



# BAXTER CITY COUNCIL AGENDA

**Thursday, March 3, 2016**

The regular meeting of the Baxter City Council will be held on Thursday, March 3, 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 February 16, 2016 (pp. 3-6).
- B. Approve City Council Work Session Minutes from February 16, 2016 (pp. 7-8).
- C. Approve City Council Special Minutes from February 24, 2016 (pp. 9-13).
- D. Approve the Payment of Bills and Finance Report (Addendum A).
- E. Approve Parks and Trails Commission Minutes from February 22, 2016 (pp. 14-15).
- F. Approve Long Range Planning Commission Minutes from February 22, 2016 (pp. 16-20).
- G. Approve Architectural Review Commission Minutes from February 24, 2016 (pp. 21-22).
- H. Adopt Resolution No. 2016-016 approving the 2016 Pavement Management Program. (pg. 23-25 and insert).
- I. Approve the Bolton & Menk Proposal for Engineering Services for the 2016 Pavement Management Program Implementation in the estimated cost of \$14,700.00 depending on

the number of meetings and number of maps required at the end of the implementation process (pp. 26-30).

- J. Approve Permit for Retail Sales of Fireworks by B.J. Alan Company at Mills Fleet Farm and Menards (pp. 31).
- K. Approve moving the Inglewood Drive Railroad Crossing Project from 2020 to 2021 in the City 5-Year CIP (pp. 32-33).
- L. Approve a 2016 budget amendment for the purchase of an athletic field cart for use at Oscar Kristofferson Park in the amount of \$2,169 (pp. 34-35).
- M. Approve the use of fiber cement as an external building material for Cub Foods located at 14133 Edgewood Drive (pp. 36-40).
- N. Approve Lease Agreement with Baxter Snowmobile Club for Use of City Building (pg. 41-52).
- O. Approve WSN Agreement for Professional Engineering Services for the North Inglewood Drive Area Improvements Feasibility Report at a Not-to-Exceed Cost of \$5,000. (pp. 53-59).

## **6. Pulled Agenda Items**

## **7. Other Business**

## **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**

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

## **10. Adjourn to the March 7, 2016 Special Council Meeting at 6:30 p.m.**

**BAXTER CITY COUNCIL MINUTES  
February 16, 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 Quinn Nystrom, Steve Barrows, and Mark Cross

COUNCIL MEMBERS ABSENT: Council Member Todd Holman

STAFF PRESENT: 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

**PUBLIC COMMENTS**

Melissa Dundas, Nisswa, explained she brought new second hand data regarding e-cigarettes and asked if the council would reconsider allowing minors to enter the tobacco product shops. Many families from rural areas visit the shop. Ms. Dundas explained she wishes the council would reconsider allowing minors, but is happy sampling is allowed. If allowing minors is not a movable topic, Ms. Dundas asked if the council could find another way to around to protect the children by either not allowing sampling or not allowing sampling when children are present in the shop.

Dave Schonrock, 6056 Fairview Road, explained the city should build streets to accommodate big trucks. The council is supposed to be making the best of our money and should spend on something that is going to work.

**CONSENT AGENDA**

- A. Approve City Council Special Minutes from February 1, 2016
- B. Approve City Council Minutes from February 2, 2016
- C. Approve City Council Work Session Minutes from February 2, 2016
- D. Approve the Payment of Bills and Finance Report
- E. Approve Temporary Gambling License for the Council 11679, Church of St. Mathias Fundraising Event
- F. Adopt Resolution No. 2016-015 Relating to Parking Along Forthun Road
- G. Approve Cold Weather Policy for the City of Baxter Warming Houses
- H. Approve the Work Plan for the Baxter Water Quality Project for the Whiskey Creek Tributary to the Mississippi River and move the construction of the project from 2017 to 2018 in the City 5-year Capital Improvements Plan
- I. Approve the WSB Certificate of Survey Contract for the Baxter Water Quality Project to the Mississippi River in the amount of \$3,750.00
- J. Approve \$12,500 Budget Amendment for Skidsteer Purchase
- K. Approve the Transfer of \$3,000 From Drug Forfeiture Funds to Police Department Budget for the Purchase of New Tasers

