous inspections, reviewed construction means and methods, verified any back-up data provided by the contractor, or ascertained how or for what purpose the contractor has used money previously paid by CLIENT.

-6 **ARTICLE 12. REQUESTS FOR INFORMATION (RFI)**

If included in the scope of services, WSN will provide, with reasonable promptness, written responses to requests from any contractor for clarification, interpretation or information on the requirements of the Contract Documents. If Contractor's RFI's are, in WSN's professional opinion, for information readily apparent from reasonable observation of field conditions or review of the Contract Documents, or are reasonably inferable therefrom, WSN shall be entitled to compensation for Additional Services for WSN's time in responding to such requests. CLIENT may wish to make the Contractor responsible to the CLIENT for all such charges for additional services as described in this article.

ARTICLE 13. CONSTRUCTION OBSERVATION

If included in the scope of services, WSN will make site visits as specified in the scope of services in order to observe the progress of the Work completed. Such site visits and observations are not intended to be an exhaustive check or detailed inspection, but rather are to allow WSN to become generally familiar with the Work. WSN shall keep CLIENT informed about the progress of the Work and shall advise the CLIENT about observed deficiencies in the Work. WSN shall not supervise, direct or have control over any Contractor's work, nor have any responsibility for the construction means, methods, techniques, sequences or procedures selected by the Contractor nor for the Contractor's safety precautions or programs in connection with the Work. These rights and responsibilities are solely those of the Contractor. WSN shall not be responsible for any acts or omissions of any Contractor and shall not be responsible for any Contractor's failure to perform the Work in accordance with the Contract Documents or any applicable laws, codes, regulations, or industry standards.

If construction observation services are not included in the scope of services, CLIENT assumes all responsibility for interpretation of the Contract Documents and for construction observation, and the CLIENT waives any claims against WSN that are connected with the performance of such services.

ARTICLE 14. BETTERMENT

If, due to WSN's negligence, a required item or component of the Project is omitted from the construction documents, WSN shall not be responsible for paying the cost required to add such item or component to the extent that such item or component would have been required and included in the original construction documents. In no event, will WSN be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the Project.

ARTICLE 15. CERTIFICATIONS, GUARANTEES AND WARRANTIES

WSN shall not be required to sign any documents, no matter by who requested, that would result in WSN having to certify, guarantee or warrant the existence of conditions whose existence WSN cannot ascertain. CLIENT agrees not to make resolution of any dispute with WSN or payment of any amount due to WSN in any way contingent upon WSN signing such certification.

ARTICLE 16. CONTINGENCY FUND

CLIENT and WSN agree that certain increased costs and changes may be required because of possible omissions, ambiguities or inconsistencies in the plans and specifications prepared by WSN, and therefore, that the final construction cost of the Project may exceed the bids, contract amount or estimated construction cost. CLIENT agrees to set aside a reserve in the amount of 5% of the Project construct costs as a contingency to be used, as required, to pay for any such increased costs and changes. CLIENT further agrees to make no claim by way of direct or third-party action against WSN with respect to any increased costs within the contingency because of such changes or because of any claims made by any Contractor relating to such changes.

ARTICLE 17. INSURANCE

WSN shall procure and maintain insurance for protection from claims against it under workers' compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or of any person other than such employees, and from claims against it for damages because of injury to or destruction of property including loss of use resulting therefrom.

Also, WSN shall procure and maintain professional liability insurance for protection from claims arising out of performance of professional services caused by any negligent act, error, or omission for which WSN is legally liable.

Certificates of insurance will be provided to the CLIENT upon request.

ARTICLE 16. ASSIGNMENT

Neither Party to this Agreement shall transfer, sublet or assign any rights or duties under or interest in this Agreement, including but not limited to monies that are due or monies that may be due, without the prior written consent of the other party. Subcontracting to subconsultants, normally contemplated by WSN as a generally accepted business practice, shall not be considered an assignment for purposes of this Agreement.

ARTICLE 19. NO THIRD-PARTY BENEFICIARIES

Nothing contained in this Agreement shall create a contractual relationship or a cause of action by a third-party against either WSN or CLIENT. WSN's services pursuant to this Agreement are being performed solely for the CLIENT's benefit, and no other party or entity shall have any claim against WSN because of this Agreement.

ARTICLE 20. CORPORATE PROTECTION

It is intended by the parties to this Agreement that WSN's services in connection with the Project shall not subject WSN's individual employees, officers or directors to any personal legal exposure for the risks associated with this Project. Therefore, and notwithstanding anything to the contrary, CLIENT agrees that as the CLIENT's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against WSN, a Minnesota corporation, and not against any of WSN's individual employees, officers or directors.

ARTICLE 21. CONTROLLING LAW

This Agreement is to be governed by the laws of the State of Minnesota.

ARTICLE 22. ASSIGNMENT OF RISK

KW
In recognition of the relative risks and benefits of the project to both the CLIENT and WSN, the risks have been allocated such that the CLIENT agrees, to the fullest extent permitted by law, to limit the liability of WSN employees of WSN and sub-consultants, to the CLIENT and to all construction contractors, subcontractors, agents and assigns on the project for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, so that total aggregate liability of WSN, employees of WSN and sub-consultants, to all those named shall not exceed WSN's total fee received for services rendered on this project. Such claims and causes include, but are not limited to negligence, professional errors or omissions, strict liability, breach of contract or warranty.

ARTICLE 23. NON-DISCRIMINATION

WSN will comply with the provisions of applicable federal, state and local statutes, ordinances and regulations pertaining to human rights and non-discrimination.

ARTICLE 24. SEVERABILITY

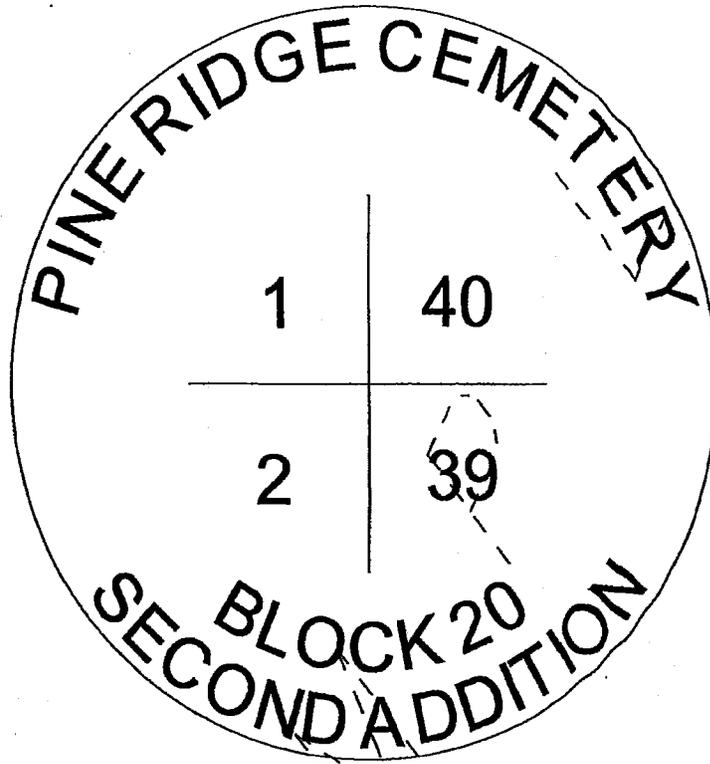
Any provision or portion thereof in this Agreement which is held to be void or unenforceable under any law shall be deemed stricken and all remaining provisions shall continue to be valid and binding between CLIENT and WSN. All limits of liability and indemnities contained in the Agreement shall survive the completion or termination of the Agreement.

ARTICLE 25. PRE-LIEN NOTICE

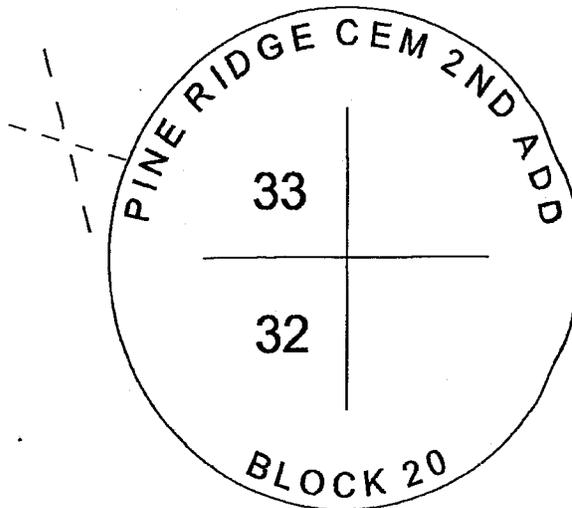
Pursuant to the Agreement WSN will be performing services in connection with improvements of real property and may contract with subconsultants or subcontractors as appropriate to furnish labor, skill and/or materials in the performance of the work. Accordingly, CLIENT is entitled under Minnesota law to the following Notice:

- (a) Any person or company supplying labor or materials for this improvement to your property may file a lien against your property if that person or company is not paid for its contributions.
- (b) Under Minnesota law, you have the right to pay persons who supplied labor or materials for this improvement directly and deduct this amount from our contract price, or withhold the amounts due from us until 120 days after completion of the improvement unless we give you a lien waiver signed by persons who supplied any labor or materials for the improvement and who gave you timely notice.

○ = DENOTES 1/2 INCH X 18 INCH LONG
IRON REBAR WITH 3 INCH DIAMETER
CEMETERY MONUMENT CAP SET.
TYPICAL MONUMENT SHOWN BELOW.