- L. Adopt Resolution 2015-016 Ordering Preparation of Report on 2016 Dellwood Drive Improvement Project
- M. Accept Utilities Commission Minutes from February 3, 2016
  1. Approve the Progressive Consulting Engineer's Agreement for Professional Services for the Design of a Floating Decanter, Review Shop Drawings and Construction Observation in the Not to Exceed amount of \$5,000.00
  2. Approve the Progressive Consulting Engineer's Agreement for Professional Services for a Pilot Study of a Polymer Feed System in the Not to Exceed amount of \$12,000.00
  3. Approve the Lift Station No. 8 Reconstruction Plans and Specifications and direct staff to bid the project
  4. Approve the Quality Flow Systems, Inc. Proposal for pumps, control panels and accessories in the total amount of \$49,770.00 for the Lift Station No. 8 Reconstruction Project
  5. Approve the Bolton & Menk Proposal for Amended Engineering Services for the Baxter Lift Station No. 3 Forcemain Reroute Project in the estimated amount of \$9,450.00 plus additional work as requested will be billed per hour at the agreed staff billing rates in the agreement
  6. Approve the Anderson Brothers Construction Partial Pay Estimate No. 7 in the amount of \$85,181.81 for the 2015 Excelsior Road Improvement Project
  7. Adopt Resolution No. 2016-017 approving the 20-Year Maintenance Plan Update (2016-2036) for the Sanitary Sewer Lift Stations
  8. Approve the WSN Engineering Proposal for the 2017 CSAH 48 Mill & Overlay from Foley Road to T.H. 210 Feasibility Report in the Not to Exceed amount of \$6,300.00
  9. Approve the WSN Engineering Proposal for Long Range Water & Sanitary Sewer Mapping Update in the Not to Exceed amount of \$9,500.00

**MOTION** by Council Member Cross, seconded by Council Member Barrows to approve the Consent Agenda. Motion carries unanimously.

### **OTHER BUSINESS**

#### **Notice of Proposed Franchise Fee Ordinance on Utility Providers**

City Administrator Heitke explained the Council discussed franchise fees on January 5, 2016 and conducted a public hearing on January 19, 2016. Upon the conclusion of the public hearing, staff was directed to prepare an ordinance for adoption. Following the public hearing, conversations were conducted with the Chamber where they asked the council to delay action during the February 2, 2016 council meeting. To accommodate the Chamber, the franchise fee agenda item was delayed to conduct further discussions with the Chamber. A meeting between staff, Mayor Olson, and the Chamber was held. During the meeting the Chamber provided a revised fee schedule. Staff is prepared to proceed tonight based upon the direction previously provided by the council. Finance Director Vacinek is ready to present Ehler's presentation from January 19, 2016 for those in attendance who were unable to attend the public hearing.

Finance Director Vacinek presented Ehler's presentation from the January 19<sup>th</sup> council meeting.

Mayor Olson opened the meeting to public comments.

Matt Kilian, Brainerd Lakes Chamber, explained the Chamber has 900 members, with 250 residing in Baxter. When the Chamber thinks of businesses, they think of small businesses, not the large businesses associated with the Baxter strip. Mr. Kilian explained he is looking for a way to collaborate with the City, not to be an adversary. The Chamber understands what the City is trying to do, and they support planning and saving money for the long term. Mr. Kilian explained there are concerns of transparency and feel the fee is hidden, and is not subject to the same review as the tax levy. Mr. Kilian stated he still has not seen the list of proposed streets to be improved and this is the first time he has seen the street lighting information. Mr. Kilian explained there is the concern of equity and would like to know how the city justifies the fee split of 60 % business and 40% residential. Mr. Kilian explained 14% of the customers are paying 60% of the tab. Those businesses reside in a very condensed business district. Mr. Kilian asked the council to delay taking action, direct staff to provide specific information on how the fee is broken down, present a list of projects for the next five years, and provide an estimated savings amount over the next five years. The Chamber would like input on the fee schedule. Mr. Kilian proposed the business community pay 28%, doubling the 14%, and residents pay the remaining 72%. Mr. Kilian asked the City to draft the ordinance to dedicate revenue for the next five years and then to evaluate the program effectiveness.

Craig Green, Camwood Trail, suggested the council should make the fee transparent and do so through the mechanisms the city already has in place.

Mark Bjorlo, Journey North Church, explained there is a reason nonprofits are exempt from taxes. We are taxing ourselves when taxing nonprofits.

Mayor Olson explained the letters received would be made part of the record.

Russ Goldstein, 5379 Cedardale Lane, asked the council to implement a five-year plan and to enact a reasonable sunset on the fee.

Mayor Olson explained the council has three options tonight. The council can vote on the agenda item as presented and distribute to the utility providers, table for one week to allow more time for study, or drop for one year.

The consensus of the council is to wait one week to allow staff additional time to review.

**MOTION** Council Member Nystrom, seconded by Council Member Barrows to schedule the special meeting for Wednesday, February 24, 2016, with the work session beginning at 6:00 p.m., Council Member Holman asked to amend motion to include tabling agenda item 7A. City Administrator Heitke asked the council to also table agenda item 7B. Council Member Nystrom accepted the amendments. Motion carries unanimously.

**Approve the Bolton & Menk Proposal for Engineering Services for the 2016 Chip Sealcoat Improvements Project in the not to exceed amount of \$4,500.**

*Council tabled discussion until February 24, 2016.*

**COUNCIL COMMENTS**

**Steve Barrows:** Council Member Barrows complimented staff on the operation of the water treatment plant.

**Mark Cross:** Direct staff to invite Dave Schonrock to attend a utilities meeting so he can lean the process for street plans.

**CITY ADMINISTRATOR'S REPORT**

City Administrator Heitke asked the council to schedule a special council meeting for March 7, 2016 at 6:30 p.m. related to the Dellwood Drive project. The council retreat has been cancelled at this time.

**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 the council to enter a closed session to discuss offers for the purchase of real property related to fifteen properties.

**MOTION** by Council Member Cross, seconded by Council Member Barrows to enter a closed session. Motion carries unanimously.

Mayor Olson opened the regular meeting.

Attorney Person explained the council has reached a consensus to making a formal offer for the property located 5632 Fairview Road and tabling the remaining Fairview Road properties until the next meeting.

**MOTION** by Council Member Cross, seconded by Council Member Barrows to approve the formal offer for 5632 Fairview Road. Motion carries unanimously.

Attorney Person explained consensus was reached for staff to have the authority to present an offer to 5425 Joler Road based on the methodology presented in closed session.

**MOTION** by Council Member Cross, seconded by Council Member Nystrom to direct staff to present an offer to 5425 Joler Road based on the methodology presented in closed session. Motion carries unanimously.

**ADJOURNMENT**

**MOTION** by Council Member Barrows, seconded by Council Member Cross to adjourn the meeting at 8:41 p.m. Motion carries unanimously.

Approved by:

Respectfully submitted,

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Darrel Olson  
Mayor

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Kelly Steele  
Assistant City Administrator/Clerk

**BAXTER CITY COUNCIL MINUTES**  
**Work Session**  
**February 16, 2016**

Mayor Darrel Olson called the Work Session to order at 5:45 p.m.

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

COUNCIL MEMBERS ABSENT: None

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

**Water Treatment Plant Evaluation Technical Memorandum**

Naeem Qureshi, Progressive Consulting Engineers, explained the City's water treatment plant, constructed in 2007, was designed to produce 5 million gallons per day; however, the actual capacity is 3.2 million gallons per day. Mr. Qureshi explained the water quality produced at the plant is excellent. The water treatment process was summarized. Mr. Qureshi conducted an evaluation of the plant, identified seven options to improve the plant output, and associated costs for the options. The implementation of the options was discussed. The Council consensus was to support Mr. Qureshi's recommendations.

**Review Golf Course Drive Storm Sewer Reroute Consideration**

Phil Martin, Bolton & Menk, explained the project area includes a storm sewer line running under the Mills Fleet Farm building. To abandon the storm sewer line and re-route it would increase the project cost from approximately \$1.3 million to \$1.6 million. The re-route would require the reconstruction of the roadway instead of the scheduled full depth reconstruction. The capacity of the storm sewer pipe is not known. The consensus of the council is to have the consultant study the cost to reroute the pipe and learn the capacity of the pipe. The council directed staff to review liability concerns.

**Crow Wing State Park Funding**

Council Member Holman explained the DNR is reallocating their funding of state parks to higher use parks such as Itasca, Kathio, and Gooseberry parks. Unfortunately, that translates into cuts in staff, facilities, maintenance and development in the parks like Crow Wing State Park. Crow Wing State Park may not have the volume of use as other parks, but the connection to the Paul Bunyan State Trail is new and Council Member Holman is seeing an increased use. Council Member Holman requested the council approve him or another interested member to work with staff to develop a letter to the DNR Commissioner Landwehr and Parks and Trails Director Erika Rivers,

which would outline the City's interest in the prioritization of Crow Wing State Park. The council consensus was to have Council Member Holman draft a letter and the Mayor would sign.

**Adjournment**

**MOTION** by Council Member Barrows, seconded by Council Member Cross to adjourn at 6:54 p.m. Motion carries unanimously.