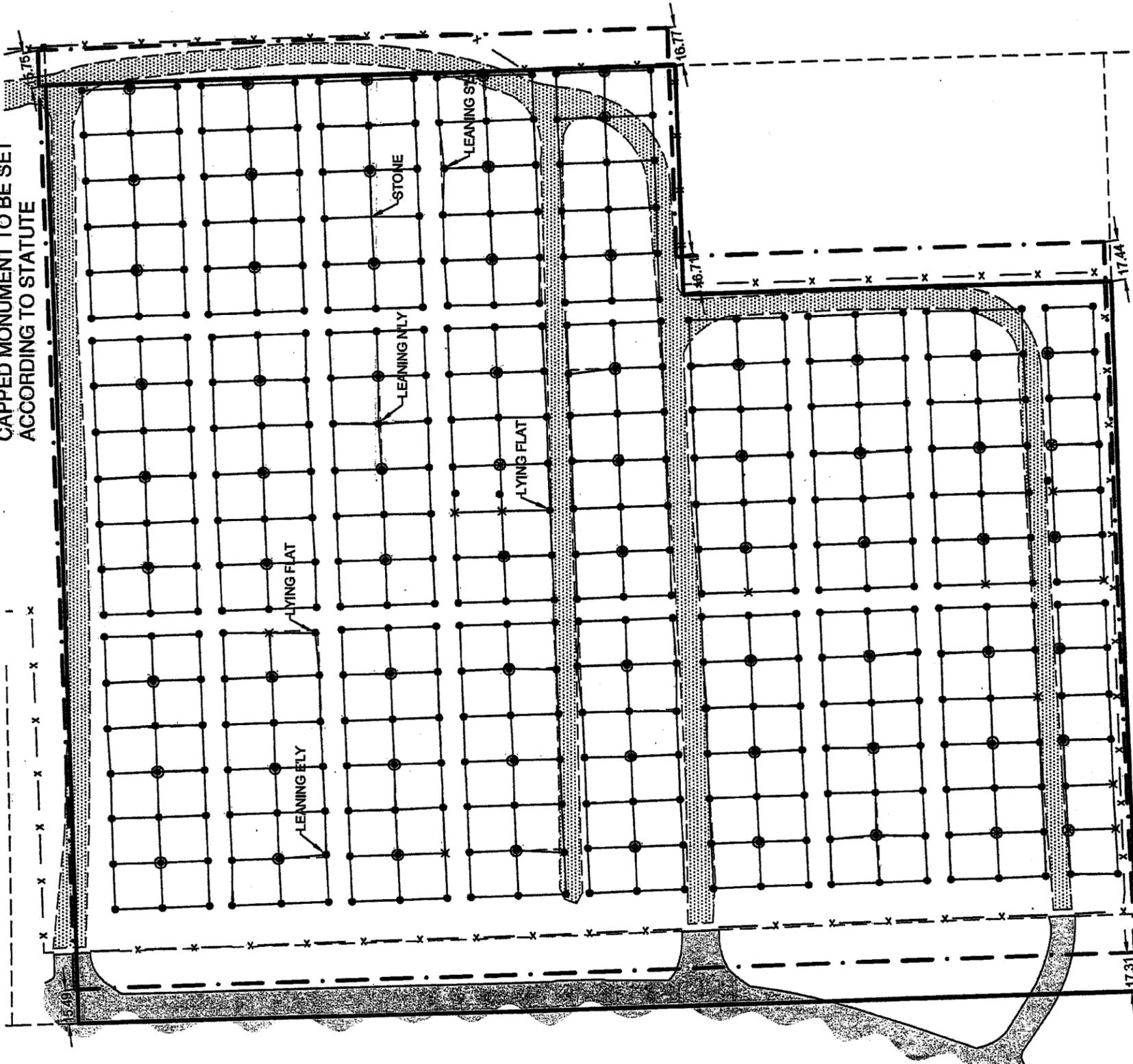
⊗ = DENOTES 1/2 INCH X 18 INCH LONG
IRON REBAR WITH 2 INCH DIAMETER
CEMETERY MONUMENT CAP SET.
TYPICAL MONUMENT SHOWN BELOW.



BAXTER CEMETERY BASE MAP

○ DENOTES LOCATION OF 3" ALUMINUM CAPPED MONUMENT TO BE SET ACCORDING TO STATUTE

2" ALUMINUM CAPPED MONUMENTS TO BE SET AT ALL OTHER LOT CORNERS



Notes:

1. The computed boundary according to the dedication on the face of PLAT of BAXTER CEMETERY, and other documents provided by the City of Baxter, is shown in heavy solid line, and fits the abutting properties well.
2. The boundary built from the found monuments within the platted cemetery does not fit well with any other documented properties in the area. This is shown as a heavy green dashed line.
3. In reviewing the found monumentation compared to the legal description of the property, an error may have been made from their starting point, or misinterpreted the dimensions of the plat.
4. Replatting of the cemetery may not provide much benefit, as the existing monuments will control the location of the internal lots, and as they are all located within the described exterior boundary, do not create any encroachments to abutting properties.
5. Areas where the cemetery roads fall out side of the boundary, have been acquired by the city, and therefore do not encroach on abutting property.
6. The relative accuracy between the interior lot corners is quite good, and only a handful of areas are questionable.
7. A few monuments have been disturbed throughout the years, and the notable ones are labeled.



ORIENTATION OF THIS BEARING SYSTEM IS BASED ON THE CITY OF BAXTER COORDINATE SYSTEM

Legend:

- DENOTES: FOUND IRON MONUMENT
- x DENOTES: MISSING MONUMENT LOCATION
- - - DENOTES: FENCE
- ▒ DENOTES: BITUMINOUS SURFACE
- ▤ DENOTES: GRAVEL SURFACE



416 S 6th ST
SUITE 200
BROWNSVILLE, TX
77801-2118
PH: 281.865.1700
FAX: 281.865.1701

SEH PROJ. NO.
BAXTER118031

REQUEST FOR COUNCIL ACTION

02.02.2016

Department Origination: IT

Agenda Section: Consent

Agenda Item: Approve Plans and Specifications and Ordering Advertisement for Bids for Fixed Network Water Meter Reading System Project

Approval Required: Simple Majority of Vote of the Council

BACKGROUND

As part of continuing efforts to provide improved service to citizens and increase City process efficiencies, the City is proposing to install a fixed network water meter reading system in 2016. This system will eliminate the need for residents to read and submit meter readings or the need for City staff to collect meter readings in the field, in addition to providing other customer service benefits.

A fixed network water meter reading system consists of data collectors installed in strategic locations around town, such as water towers, cell towers, lift station poles, etc. and a radio transmitter attached to each meter, which sends readings to the data collectors at fixed intervals.

TKDA has prepared the plans and specifications, a summary of which is below. Complete copies of the plans and specifications are available upon request.

Summary of Project Plans and Specifications

Base bid and alternate bid proposals are being accepted to purchase and install the fixed network water meter reading system. Base bid proposals will include removing approximately 2565 meters and installing new meters and transmitters. Approximately 335 meters will be reused with the registers changed out and transmitters installed. Alternate bid proposals, for vendors that are unable to reuse existing meters with their system, will include removing approximately 2900 meters and installing new meters and transmitters. Each proposal will be bid as two packages, one for the purchase of equipment and one for installation of the equipment.

Each vendor will conduct a propagation study to determine the number and location of data collectors needed to provide a minimum of 98.5% of the meter readings on a daily basis. The system will be fully redundant, so if one collector goes down, the system will continue to perform satisfactorily, with either multiple collectors or a backup option for mobile drive-by collection. The meters will be required to conform to AWWA standards and have the ability to detect reverse flow and leaks. The radio transmitters will be installed in the floor joists or outside the property if necessary for the system to obtain a reading.

The project bids will be evaluated as a 25 year life cycle cost, to include the cost of one complete replacement battery change-out during the life of the system. The costs for additional meters

and/or transmitters will be locked in for the first year, then adjusted annually based on the Producer Price Index (PPI) until the year 2040.

Preliminary Project Schedule	
January 2016	Prepare Plans and Specifications
February 2016	Advertise and Secure bids
March 2016	Award and Issue Construction Contract
April-May 2016	Prepare and Adopt Necessary Policies
June 2016-October 2016	Installation of Equipment
November 2016	Final Completion/Project Close-Out

FINANCIAL IMPLICATIONS

The services provided by TKDA for the bidding phase were included in their professional engineering services contract. The fixed network water meter reading system project is included in the 2016 adopted budget, with funding from local option sales tax collections.

STAFF RECOMMENDATIONS

Staff recommends approving the TKDA prepared plans and specifications and order advertisement for bids for the fixed network water meter reading system project.

COUNCIL ACTION REQUESTED

Approve Plans and Specifications and Ordering Advertisement for Bids for Fixed Network Water Meter Reading System Project

REQUEST FOR COUNCIL ACTION

02.02.2016

Department Origination:
Public Works Department

Agenda Section:
Consent

Agenda Item: Award the Professional Engineering and Related Engineering Services Contract for 2016 Golf Course Drive Area Improvements Project to Bolton & Menk in the not to exceed amount of \$133,180.00.

Approval Required: Simple Majority Vote of the Council

BACKGROUND

City staff in early January, 2016 submitted a request to solicit engineering proposals from local qualified engineering firms to provide professional engineering and related services for the 2016 Golf Course Drive Area Improvements Project

The following firms submitted the Request for Proposals (RFP) for the 2016 Golf Course Drive Area Improvements Project before the deadline of Tuesday, January 26, 2016 at 4:30 p.m.:

- Bolton & Menk
- SEH, Inc
- WSB
- WSN

All firms were evaluated by the Public Works Director Trevor Walter as per the attached evaluation form. All firms met or exceeded all requirements outlined in the RFP therefore the only remaining factor was the cost of the services to the City.

Based on a not to exceed cost, Public Works Director Walter is recommending Bolton & Menk for the engineering services for the 2016 Golf Course Drive Area Improvements Project.

The approved 5-year Capital Improvement Plan (CIP) has Golf Course Drive Improvements Project scheduled for 2016. The approved 5-year CIP was put together using the Pavement Management Plan that was completed by Bolton & Menk in 2013.

FINANCIAL IMPLICATIONS

The project will be assessed as per the City of Baxter Assessment Policy. Assessments are estimated to be over the 20% as required for bonding. As per the City's assessment policy, projects are typically 100% assessed for up to 26 foot-wide on residential streets and up to a 44 foot-wide on commercial streets. Engineering service fees were included in the overall 2016 Golf Course Drive Area Improvements Project budget.

STAFF RECOMMENDATION

Staff recommends awarding the professional engineering and related services contract for the 2016 Golf Course Drive Area Improvements Project to Bolton & Menk in the not to exceed amount of \$133,180.00 (see attached engineering contract).

COUNCIL ACTION REQUESTED

MOTION to award the professional engineering and related services contract for the 2016 Golf Course Drive Area Improvements Project to Bolton & Menk in the not to exceed amount of \$133,180.00.

Attached: Evaluation Form
 Bolton & Menk Engineering Contract

****Please note that all four original submitted proposals are on file in the City Clerk's Office for review.**

2016 CITY OF BAXTER GOLF COURSE DRIVE IMPROVEMENTS PROJECT Request for Proposals Evaluation Sheet

Evaluation Factor	Request for Proposal Firms			
	BOLTON & MENK	SEH, INC.	WSB	WSN
Technical Ability				
1. Technical competence, capabilities and specialized expertise was demonstrated by the responder's expressed project understanding, proposed project approach and methodology, project work plan and project management techniques.	Yes	Yes	Yes	Yes
2. Firm has the required background and experience with similar work, including ability and experience in handling project of similar nature.	Yes	Yes	Yes	Yes
3. The firm has all qualifications and availability of key personnel and other resources to perform the work within the specified project schedule.	Exceeds RFP	Exceeds RFP	Exceeds RFP	Exceeds RFP
4. Was there any additional pertinent information required by the City after proposal submittal to the City.	No	No	No	No
5. Conflict of interest disclosure statement submitted.	Yes	Yes	Yes	Yes
6. Construction Testing	Braun	Braun	Braun	Braun
Past Experience				
1. Firm is experienced with similar projects and work. Consultant has completed how many similar projects in the last 10 years similar.	>15 Projects	>15 Projects	>15 Projects	>15 Projects
2. Project Team Members has how many combined years of relevant work experience.	>75 years of combined experience			
Consultant Bid	\$133,180.00	\$184,480.00	\$209,000.00	\$186,695.50
Additions to Bid	0	0	0	0
Total Consultant Cost	\$133,180.00	\$184,480.00	\$209,000.00	\$186,695.50

Reviewer Name: _____

Title: Public Works Director/City Engineer



BOLTON & MENK, INC.

Consulting Engineers & Surveyors

7656 Design Road, Suite 200 • Baxter, MN 56425-8676

Phone (218) 825-0684 • Fax (218) 825-0685

www.bolton-menk.com

January 27, 2016

Trevor Walter
Public Works Director / City Engineer
City of Baxter
13190 Memorywood Drive
Baxter, MN 56425

RE: Agreement for 2016 Golf Course Drive Reclamation and Reconstruction

Dear Mr. Walter,

We would like to thank you for selecting Bolton & Menk, Inc. (BMI) to provide engineering, design, and construction related services for the above referenced project. In response to your request, we are pleased to present you with our Agreement for engineering services (attached).

Our proposed scope of services, work plan, understandings, fee schedule, and proposed project schedule was provided in our Proposal dated January 26, 2016. Our Proposal with the proposed fee schedule have been incorporated into the attached Agreement.

BMI proposes to perform the services described in our Proposal and the attached Agreement for a Not To Exceed amount of \$133,180. We understand construction observation services will be paid for by the City on an hourly rate with hours dependent upon the contractor awarded the construction project.

If you are in agreement with our Proposal for this project, please sign and return a copy of the attached Agreement with a notice to proceed. We look forward to working with you and City staff on this project.

Mike Rardin will personally serve as your Senior Project Manager and lead client contact on this project. Please contact Mike at 218-232-6536 or michaelra@bolton-menk.com if you have any questions regarding this Agreement.

Respectfully submitted,

Bolton & Menk, Inc.

Phillip M. Martin, P.E.
Principal-in-Charge

AGREEMENT FOR PROFESSIONAL SERVICES

2016 FULL DEPTH RECLAMATION AND RECONSTRUCTION OF GOLF COURSE DRIVE

CITY OF BAXTER, MINNESOTA

This Agreement, made this Twenty Seventh day of January 2016 by and between City of Baxter, PO Box 2626 13190 Memorywood Drive, Baxter, Minnesota 56425, hereinafter referred to as CLIENT, and BOLTON & MENK, INC., 7656 Design Road, Suite 200, Baxter, Minnesota, 56425, hereinafter referred to as CONSULTANT.

WITNESS, whereas the CLIENT requires professional services in conjunction with the 2016 Full Depth Reclamation and Reconstruction of Golf Course Drive improvement project and whereas the CONSULTANT agrees to furnish the various professional services required by the CLIENT.

NOW, THEREFORE, in consideration of the mutual covenants and promises between the parties hereto, it is agreed:

SECTION I - CONSULTANT'S SERVICES

- A. The CONSULTANT agrees to perform the various Basic Services in connection with the proposed project as described in CONSULTANT Proposal dated January 26, 2016. Electronic versions of spreadsheet data, equipment evaluation data, and resulting data generated during the project shall be provided to the CLIENT on an "AS IS" basis strictly for the convenience of the CLIENT without any warranties of any kind as described in Paragraph IV.F.
- B. Upon mutual agreement of the parties hereto, Additional Services may be authorized as described in Paragraph IV.B.

SECTION II - THE CLIENT'S RESPONSIBILITIES

- A. The CLIENT shall promptly compensate the CONSULTANT in accordance with Section III of this Agreement.
- B. The CLIENT shall place any and all previously acquired information in its custody at the disposal of the CONSULTANT for its use. Such information shall include but shall not be limited boundary surveys, topographic surveys, preliminary sketch plan layouts, building plans, soil surveys, abstracts, deed descriptions, tile maps and layouts, aerial photos, utility agreements, environmental reviews, and zoning limitations. The CONSULTANT may rely upon the accuracy and sufficiency of all such information in performing services unless otherwise instructed, in writing, by CLIENT.
- C. The CLIENT will guarantee access to and make all provisions for entry upon both public and private portions of the project and pertinent adjoining properties.
- D. The CLIENT will give prompt notice to the CONSULTANT whenever the CLIENT observes or otherwise becomes aware of any defect in the proposed project.

- E. The CLIENT shall designate a liaison person to act as the CLIENT'S representative with respect to services to be rendered under this Agreement. Said representative shall have the authority to transmit instructions, receive instructions, receive information, interpret and define the CLIENT'S policies with respect to the project and CONSULTANT'S services.
- F. The CLIENT shall provide such legal, accounting, independent cost estimating and insurance counseling services as may be required for completion of the consultant services described in this agreement.
- G. The CLIENT will obtain any and all regulatory permits required for the proper and legal execution of the project.

SECTION III - COMPENSATION FOR SERVICES

A. FEES.

The CLIENT will compensate the CONSULTANT, on an hourly basis, for services performed in accordance with the fee schedule in CONSULTANT Proposal, attached as Exhibit 1, for a not to exceed amount of \$133,180.

- B. The payment to the CONSULTANT will be made by the CLIENT upon billing at intervals not more often than monthly at the herein rates.

SECTION IV - GENERAL

A. STANDARD OF CARE

Professional services provided under this Agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the Consultant's profession currently practicing under similar conditions. No warranty, express or implied, is made.

B. CHANGE IN PROJECT SCOPE

In the event the CLIENT changes or is required to change the scope of the project from that described in Section I and/or the applicable addendum, and such changes require Additional Services by the CONSULTANT, the CONSULTANT shall be entitled to additional compensation at the applicable hourly rates. The CONSULTANT shall give notice to the CLIENT of any Additional Services, prior to furnishing such additional services. The CLIENT may request an estimate of additional cost from the CONSULTANT, and upon receipt of the request, the CONSULTANT shall furnish such, prior to authorization of the changed scope of work.

C. LIMITATION OF LIABILITY

CONSULTANT shall indemnify, defend, and hold harmless CLIENT and its officials, agents and employees from any loss, claim, liability, and expense (including reasonable attorneys' fees and expenses of litigation) arising from, or based in the whole, or in any part, on any negligent act or omission by CONSULTANT'S employees, agents, or subconsultants. In no event shall

CONSULTANT be liable to CLIENT for consequential, incidental, indirect, special, or punitive damages.

CLIENT shall indemnify, defend, and hold harmless CONSULTANT and its employees from any loss, claim, liability, and expense (including reasonable attorneys' fees and expenses of litigation) arising from, or based in the whole, or in any part, on any negligent act or omission by CLIENT'S employees, agents, or consultants. In no event shall CLIENT be liable to CONSULTANT for consequential, incidental, indirect, special, or punitive damages.

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the CLIENT or the CONSULTANT. The CONSULTANT'S services under this Agreement are being performed solely for the CLIENT'S benefit, and no other entity shall have any claim against the CONSULTANT because of this Agreement or the performance or nonperformance of services provided hereunder. The CLIENT agrees to include a provision in all contracts with contractors and other entities involved in this project to carry out the intent of the paragraph.

D. INSURANCE

The CONSULTANT agrees to maintain, at the CONSULTANT'S expense, statutory worker's compensation coverage.

The CONSULTANT also agrees to maintain, at CONSULTANT'S expense, general liability insurance coverage insuring CONSULTANT against claims for bodily injury, death or property damage arising out of CONSULTANT'S general business activities (including automobile use). The liability insurance policy shall provide coverage for each occurrence in the minimum amount of \$1,000,000.

During the period of plan design of the project, the CONSULTANT also agrees to maintain, at CONSULTANT'S expense, Professional Liability Insurance coverage insuring CONSULTANT against damages for legal liability arising from an error, omission or negligent act in the performance of professional services required by this agreement, providing that such coverage is reasonably available at commercially affordable premiums. For purposes of this agreement, "reasonably available" and "commercially affordable" shall mean that more than half of the design professionals practicing in this state in CONSULTANT'S discipline are able to obtain coverage. The professional liability insurance policy shall provide coverage for each occurrence in the amount of \$1,000,000 and annual aggregate of \$1,000,000 on a claims-made basis.

Upon request of CLIENT, CONSULTANT shall provide CLIENT with certificates of insurance, showing evidence of required coverages.

E. OPINIONS OR ESTIMATES OF CONSTRUCTION COST

Where provided by the CONSULTANT as part of Exhibit I or otherwise, opinions or estimates of construction cost will generally be based upon public construction cost information. Since the CONSULTANT has no control over the cost of labor, materials, competitive bidding process, weather conditions and other factors affecting the cost of construction, all cost estimates are opinions for general information of the CLIENT and the CONSULTANT does not warrant or guarantee the accuracy of construction cost opinions or estimates. The CLIENT acknowledges that costs for project financing should be based upon contracted construction costs with appropriate contingencies.