Approved by:

Respectfully submitted,

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Darrel Olson  
Mayor

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Kelly Steele  
Assistant City Administrator/Clerk

**BAXTER CITY COUNCIL MINUTES**  
**Special Meeting**  
**February 24, 2016**

Mayor Darrel Olson called the Special City Council Meeting to order at 6:00 p.m.

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

**COUNCIL MEMBERS ABSENT:** None

**STAFF PRESENT:** City Administrator Gordon Heitke, Finance Director Jeremy Vacinek, and Assistant City Administrator Kelly Steele

Mayor Olson explained the first half of the special meeting would be devoted to a work session for staff to review information for council discussion. Upon the conclusion of the work session, the council will enter the regular portion of the meeting and allow public comments.

Finance Director Vacinek explained at the February 16, 2016 city council meeting, council directed staff to work with Ehler's, the city's financial consultant, to provide some additional background on the proposed franchise fee structure in light of the comments received during the meeting.

The proposed City of Baxter franchise fees are modelled after the utility provider's revenue structure. Based upon revenue figures provided by the electric and gas providers, \$5,605,536 of the providers' revenues generated within the City of Baxter are derived from residential accounts, or 36.5% of the overall \$15,362,840 of energy providers' revenues from 2015. The remaining \$9,757,304, or 63.5% of sales, is generated in the commercial classification.

Short of basing the fee on a true percentage that would increase/decrease with system usage cycles due to seasonal demand, energy prices, and other outside influences, the city fine-tuned a fixed fee to level out impacts among user classes and minimize exposure to large user accounts. The final franchise fee structure came in close to the provider revenue mix and actually erred toward more of a share to residential than commercial, as evidenced by the 36.5% residential percentage of provider sales compared to the proposed franchise fee structure of collecting 40.4% of the total anticipated revenues from the residential classification.

The proposed franchise fee structure's residential to commercial ratio (40.4% vs. 59.6%), along with the utility providers' 2015 sales residential to commercial ratio (36.5% vs. 63.5%), closely mirrors the City of Baxter's current tax capacity composition, the other revenue source available to the City of Baxter to finance pavement management and street lighting programs.

Residential-homestead property currently accounts for 33% of the City's tax capacity. Under the proposed franchise fee rate structure, 40.4% of the franchise fee revenues are derived from residential properties, with the remaining 59.6% comprised of not only tax-paying commercial entities, but also tax-

exempt properties that would not contribute to street maintenance and lighting if the revenues were generated via property taxes.

The alternative of funding through the property tax levy would require an increase in the current tax capacity rate from 53.22% to 57.95%.

At the January 21, 2014 Council meeting, franchise fees were presented as the recommended funding source for a portion of the City's pavement management program and street lighting program.

The 1994 franchise agreement with Crow Wing Power established a Community Lighting Program which obligated Crow Wing Power to install, maintain and operate the street lighting system on the public right-of-ways in its service territory within the city. The cost of installation, maintenance and operation of the street lighting system is recovered by Crow Wing Power through a budget funded by 1% of the annual gross revenues generated by the operation of the electrical distribution system within the City. The 2013 projected revenues were approximately \$99,700, and 2014 was \$102,175.

The original intent of this street lighting program was to illuminate all intersections, cul-de-sacs and 90-degree corners because of safety concerns. At this time, Crow Wing Power has installed 373 lights, with only eleven lights left to install within their service area, of which five are on hold due to neighborhood petitions.

Since the original primary intention of the street lighting program has essentially been completed, the program needs to be modified to reflect current needs, primarily ongoing maintenance and operation. It is envisioned the new program will be developed in conjunction with the new franchise agreement in 2014 and will likely be proposed to be a flat per meter franchise fee. Fee revenues will be sent to the City to be used to pay for the cost of maintenance and operation through an agreement with Crow Wing Power since they own the equipment.

There currently is no franchise agreement with the Brainerd Public Utilities (BPUC) or street lighting program to pay for the installation, maintenance and operation of street lights in the BPUC service area, such as we have with Crow Wing Power. The City's current plan for street lighting in the BPUC service area calls for the installation of approximately 40 street lights needing to be installed and or updated.

In order to replace the outdated Community Lighting Program we have with Crow Wing Power, establish a revenue source to pay for the future street lighting installation, maintenance and operation in both electric utility service areas (citywide), and to establish a consistent and equitable street light funding program for both service areas, staff is recommending the establishment of a flat per meter franchise fee for electric users city-wide that would be included with the electric franchise fee collected for street maintenance.

The proposed annual street lighting budget of approximately \$115,000. It should be noted if the franchise fees were implemented, collection would not commence any earlier than September 2016, as depicted in Potential Implementation Schedule the next section. At that point, the City's lighting program and current funding source with Crow Wing Power will cease, per the terms of the franchise agreement with the electric provider.