F. USE OF 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 CLIENT are limited to the printed copies (also known as hard copies) that are signed or sealed by CONSULTANT. Except for electronic/digital data which is specifically identified as a project deliverable by this AGREEMENT or except as otherwise explicitly provided in this AGREEMENT, all electronic/digital data developed by the CONSULTANT as part of the PROJECT is acknowledged to be an internal working document for the CONSULTANT'S purposes solely and any such information provided to the CLIENT shall be on an "AS IS" basis strictly for the convenience of the CLIENT without any warranties of any kind. As such, the CLIENT is advised and acknowledges that use of such information may require substantial modification and independent verification by the CLIENT (or its designees). Provision of electronic/digital data, whether required by this Agreement or provided as a convenience to the Client, does not include any license of software or other systems necessary to read, use or reproduce the information. It is the responsibility of the CLIENT to verify compatibility with its system and long-term stability of media. CLIENT shall indemnify and hold harmless CONSULTANT and its Subconsultants from all claims, damages, losses, and expenses, including attorneys' fees arising out of or resulting from third party use or any adaptation or distribution of electronic/digital data provided under this AGREEMENT, unless such third party use and adaptation or distribution is explicitly authorized by this AGREEMENT.

G. REUSE OF DOCUMENTS

Drawings and Specifications and all other documents (including electronic and digital versions of any documents) prepared or furnished by CONSULTANT pursuant to this AGREEMENT are instruments of service in respect to the Project and CONSULTANT shall retain an ownership interest therein. Upon payment of all fees owed to the CONSULTANT, the CLIENT shall acquire an ownership interest in all identified deliverables, including Plans and Specifications, for any reasonable use relative to the Project and the general operations of the CLIENT. CLIENT may make and disseminate copies for information and reference in connection with the use and maintenance of the Project by the CLIENT. However, such documents are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the Project or on any other project and any reuse other than that specifically intended by this AGREEMENT will be at CLIENT'S sole risk and without liability or legal exposure to CONSULTANT.

H. CONFIDENTIALITY

CONSULTANT agrees to keep confidential and not to disclose to any person or entity, other than CONSULTANT'S employees and subconsultants any information obtained from CLIENT not previously in the public domain or not otherwise previously known to or generated by CONSULTANT. These provisions shall not apply to information in whatever form that comes into the public domain through no fault of CONSULTANT; or is furnished to CONSULTANT by a third party who is under no obligation to keep such information confidential; or is information for which the CONSULTANT is required to provide by law or authority with proper jurisdiction; or is information upon which the CONSULTANT must rely for defense of any claim or legal action.

I. PERIOD OF AGREEMENT

This Agreement will remain in effect for the duration of the project, after which time the Agreement may be extended upon mutual agreement of both parties.

J. PAYMENTS

If CLIENT fails to make any payment due CONSULTANT for services and expenses within thirty days after date of the CONSULTANT'S invoice, a service charge of one and one-half percent (1.5%) per month or the maximum rate permitted by law, whichever is less, will be charged on any unpaid balance. In addition after giving seven days' written notice to CLIENT, CONSULTANT may, without waiving any claim or right against the CLIENT and without incurring liability whatsoever to the CLIENT, suspend services and withhold project deliverables due under this Agreement until CONSULTANT has been paid in full all amounts due for services, expenses and charges.

K. TERMINATION

This Agreement may be terminated by either party for any reason or for convenience by either party upon seven (7) days written notice.

In the event of termination, the CLIENT shall be obligated to the CONSULTANT for payment of amounts due and owing including payment for services performed or furnished to the date and time of termination, computed in accordance with Section III of this Agreement.

L. CONTINGENT FEE

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT 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 Agreement.

M. NON-DISCRIMINATION

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

The CONSULTANT is an Equal Opportunity Employer and it is the policy of the CONSULTANT that all employees, persons seeking employment, subcontractors, subconsultants and vendors are treated without regard to their race, religion, sex, color, national origin, disability, age, sexual orientation, marital status, public assistance status or any other characteristic protected by federal, state or local law.

N. CONTROLLING LAW

This Agreement is to be governed by the law of the State of Minnesota.

O. DISPUTE RESOLUTION

CLIENT and CONSULTANT agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice of dispute prior to proceeding to formal dispute resolution or exercising their rights under law. Any claims or disputes unresolved after good faith negotiations shall then be submitted to mediation using a neutral from the Minnesota District Court Rule 114 Roster, or if mutually agreed at time of dispute submittal, a neutral from the American Arbitration Association Construction Industry roster. If mediation is unsuccessful in resolving the dispute, then either party may seek to have the dispute resolved by bringing an action in a court of competent jurisdiction.

P. SURVIVAL

All obligations, representations and provisions made in or given in Section IV of this Agreement will survive the completion of all services of the CONSULTANT under this Agreement or the termination of this Agreement for any reason.

Q. SEVERABILITY

Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon CLIENT and CONSULTANT, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

SECTION V - SIGNATURES

THIS INSTRUMENT embodies the whole agreement of the parties, there being no promises, terms, conditions or obligation referring to the subject matter other than contained herein. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument signed by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their behalf.

CLIENT: City of Baxter

CONSULTANT: Bolton & Menk, Inc.

Dee M. Menk

Office Manager

CLIENT: City of Baxter

PROPOSED FEE SCHEDULE/BUDGET

BOLTON & MENK INC.

CLIENT: City of Baxter
 PROJECT: 2016 FDR and Reconstruction of Golf Course Drive

TASK NO	WORK TASK DESCRIPTION	Principal-In-Charge	Senior Project Manager	Project Engineer	Design Engineer	Licensed Land Surveyor	Surveyor	RPR (Assistant)	RPR (Primary)	Clerical	Total Hours	Total Cost
1	Preliminary Details and Survey	0	1	1	0	35	48	0	0	0	85	\$9,975.00
2	Geotechnical Evaluation	0	0	2	0	0	0	0	0	0	2	\$240.00
3	Feasibility Study	1	15	6	20	0	0	0	0	6	48	\$4,990.00
4	Design	0	2	42	132	0	0	0	0	10	186	\$18,014.00
5	Advertising, Bidding, & Award	0	6	6	0	0	0	0	0	8	20	\$2,000.00
6	Final Assessment Calculation & Hearing	0	5	0	6	0	0	0	0	2	13	\$1,362.00
7	Construction Staking	0	0	0	0	14	77	0	0	0	91	\$9,555.00
8	Project Management	4	6	30	0	0	0	0	0	2	42	\$4,550.00
9	Construction Services	0	0	0	0	0	0	360	360	0	720	\$55,800.00
10	Construction Testing (See Subconsultant Fee)	0	0	0	0	0	0	0	0	0	0	\$0.00
11	Post Construction Services	0	0	2	12	12	12	0	0	0	38	\$3,864.00
TOTAL HOURS		5	35	89	170	61	137	360	360	28	1245	
TOTAL LABOR COSTS												\$109,350.00

TOTAL FEE \$133,180.00

REQUEST FOR COUNCIL ACTION

February 2, 2016

Department Origination: Community Development

Agenda Section: Consent

Agenda Item: Approve Plans and Specifications for the Oscar Kristofferson Park Pavilion and Kitchen and Authorize staff to advertise for bids

Approval Required: Simple Majority of Vote of the Council

BACKGROUND

At the July 7, 2015 City Council Work Session, the City Council provided consensus support of moving forward with a project to build a new pavilion with a kitchen at Oscar Kristofferson park. At the September 1, 2015 City Council meeting, the City Council approved a proposal by WSN to assist the City with design, preparation of bidding documents/bidding and construction administration for the Oscar Kristofferson Park Pavilion and kitchen in the amount of \$10,850. Since September, staff has held several construction meetings with WSN to prepare the attached plans and specifications to bid the project. The attached cover letter from WSN includes an anticipated construction schedule for the City Council's consideration.

FINANCIAL IMPLICATIONS

Staff estimates a total cost of \$250,000 to complete construction of the pavilion, including the \$10,850 for WSN to assist the City with plan, specifications and bidding. The cost for the pavilion project would come out of the park dedication fund.

RECOMMENDATION

Staff recommends approval of the Plans and Specifications for the Oscar Kristofferson Park Pavilion and Kitchen and Authorize staff to advertise for bids.

COUNCIL ACTION REQUESTED

Motion to approve the plans and specifications for the Oscar Kristofferson Park Pavilion and Kitchen and authorize staff to advertise for bids.

Attachments:

- 1) WSN Cover Letter
- 2) Plans and Specifications



January 27, 2016

Mayor Olson
Baxter City Council
City of Baxter
P.O. Box 2626
Baxter, MN 56425

Baxter/Brainerd
7804 Industrial Park Road
PO Box 2720
Baxter, MN 56425-2720

218.829.5117
218.829.2517
Brainerd@wsn.us.com

WidsethSmithNolting.com

Re: Oscar Kristofferson Park Picnic Pavilion Project

Dear Mayor Olson and City Council:

Please refer to the attached drawings that represent the 90% complete bid document set for the Oscar Kristofferson Park Picnic Pavilion project located in Baxter, MN. The bid documents include civil, mechanical and electrical engineering drawings as well as architectural drawings. The picnic pavilion is a 62'-0" x 42'-0" pre-engineered structure, and similar to what has been installed at Whipple Beach, this structure will also house a 14'-0" x 11'-4" kitchen. In addition to the new picnic pavilion and kitchen, there will also be improvements to the existing sidewalks that will enhance the pedestrian experience and improve access to Oscar Kristofferson Park.

The anticipated schedule for bidding and construction is as follows:

Project Out For Bid.....	February 9, 2016
Bids Due.....	March 1, 2016
Award Bid.....	March 15, 2016
Begin Construction.....	April 4, 2016
Substantial Completion.....	July 1, 2016
Grand Opening.....	July 20, 2016

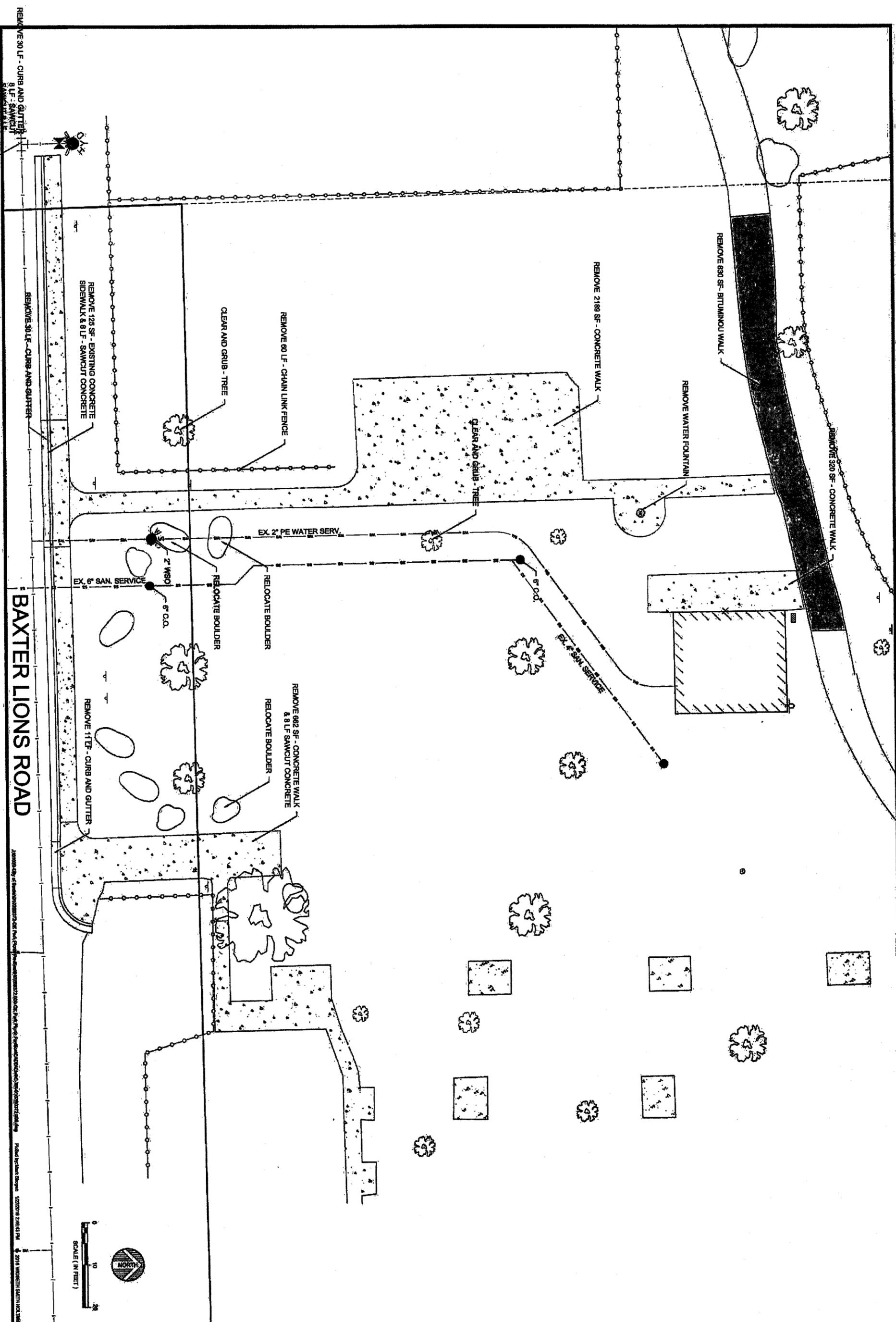
If you have any questions relating to the scope of work of the bid documents or the anticipated schedule as described above, please contact us right away. Thank you for the opportunity to work with the City of Baxter on this project.

Sincerely,

Widseth Smith Nolting

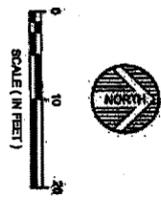
Michael Angland, AIA, LEED AP

Cc: Kevin Wernberg, Aric Welch



REMOVE 30 LF - CURB AND GUTTER
 8 LF - SAWCUT CONCRETE
 REMOVE 125 SF - EXISTING CONCRETE SIDEWALK & 8 LF - SAWCUT CONCRETE
 REMOVE 60 LF - CHAIN LINK FENCE
 CLEAR AND GRUB - TREE
 REMOVE 80 LF - SAWCUT CONCRETE
 EX. 2\"/>

BAXTER LIONS ROAD



C1.0 SHEET NO.	OSCAR KRISTOFFERSON PARK PICNIC SHELTER CITY OF BAXTER BAXTER, MINNESOTA DEMOLITION PLAN	DATE: JANUARY 2019 SCALE: AS SHOWN DRAWN BY: M.A.S. CHECKED BY: A.L.W. JOB NUMBER: 0102B0372.000	<table border="1"> <thead> <tr> <th>DATE</th> <th>REV#</th> <th>REVISION DESCRIPTION</th> <th>BY</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	DATE	REV#	REVISION DESCRIPTION	BY					I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION, OR REPORT WAS PREPARED BY ME OR UNDER MY CLOSE SUPERVISION AND THAT I AM A DAILY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA. ASB WSLOR DATE: 1/26/2019	WIDSETH SMITH NOLTING Engineering Architecture Surveying Environmental
	DATE	REV#	REVISION DESCRIPTION	BY									

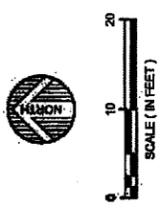
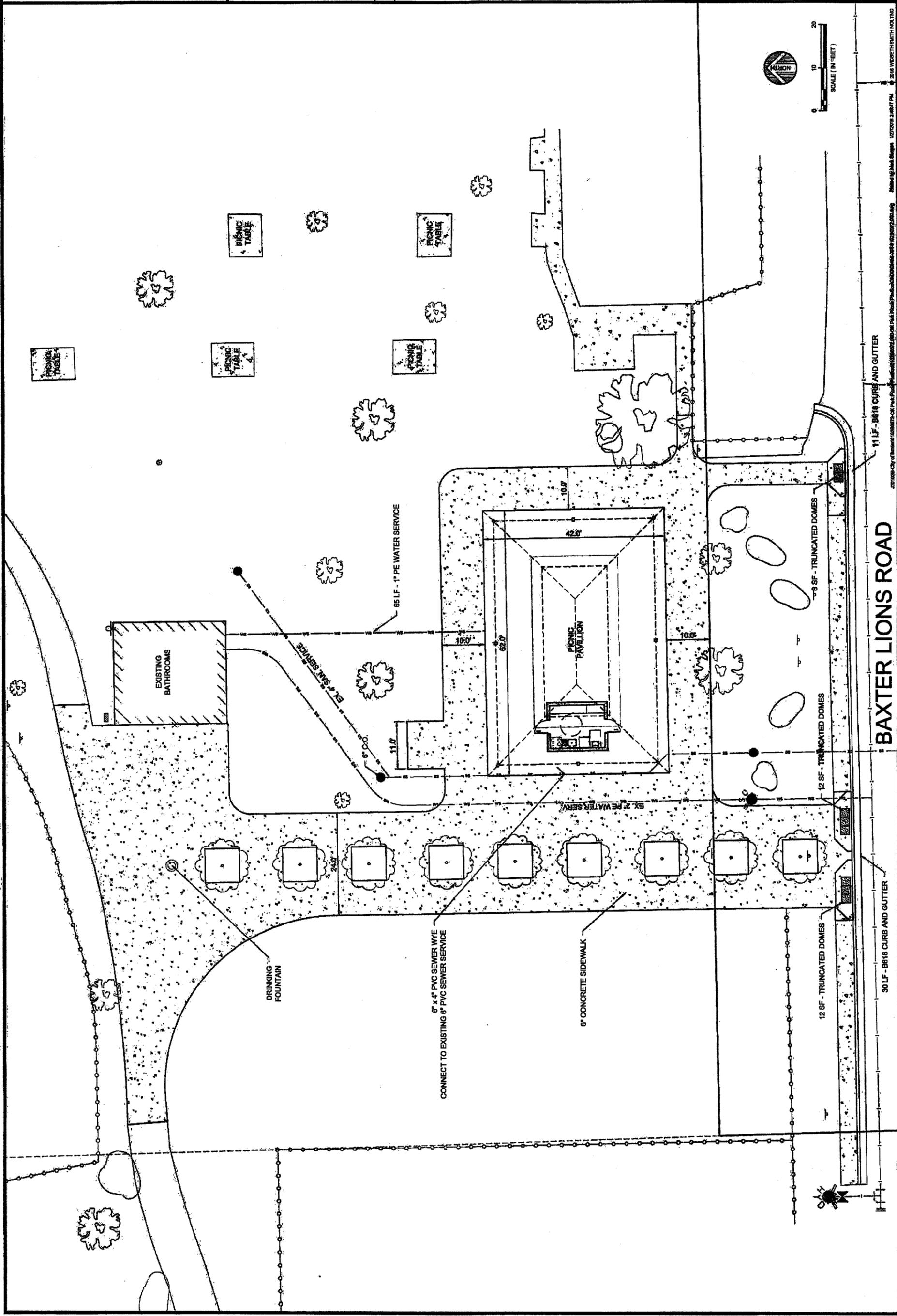