To implement the franchise fees, proposed ordinances establishing franchise fees need to be sent to the utility providers for a period of time, followed by adoption of the ordinances at which time the franchise fees will be collected by the utility providers and remitted to the City.

Adjusting the share of a franchise fee burden heavily toward one utility classification over another would further disrupt the economics of the gas and electric utility system in place. At the onset, the four utility providers have asked that the City work to structure a franchise fee that provides equitable impact between similar user classes and not overly change their pricing structures in place. An approach to dramatically increase the residential share of the fee burden by basing the distribution of the franchise fee charges on the proportionate number of utility accounts also does not fully recognize the impact commercial traffic has on the city's street system or the need for street lighting and traffic signals in congested areas. Commercial parcels tend to be larger, generate more traffic, require more maintenance, and necessitate the need for more infrastructure in the form of wider streets for additional lanes, street lighting and traffic signals than residential areas. A utility account for a big box retailer is not equivalent to a single-family residential account.

Substantiating a dramatic increase in the residential share of the franchise fee burden would require initiating a comprehensive city-wide traffic study to specifically identify user traffic patterns and impact on street, lighting, and signal maintenance. Short of this, the City's proposed fee structure most closely mirrors the existing utility pricing structure and property tax composition while delivering a reliable revenue stream to initiate the City's pavement management and street lighting program.

Mayor Olson opened the regular portion of the meeting at 6:19 p.m.

Matt Kilian, Brainerd Lakes Chamber, thanked the Council for postponing the decision for one week and for taking public comment when it is not required. Mr. Kilian explained he thought he was in the wrong meeting because he thought the council was going to discuss different options, not repeat past discussions. The Chamber is trying to be a part of the solution and they do not feel the council wants them to be part of the solution. Mr. Kilian asked which roads and street lights will be completed. Mr. Kilian explained he found the Pavement Management Plan on the City's website. The Chamber continues to have an issue with 14% of the customers are paying 60% of the tab. The Chamber is concerned about small businesses and the barriers to start a small business. The Chamber would like to see the sunset considered and the fee should be better defined on the utility provider's bill. Mr. Kilian explained if the council passes the ordinance tonight, it shows the council listens to people but you do not take those suggestions and not taking action on those suggestions, people will not share their opinion. Mr. Kilian hoped there would be some type of compromise.

Dave Schonrock, 6056 Fairview Road, questioned why people ask a question and do not get an answer. Mr. Schonrock explained the city is creating new roads, but is unable to take care of existing roads. Mr. Shronrock compared franchise fees to drug dealers because they get people hooked. Mr. Shronrock provided a handout with a list of taxes and said residents have been paying enough tax and suggested the council spend more wisely.

Lisa Paxton, Ultra Paws, explained she has shared letters with the council expressing her concerns regarding the franchise fee. Ms. Paxton conducted research and found franchise fees vary across cities. Ms. Paxton discovered 66% of the City's budget is paid by businesses. Ms. Paxton presented the council with a document containing her proposal for franchise fee rates.

Brent Gunsbury explained he owns property near El Tequila. Mr. Gunsbury questioned a business may only have a 5% net profit and has to pay for additional taxes or fees.

Chris Quisberg, Cub Foods, explained he has talked to many business owners and the Council's motive to delay further discussion. The Chamber conducted a meeting earlier in the day to discuss property taxes and found one third of taxes paid go to the City of Baxter.

Jerry Sinner, 7756 College Road, questioned the reason the graphic shows everyone is saving money under the franchise fee proposal. Someone is paying more and it is the nonprofits. Mr. Sinner explained he is not convinced energy usage is tied to street usage. Mr. Sinner asked if the city's sale tax revenue could be used for street repairs.

Kevin Stumpf, 7788 Fairview Road, explained he will have to pass the franchise fee on to his customers and the residents are going to pay the tax. Mr. Stumpf stated it is a great idea to have nonprofits paying towards the franchise fee. Mr. Stumpf explained he does not like the fee split, and it does not address land that does not have utilities, such as Cypress Drive.

Mayor Olson closed the public comment session at 6:50 p.m.

Council Member Cross explained Baxter has always been a fee-based city and it has worked out to everyone's advantage. It is less expensive to pay franchise fees over a period of time than to pay for a street reconstruction assessment. Council Member Cross explained residential constituents have expressed concerns with the Chamber's fee proposal.

Council Member Holman explained the city tries to be equitable and fair. The council represents all 8,000 members and needs to find the best and most equitable approach.