DATE: JANUARY 2018
SCALE: AS SHOWN
DRAWN BY: M.A.S.
CHECKED BY: A.L.W.
JOB NUMBER: 0102B0572.000

DATE	REVISION DESCRIPTION	BY

OSCAR KRISTOFFERSON PARK PICNIC SHELTER
CITY OF BAXTER
BAXTER, MINNESOTA
SITE PLAN

PROJECT NO. C2.0



BAXTER LIONS ROAD

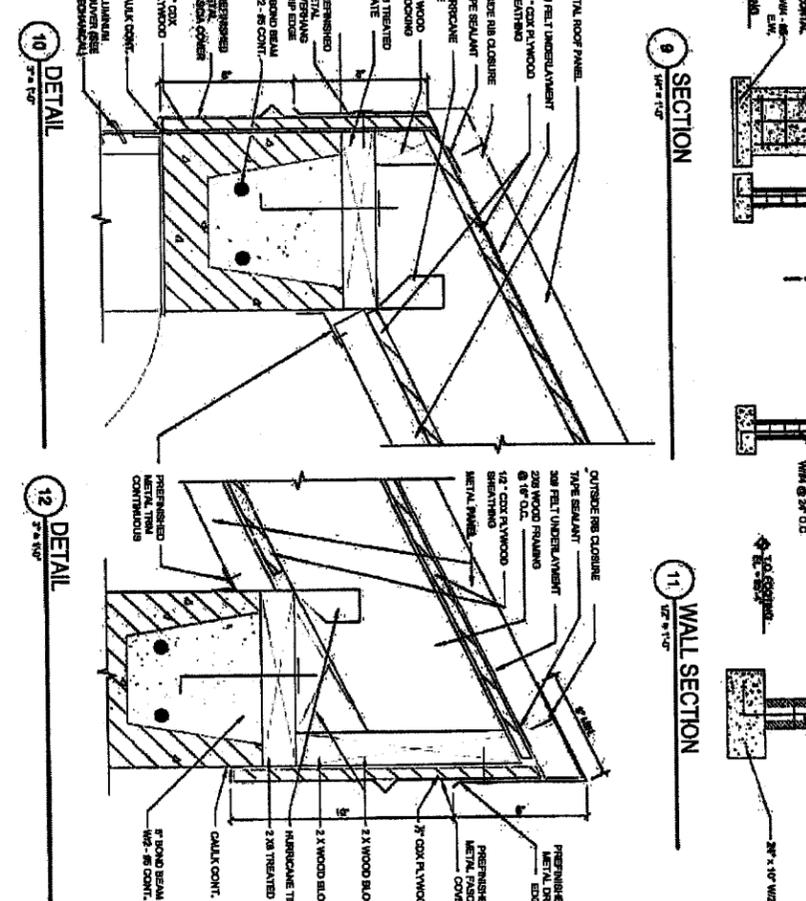
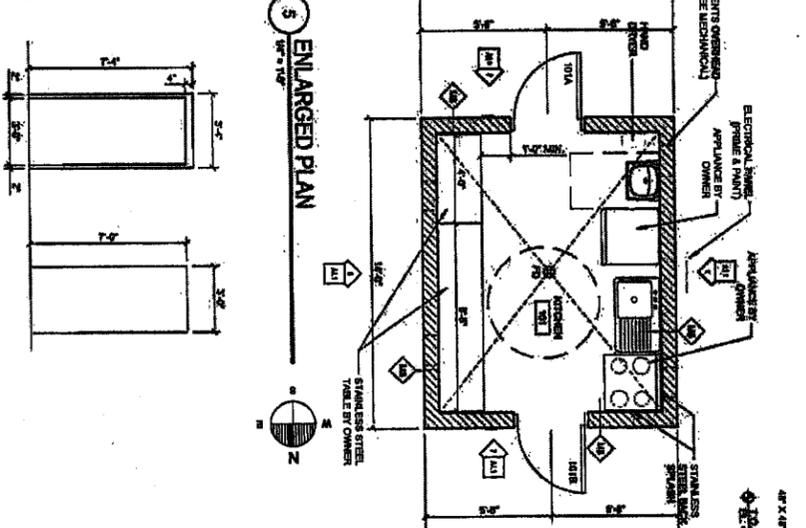
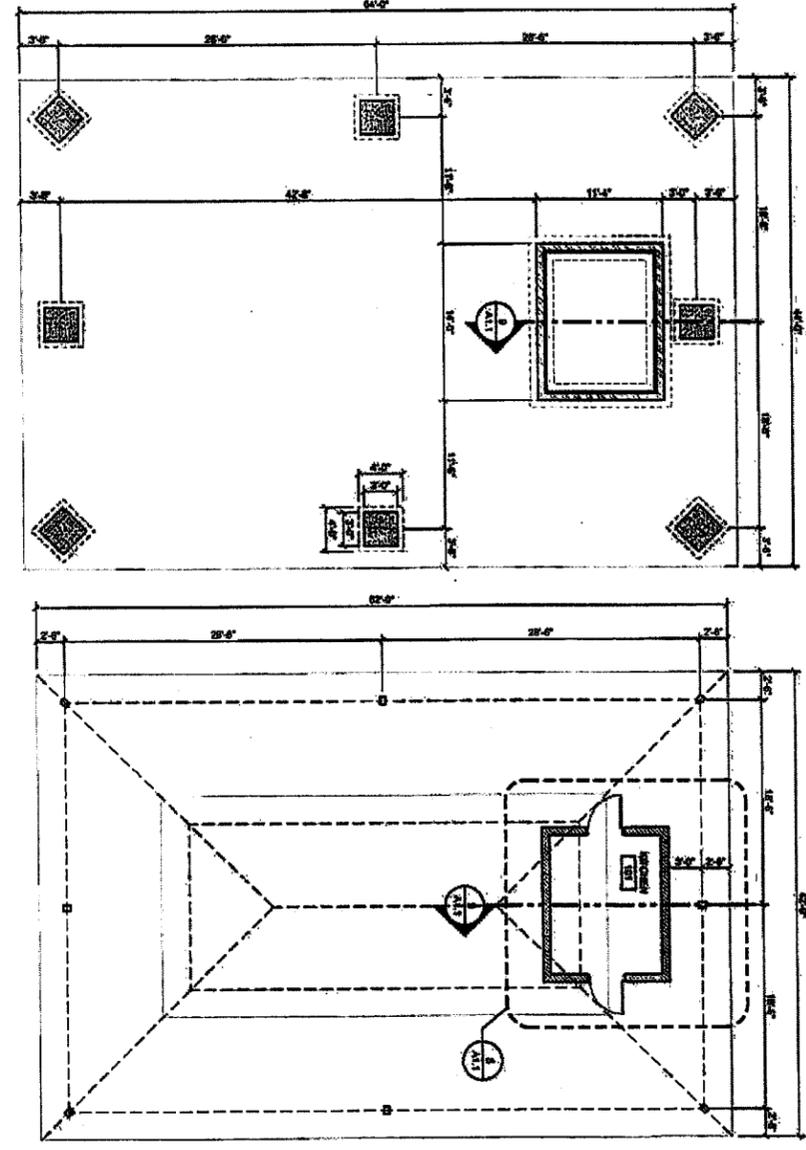
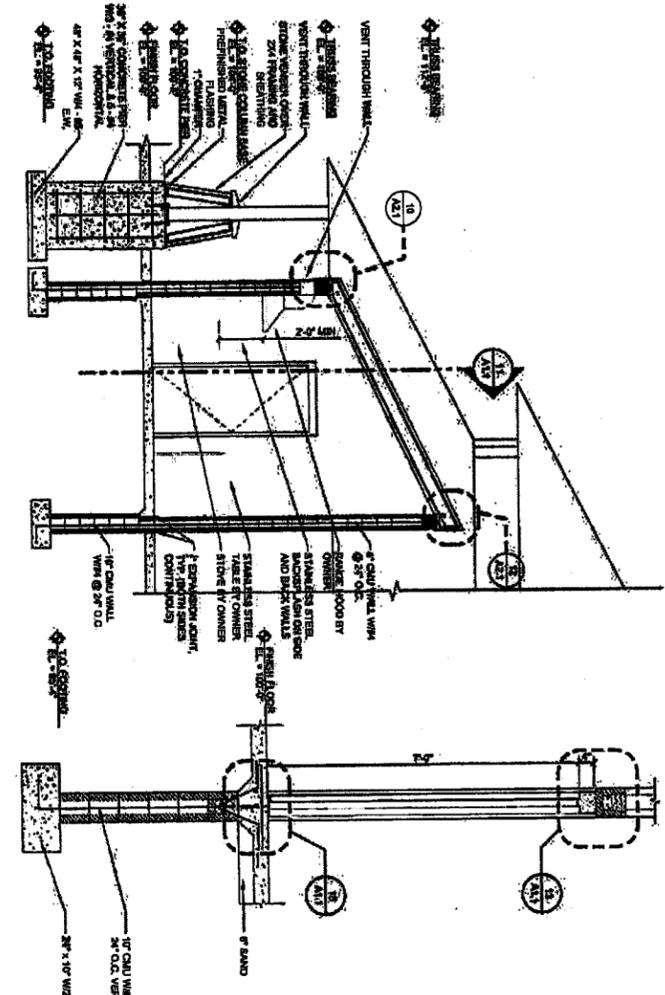
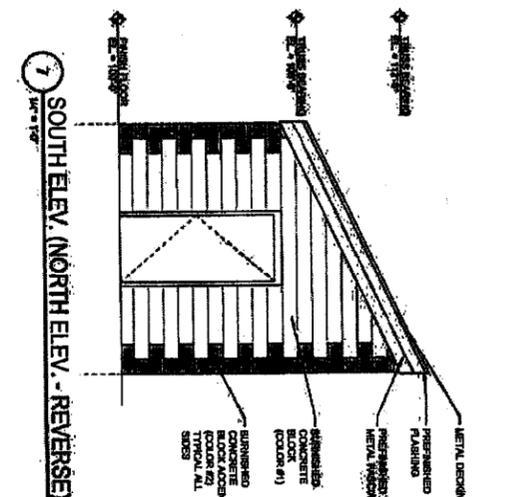
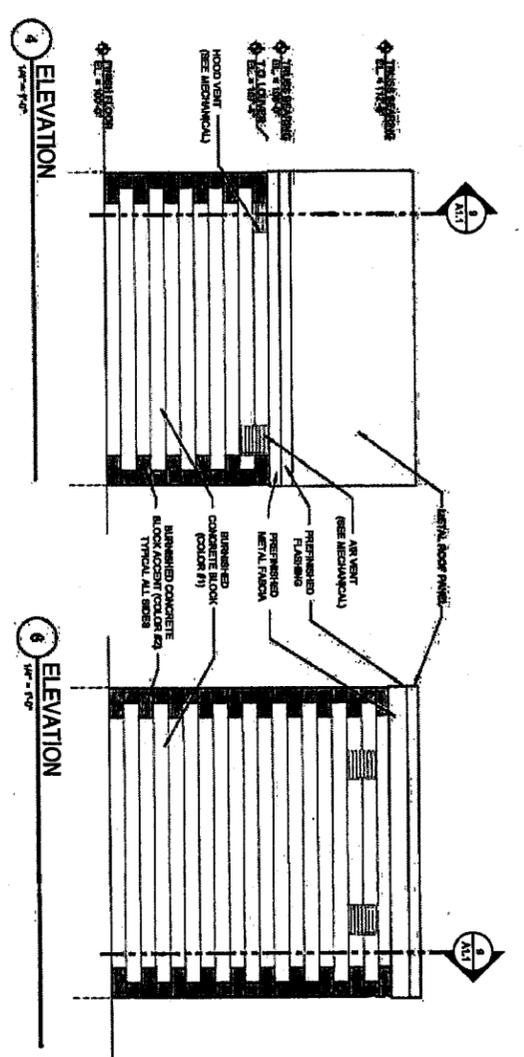
30 LF - B618 CURB AND GUTTER

11 LF - B618 CURB AND GUTTER

12 SF - TRUNCATED DOMES

8 SF - TRUNCATED DOMES

2018 City of Baxter 0102B0572-000 Plan No. 0102B0572-000.dwg 2/7/2018 2:48:17 PM 2018 WIDETH SMITH NOLTING

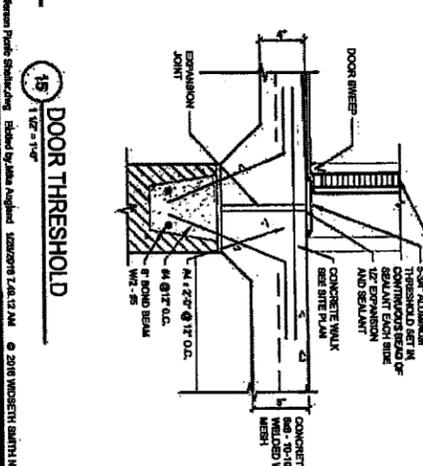
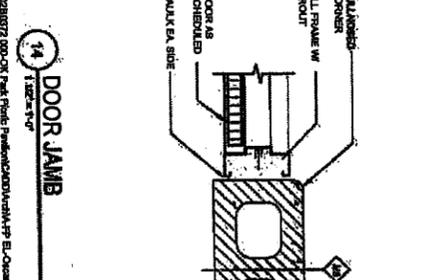
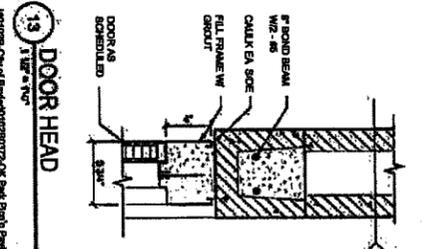
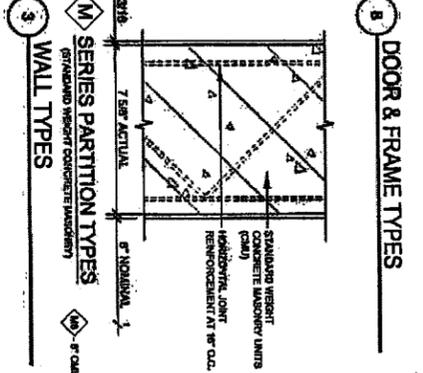


ROOM FINISH SCHEDULE

ROOM NUMBER	ROOM NAME	FLOOR	BASE				WALLS				CEILING				REMARKS
			NORTH	EAST	SOUTH	WEST	NORTH	EAST	SOUTH	WEST	NORTH	EAST	SOUTH	WEST	
101	KITCHEN		CONC-S	CAU	BURNS	CAU	BURNS	CAU	BURNS	MTL	FINISH	MTL	FINISH	VARIES	

ABBREVIATIONS

- BURNS - BURNISHED BLOCK - SEALED
- CAU - CAST-IN PLACE CONCRETE
- CONC-S - CONCRETE
- MTL - METAL PANEL



OSCAR KRISTOFFERSON PARK PICNIC SHELTER
CITY OF BAXTER
BAXTER, MINNESOTA

WIDSETH SMITH NOLTING
Engineering | Architecture | Surveying | Environmental

DATE: JANUARY 2016
SCALE: AS SHOWN
DRAWN BY: AGM/CJB
CHECKED BY: MJA

DATE: _____
REV: _____
REVISIONS DESCRIPTION: _____
BY: _____

DATE: _____
LIC. NO. _____

A1.1



REQUEST FOR COUNCIL ACTION

February 2, 2016

Department Origination: Administration

Agenda Section: Other Business

Agenda Item: Approve Ordinance 2016-005 Amending Text of Title 4, Chapter 3 Open Burning and Ordinance 2016-006 Summary Publication of Ordinance 2016-005.

Approval Required: 4/5 Vote of the Council

BACKGROUND

The City's existing ordinance regulating open burning did not allow open burning of leaves, unless the leaves were contained within a fully enclosed firebox, structure or vehicle and from which the products of combustion were emitted into the open atmosphere without passing through a stack, duct, or chimney. The existing ordinance also prohibited open burning between April 1 and May 15, unless the ground was snow covered.

The proposed ordinance amendment contains four major changes.

1. The definition of open burning was improved to allow open burning without requiring any matter, including leaves, to be fully enclosed.
2. The restriction of no open burning during the period of April 1 through May 15 was removed. There is no statutory restriction for this period of time.
3. Applicants will be able to acquire a burning permit through the DNR's website or the Brainerd Fire Department.
4. The burning of leaves will only be allowed during the period of September 15 through December 1, as allowed in Minnesota Statute 116.082.

Chief Exsted and Fire Chief Holmes have reviewed the ordinance amendments.

FINANCIAL IMPLICATIONS

The financial implication to the city in adopting the ordinance is the cost of publication. To reduce the publication expense, the ordinance has been summarized for publication purposes. A 4/5 vote of the council is required for the approval of the summary ordinance.

STAFF RECOMMENDATIONS

Motion to adopt Ordinance 2016-005 Amending the Text of Title 4, Chapter 3 of the Baxter City Code, Ordinance 2016-006 Summary Publication of Ordinance 2016-005.

COUNCIL ACTION REQUESTED

Motion to adopt Ordinance 2016-005 Amending the Text of Title 4, Chapter 3 of the Baxter City Code, Ordinance 2016-006 Summary Publication of Ordinance 2016-005.

Attachments:

1. Ordinance 2016-005 Amending the Text of Title 4, Chapter 3 of the Baxter City Code
2. Ordinance 2016-006 Summary Publication of Ordinance 2016-005

ORDINANCE 2016-005

AN ORDINANCE AMENDING TEXT OF TITLE 4, CHAPTER 3 OF THE BAXTER CITY CODE

THE CITY COUNCIL OF THE CITY OF BAXTER, MINNESOTA DOES ORDAIN:

The text of Title 4, Chapter 3 (Open Burning) of the Baxter City Code is hereby amended by deleting the ~~stricken~~ material and adding the underlined material as follows:

4-3-1: PURPOSE:

4-3-2: DEFINITIONS:

4-3-3: STATUTE ADOPTED:

4-3-4: PROHIBITED BURNING:

4-3-5: PERMIT REQUIRED:

4-3-6: DATES ALLOWED:

4-3-7: PERMIT HOLDER RESPONSIBILITY:

4-3-8: REVOCATION:

4-3-9: BURNING BAN OR AIR QUALITY ALERT:

4-3-10: PENALTY:

4-3-1: PURPOSE:

The purpose of this chapter is to regulate open burning within the City of Baxter, to protect the public health, safety, and welfare. Through passage of this ordinance, the designated fire official is hereby authorized to adopt and impose burning restrictions to aid in the prevention of wildfire and to consult with the Department of Natural Resources (DNR), Division of Forestry to develop any restrictions or other criteria. ~~establish permitted categories of open burning within the city and provide for a permitting process for open burning, except when such open burning is defined as a "recreational/camp fire" as prescribed in this chapter.~~ (Ord. 2013-6, 4-16-2013)

4-3-2: DEFINITIONS:

For the purposes of this chapter, the terms in this section have the meaning given them, unless the context clearly indicates or requires a different meaning:

DESIGNATED FIRE OFFICIAL. The Fire Chief, Fire Marshal, City Fire Warden, or other designee who provides fire protection or public safety services to the city.

LEAF BURNING MAP. A map adopted by the city council depicting property located within the City of Baxter where the conducting of leaf burning is identified as either allowed or not allowed.

OPEN FIRE OR OPEN BURNING: The burning of any matter if the resulting combustion products are emitted directly into the atmosphere without passing through a stack, duct, or chimney, except a recreational as defined herein. Mobile cooking devices such as charcoal grills, wood smokers, manufactured hibachis, and propane or natural gas devices are not considered open burning devices. A fire burning in matter (whether concentrated or dispersed) contained within a fully enclosed firebox, structure or vehicle and from which the products of combustion are emitted into the open atmosphere without passing through a stack, duct or chimney.

RECREATIONAL/CAMP FIRE: A fire set with an approved starter fuel no more than three feet in diameter by three feet high contained within a recreational fire site: using dry, clean wood; producing little detectable smoke, odor, or soot beyond the property line; conducted with an adult tending the fire at all times; for recreational, ceremonial, or social food preparation; extinguished completely before quitting the occasion; and respecting weather conditions, neighbors, burning bans, and air quality requirements so that nuisance, health, or safety hazards will not be created. A campfire is a type of recreational fire. No more than one recreational fire is allowed on any property at one time. for cooking, warming or ceremonial purposes which is not more than three feet (3') in diameter by three feet (3') high and has had the ground five feet (5') from the base of the fire cleared of all combustible material.

RECREATIONAL FIRE SITE. An area of no more than a 3-foot diameter circle (as measured from the inside of the fire ring or border): either natural rock, cement, brick, tile, blocks, or ferrous metal. Burning barrels are not a recreational fire site. Recreational fire sites shall not be located closer than 25 feet to any structure or combustible material.

RUNNING FIRE. An attended fire allowed to spread through surface vegetative matter under controlled conditions for the purpose of vegetative management, forest management, game habitat management, or agricultural improvement.

SNOW COVERED: The ground has a continuous, unbroken cover of snow to a depth of three inches (3") or more, surrounding the immediate area of the fire sufficient to keep the fire from spreading.