Council Member Nystrom stated the council is elected to hear the people and make the best decisions. Council Member Nystrom explained there is a lot of discord and thought the city should consider other options.

Council Member Barrows explained the use of sales tax revenue is restricted. The franchise fee is reviewed annually during the budget process. Council Member Barrows invited people to attend the budget meeting to express their concerns. Residents will pay a franchise fee on their personal bills and will pay when the businesses pass their fee on to their customers.

Mayor Olson explained Mr. Kilian's letters only discussed the franchise fee split. The franchise fee has been discussed since 2013, and will be reviewed annually as part of the budget process. Though state statute does not require a public hearing to adopt franchise fees, the city has held a public hearing, purchased display advertisements in the Brainerd Dispatch, and the discussion has been covered by the Brainerd Dispatch on placed on the City's website. Mayor Olson reiterated the council has three options to consider for the next step.

**MOTION** by Council Member Holman, seconded by Council Member Cross to direct staff to provide notice of the franchise fee ordinances to the utility providers. Motion carries with Council Members Barrows, Holman, Cross, and Mayor Olson voting yes. Council Member Nystrom voting no.

**MOTION** by Council Member Holman, seconded by Council Member Barrows to approve the Bolton & Menk proposal of engineering services for the 2016 Chip Sealcoat Improvements Project in the not to exceed amount of \$4,500. Motion carries with Council Members Barrows, Holman, Cross, and Mayor Olson voting yes. Council Member Nystrom voting no.

**MOTION** by Council Member Cross, seconded by Council Member Barrows to adjourn at 7:14 p.m. Motion carries unanimously.

Approved by:

Respectfully submitted,

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Darrel Olson  
Mayor

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Kelly Steele  
Assistant City Administrator/Clerk

**PARKS & TRAILS COMMISSION MINUTES**  
**February 22, 2016**

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

MEMBERS PRESENT: Commissioner Mari Holderness, Gail Brecht, Melissa Barrick and Council Liaison Quinn Nystrom

MEMBERS ABSENT: Chair Jim Kalkofen and Ken Hasskamp

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

OTHERS PRESENT: None

**Approval of the Minutes**

**MOTION** by Commissioner Holderness, seconded by Commissioner/Acting Chair Brecht to approve the regular meeting minutes of January 25, 2016 as presented. Motion carried unanimously.

**OK PARK**

**Soccer Nets Cart**

CD Director Doty stated that at the last meeting he and Commissioner Brecht informed the Commission of the Joint Powers request for a cart for soccer nets. Staff did some research and cost analysis for a cart and found a 5' x 10' aluminum cart that is meant to go over the grass/fields. There will need to be a budget amendment request made to the Council if this Commission approves the purchase. Acting Chair Brecht asked where it would be stored. CD Director Doty indicated that most likely the cart would be stored in the garage and could potentially be used by other school activities as needed. CD Director Doty stated that he sent an emailed picture of the cart over to the school district to see if this was what they were hoping for, it was. It was asked who would be paying for the cart. CD Director Doty stated that the finance director would indicate which fund it would be coming from since it involves the Joint Powers Agreement. Commissioner Barrick asked if it is typical for the City to pay for something that the school district will be the primary user of. CD Director Doty stated that the Joint Powers Agreement has staff maintaining the fields and purchasing some items, while the school district handles all of the administration of the programs. It's considered to be a give and take relationship and balances out fairly well. Acting Chair Brecht indicated that it is a nice looking cart and appears to be usable for other activities as well.

**Pavilion Advertisement for Bidding**

CD Director Doty referred the Commission to the partial bid specifications included in the packet, noting that the full bid documents are available at city hall. The opening bid date is March 1, 2016, construction is supposed to start April 1, 2016, with a substantial completion date of July 1, 2016. CD Director Doty walked the Commission through the plan set in the packet. He noted that there is going to be chain link fencing around the construction area since the restrooms and the rest of the park will be in use throughout construction.

**Pavilion Grand Opening/Music Event-July 20, 2016**

CD Director Doty stated that the dates for the grand opening/music event were discussed at the previous meeting. Staff took the dates suggested and compared them to the calendar of events and pavilion booking, it was determined that July 20<sup>th</sup> was the best date. Council Liaison Nystrom confirmed availability with Scott Lykins and staff took the July 20, 2016 date to the Council meeting for approval. CD Director Doty stated that the next step is to plan the event and it should take place in the next few months. The Commission held conversation regarding grand openings and getting residents excited about a new park/trail/pavilion. CD Director Doty noted that there will be mention of the grand opening in the Baxter residential newsletter, on the web and possibly on radio stations such as WJJY that does community updates for free.

his understanding that there needed to be access for staff to monitor and maintain storm water ponds.