STARTER FUELS. Dry, untreated, or unpainted kindling, branches, or charcoal fire starter. Paraffin candles and alcohols are permitted as starter fuels and as aids to ignition only. Propane gas torches or other clean gas burning devices causing minimal pollution may be used to start an open burn.

VEGETATIVE MATERIALS. Dry leaves, dry grass clippings, twigs, branches, tree limbs, untreated or unpainted wood that contains no glues or resins, and other similar materials. Paper and cardboard are not considered vegetative materials.

WOOD: Dry, clean fuel only such as twigs, branches, limbs, manufactured fireplace logs, charcoal, cordwood or untreated lumber dimensional lumber. "Wood" does not include wood that is green, with leaves or needles, rotten, wet, oil soaked, or treated with paint, glue or preservatives. Clean pallets may be used for recreational fires when cut into less than three-foot lengths. (Ord. 2013-6, 4-16-2013)

4-3-3: STATUTE ADOPTED:

Minnesota statutes Chapter 88, as they may be amended from time to time, sections 88.01 through 88.22 with reference to the definition of terms, conditions of operation, permits, and all other matters pertaining to open burning are hereby adopted by reference and made a part of this chapter as if fully set forth herein. It is the intention of the City Council that all future amendments of Minnesota Statute Chapter 88, are hereby adopted by reference as if they had been in existence at the time this ordinance was adopted. (Ord. 2013-6, 4-16-2013)

CITY MAY BE MORE RESTRICTIVE THAN STATE LAW

The Council is authorized to impose, and has imposed in this ordinance, additional restrictions on open burning within its limits beyond those contained in Minnesota Statute Chapter 88, as it may be amended from time to time.

4-3-4: PROHIBITED BURNING:

A. Excessive Or Noxious Smoke: No person shall conduct, cause or permit open burning of ~~leaves, except as allowed herein;~~ oils; petroleum fuels; rubber; plastics; chemically treated materials; or other materials which produce excessive or noxious smoke such as, but not limited to: tires; railroad ties; treated, painted or glued wood; composite shingles; tarpaper; insulation; composition board; sheetrock; wiring; paint or paint filters. ~~other similar materials.~~

~~Exception: The burning of leaves is allowed within areas set forth on the "leaf burning map", as adopted by the city council.~~

B. No person shall conduct, cause, or permit the open burning of: Hazardous Waste or materials from; sSalvage oOperations; solid waste generated from an industrial or manufactured process; materials from a service or commercial establishment; or building materials generated from demolition of commercial or institutional structures. Demolition Of Structures: No person shall conduct, cause or permit open burning of hazardous waste or salvage operations, or open burning of building material generated from demolition of commercial or institutional structures.

C. ~~Food Waste:~~ No person shall conduct, cause or permit open burning of discarded materials resulting from the handling, processing, storage, preparation, serving or consumption of food.

D. Burners: "Burners" as currently defined in Minnesota statutes shall not be allowed within the city limits. (Ord. 2013-6, 4-16-2013)

E. No person shall conduct the burning of leaves in areas not identified as approved leaf burning areas as established identified on the Leaf Burning Map adopted by the city council. Leaf burning shall only be allowed between September 15 and December 1.

~~B. April 1 Through May 15: No open burning will be allowed between the dates of April 1 and May 15 unless the ground is snow covered. Determination of snow covered condition shall be made by the Brainerd DNR forestry office. The only exception will be for the burning of vegetative material generated by the clearing of property for construction projects or lawful burning of "wood" (as defined) generated from industrial processes as permitted by the DNR and in conformance with MPCA regulations. Permits for the above activities will be available only through the Brainerd DNR forestry office. (Ord. 2013-6, 4-16-2013)~~

4-3-5: OPEN BURNING PROHIBITED EXCEPT BY PERMIT. PERMIT REQUIRED:

No person shall start or allow any open burning on any property in the city without first having obtained an open burning ~~permit, permit,~~ except that a permit is not required for any fire which is a "~~r~~Recreational Fire /camp fire" as defined herein or if the ground is Snow Covered as defined in Section 4-3-2. ~~Open burning permits will be available from DNR-certified fire wardens and the Brainerd DNR forestry office. (Ord. 2013-6, 4-16-2013)~~

PERMITTED OPEN BURNING.

Under special or extraordinary circumstances, open burning permits may be issued by the fire chief or by a DNR forestry official for:

- a. Elimination of a health hazard that cannot be abated by other practical means, as determined by the commissioner of the Department of Health or the local health authority.
- b. Ground thawing for utility repair and construction.
- c. Running fires.
- d. Disposal of vegetative matter for managing forest, prairie, or wildlife habitat, and in the development and maintenance of land and rights-of-way where chipping, composting, land-spreading, or other alternative methods are not practical.
- e. Disposal of diseased trees generated on-site, diseased or infested nursery stock, or diseased beehives.

f. Disposal of unpainted, untreated, non-glued lumber and wood shakes generated from construction, where recycling, reuse, removal, or other alternative disposal methods are not practical.

(B) Fire training permits may only be issued by the DNR.

(C) Permits for the operation of a permanent tree and brush burning sites may only be issued by the DNR.

PERMIT APPLICATION

(A) Open burning permits shall be obtained by making application on a form prescribed by the DNR on the DNR's website or through the Brainerd Fire Department. The permit application shall be presented to the designated fire official for review.

PERMIT PROCESS

(A) The applicant shall demonstrate to the designated fire official the ability to comply with the applicable state statutes, this ordinance, or any additional regulations that may be adopted.

DENIAL OF PERMIT

(A) If the established criteria for the issuance of an open burning permit are not met, the application will be denied.

(B) Even if the established criteria for the issuance of an open burning permit are met, if it is determined that a practical alternative method for disposal exists, a pollution or nuisance conditions would result, or if a burn event safety plan cannot be drafted to the satisfaction of the designated fire official, the application may be denied.

4-3-6: DATES ALLOWED:

~~A. Ground Snow Covered: Open burning in conformance with the requirements of this chapter shall be allowed when the ground is snow covered and no open burning permit shall be required¹.~~

~~B. April 1 Through May 15: No open burning will be allowed between the dates of April 1 and May 15 unless the ground is snow covered. Determination of snow covered condition shall be made by the Brainerd DNR forestry office. The only exception will be for the burning of vegetative material generated by the clearing of property for construction projects or lawful burning of "wood" (as defined) generated from industrial processes as permitted by the DNR and in conformance with MPCA regulations. Permits for the above activities will be available only through the Brainerd DNR forestry office. (Ord. 2013-6, 4-16-2013)~~

4-3-7: PERMIT HOLDER RESPONSIBILITY:

- A. ~~A-~~ Confirm No Ban Or Alert: Prior to starting an open burn, the permit holder shall be responsible for confirming that no burning ban or air quality alert is in effect.
- B. The open burning site shall have appropriate communication and fire suppression equipment available.

~~B. Fire: Every~~ The open burn shall be attended to constantly tended by the permit holder or their competent representative at all times. No fire may ever be allowed to smolder. The fire shall be completely extinguished before the permit holder or his or her representative leaves the site. It is the responsibility of the permit holder to have a valid permit, as required by this ordinance, available for inspection on site by law enforcement, the Fire Department, a Minnesota Pollution Control Agency (MPCA) representative or DNR officer.

~~C. Extinguished: The open burn shall be completely extinguished before the permit holder or their representative leaves the site.~~

~~D. Valid Permit On Site: It is the responsibility of the permit holder to have a valid permit available for inspection on site.~~

E. Compliance: The permit holder is responsible for compliance and implementation of all general conditions, and special conditions, and guidelines as established in the issued permit. The permit holder shall be responsible for all costs incurred as a result of the burn, including but not limited to fire suppression and administrative fees. (Ord. 2013-6, 4-16-2013)

4-3-8: REVOCAION OF PERMIT:

The open burning permit is subject to revocation at the discretion of a DNR ~~forest or conservation~~ officer, a fire warden, law enforcement officer, or the fire chief. Reasons for revocation include, but are not limited to: a fire hazard existing or developing during the course of the burn; any of the permit conditions being violated during the course of the burn; pollution or nuisance conditions developing during the course of the burn; or a fire smoldering with no flame present; or no attendant being present at the fire. (Ord. 2013-6, 4-16-2013)

4-3-9: BURNING BAN OR AIR QUALITY ALERT:

(A)The designated fire official is authorized to determine when conditions make open burning potentially hazardous and declare a burning ban within the city.

(B) No open burning or recreational/camp fire or open burn will be allowed-permitted when the city or the DNR has officially declared a burning ban due to potential hazardous fire conditions or when the MPCA has declared an air quality alert. (Ord. 2013-6, 4-16-2013)

4-3-10: PENALTY:

Any person violating any provision of the chapter is guilty of a misdemeanor and, upon conviction, shall be punished by a fine and/or imprisonment. (Ord. 2013-6, 4-16-2013)

EFFECTIVE DATE.

This ordinance becomes effective on the date of its publication, or upon the publication of a summary of the ordinance as authorized by Minnesota Statute 412.191, subd. 4, as it may be amended from time to time, and meeting the requirements of Minnesota Statute 331A.01, subd. 10, as it may be amended from time to time.

Darrel Olson, Mayor

ATTEST:

Kelly Steele, Assistant City Administrator

City Seal

Published in the Brainerd Daily Dispatch on _____, 2016

Drafted By:
The City of Baxter
P.O. Box 2626
13190 Memorywood Drive
Baxter, MN 56425

**CITY OF BAXTER, MINNESOTA
ORDINANCE 2016-006**

SUMMARY OF ORDINANCE NO. 2016-005

**AN ORDINANCE AMENDING THE TEXT OF TITLE 4, CHAPTER 3 (Open Burning) OF THE
BAXTER CITY CODE**

This ordinance amends the text of the Open Burning regulations (Title 4, Chapter 3 of the City Code). The ordinance consists of amendments to definitions, prohibited open burning, permitted open burning, permitted open burning special circumstances, permit process, permit holder responsibility, revocation of a permit, and burning ban or air quality alert.

A printed copy of the entire amended ordinance is available for inspection by any person at City Hall during the City Clerk's regular office hours.

Whereupon, said Ordinance is hereby declared adopted on this 2nd day of February 2016.

Darrel Olson, Mayor

ATTEST:

Kelly Steele, Assistant City Administrator/Clerk

City Seal