Council Liaison Nystrom asked about the Clearwater trail/park land and if it was going to be placed within the CIP map. The Commission held conversation regarding the potential for a pedestrian overpass on Clearwater Rd. and the 2017 trail from Jewelwood Park to Clearwater Rd. The Commission held discussion on several different projects that are set forth in the CIP planning.

The Commission held discussion regarding park fees and the need for additional park fees being generated.

The next scheduled meeting is March 28, 2016 at 4:00 pm.

**Adjournment**

**MOTION** by Commissioner Holderness, seconded by Council Liaison Barrick to adjourn the meeting at 5:04 p.m. Motion carried unanimously.

Approved by:

Respectfully submitted,

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Acting Chair Brecht

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Shanna Newman, CD Administrative Assistant

**LONG RANGE PLANNING COMMISSION MEETING  
February 22, 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, and Council Liaison Todd Holman

**MEMBERS ABSENT:** Lori Rubin, Jim Kalkofen and Cathy Clark

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

**OTHERS:** Dean Hanson, Chris Close, LaVerne Borg and Loran Knack

**Approval of Minutes**

Motion by Commissioner Ylimeini, second by Commissioner Ryan to approve the minutes of the January 25, 2016 meetings. Motion carried unanimously.

**Inglewood Drive Planning Area-Comprehensive Plan Amendment**

CD Director Doty stated at the last meeting a public hearing was opened to determine the land use for the newly annexed property, it was tabled to allow for additional options. He indicated that all previous and new options are outlined in the staff report provided in the packet. At the last meeting, there were requests for alternative options for three parcels. Those three property owners have concerns about not being able to develop their property until city water and sewer are available to these properties. CD Director Doty explained a map within the staff report and power point. Staff has put together those additional alternatives and they are as follows.

**Previous Options**

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 locations 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.

**New Options**

4-Includes an expansion of Commercial Industrial for (Mr. Tom Bercher's Properties) three properties north of Peace Road and West of Inglewood Drive. Given that the wetland can be filled, the land would have enough depth off Inglewood Drive for Commercial Industrial land use.

5-Includes an expansion of Commercial Industrial to add all of the properties north of Peace Road and West of Inglewood Drive. This option would allow the southeasterly 10 acres to of this 40 to be consistent with the remainder of the Commercial Industrial land.

6-Includes an expansion of Commercial Industrial to add all of the properties northeast and north of Peace Road. This option would allow 80 acres of land into the Commercial Industrial District. For a comparison, this includes a business district land area equal to half of the City's industrial property on Industrial Park Road.

CD Director Doty stated that included at each Commissioner's chair was an addition to the packet from Mr. Bercher. The first item was an email in support of Option 4, 5, or 6. The second item was a Minnesota Wetland Conservation Act-Notice of Decision regarding Mr. Bercher's wetland that was discussed at the last meeting. Basically the report indicated that the wetlands were man-made and could be filled.

CD Director Doty stated that there would be a few additional map updates and a zoning district added to the comprehensive plan. CD Director Doty stated that they are recommending approval of Option three for Future Land Use and the map amendments as discussed.

Commissioner Cross asked CD Director Doty to go to the wetland document. Although there is wetland that could be filled per the document, it was discussed that there could be additional wetlands that are part of a wetland inventory. Specifically a potential wetland in the southeast corner of the site was discussed. It was discussed that a wetland outside of the defined fill area would still need to be protected.

CD Director Doty indicated that an additional letter was received by Brainerd Investments. One was dated February 16, 2016 and a follow-up email was received today, February 22, 2016.

Chair Donnay asked for a recap of the previous zoning by the County, CD Director Doty indicated it was zoned rural residential on the west side and business district on the east side all the way down to the water tower site.

Chair Donnay asked about the feasibility study to bring City water and sewer to these properties. He asked if the Council is thinking about the study at this point. CD Director Doty indicated that the Council is not looking into a study at this point.

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.

Loren Knack, property owner along Pine Beach Road, noted that he has only worked with Council Liaison Holman on this issue. He gave a little background on his history, bought a resort in 1972 on Gull Lake, in 1974 he received a letter that the City of Lakeshore had rezoned the property that he owned to residential. He went to the City of Lakeshore and was told he could not build any additional cabins on his 20 acres, shutting out all of the resorts around the lake. Since then he has been a realtor assisting in the development of land for over 40 years. When the land annexed into Baxter was purchased, due diligent was done to make sure what could be done and not be done on this property. He gave the history of receiving the first phone call to present. He indicated how fast this annexation took place and the minimal input from the property owners. Mr. Knack indicated that they have lost buyers because there is no service to the land that was annexed in. He expressed concern over the taxes that are going to be placed on the property now that it is in the City and the lack of other property owners not being here to express their concern over what is taking place.

Mr. Dean Hanson, a property owner of land in the annexed area, noted he was blown away at the last meeting. He was upset that they were going to have to put in city water and sewer at a large expense. He stated that he will be 79 this year and is retired. This piece of land was the final "nest egg" for retirement and now the property unsellable. He read the last part of the letter into the record and stated that a second letter (email) was

sent offering a solution that the City purchase the property for expansion of city water and sewer. He indicated that they want to work with the City and hopes that the City wants to work with them (property owners).

Mr. LaVerne Borg , a property owner of land in the annexed area, stated he had done some research on industrial parks, noting that Brainerd just had a FedEx built in their park. Land was similar to their land and was somewhat affordable. He would like to work together with the City and respect each other's position on this situation. It would have been very helpful for a feasibility study to have been completed prior to the annexation taking place to determine when city water and sewer might be extended.

Mr. Chris Close, on behalf of Mr. Tom Bercher, expressed that Mr. Bercher would like to see Options 4-6 as a strong consideration. He expressed concern over a residential zone as it would be a hard sell next to an industrial business.

With no other comments, Chair Donnay closed the public hearing at 6:40 p.m.

Commissioner Cross stated that Chair Donnay had asked what the county deemed C-1 commercial, he looked it up during the meeting and found that it allows general retail, whole sale, and office services abutting a municipality on a federal, state or county road or highway. He questioned if the commercial should continue all the way down Inglewood as the road is no longer a county road. His other question was about feasibility. If you look at the city sewer map, that area shows a lift station required. He would like to know where the property lines were located, it was indicated on the map (person spoke from the audience and was not heard clearly on tape).

Commissioner Ylimeini asked/referenced the commercial sign that is on the property. (person spoke from the audience and was not heard clearly on tape).

Commissioner Ylimeini stated that he liked the idea of commercial up and down Inglewood Rd. because it is a 10 ton road. He has also been a land owner with the same situation, only his land was residential and not commercial. Commission Cross again stated that the City needs to be careful zoning Inglewood commercial and stated he is in favor of Option 3.

Chair Donnay asked how it is decided if a road is 10 ton or not. Commissioner Cross stated that parallel corridors and main corridors are 10 ton due to road restrictions.

Chair Donnay asked if it was this Commissions job to decide how a commercial lot is developed with urban services. CD Director Doty indicated that yes it can be, being that the Commission is deciding the land use of the property but the ordinance requiring water and sewer for commercial development is a broader city ordinance that the City Council would ultimately have to decide to change or not. The commission held conversation regarding private forced main verses well and septic.

Commissioner Ryan stated that he feels this is a situation of the cart going in front of the horse and that this was not a well thought out situation. He reviewed the different options with the Commission. He indicated that for someone to say that these properties are not developable is not true. Each piece can be developed; it just has to be paid for.

In light of the above comments, Commissioner Ryan offered the following motion.

**Motion** by Commissioner Ryan, second by Commissioner Cross to recommend the City Council approve Option 3 of the proposed land uses for the newly annexed land on Inglewood Dr. per staff recommendation.

Commissioner Cross stated that the Council was forced into this situation as the County wanted to turn the road over to the City. The Council was not looking for areas to annex into the City. This was completely out of their hands; please keep that in mind.

Motion passed unanimously.

CD Director Doty stated that this recommendation could be going forward in March, possibly March 3<sup>rd</sup> (due to caucuses) or March 15<sup>th</sup>.

**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 County in order for the Northland Arboretum to place a permanent sign on the property located on the corner of Conservation Drive and Excelsior Road. At the last meeting there was concern about selling a piece of land that has a large city holding pond and the Commission requested a survey showing what is left of the land after all of the easements are taken into consideration. Included in the packet was a proposal from Scott Hedlund of SEH with two different options. CD Director Doty reviewed the two options with the Commission. He explained that the sign cannot be placed in the right of way and off site signs are not allowed in Baxter. This would require platting this parcel of land and selling it to the County to allow for the sign. The two options were discussed and staff would like to see option one of platting because it is a cleaner option than just having easements granted to the land. Either way the Arboretum has to own the property in order to place a sign on it.

Commissioner Ryan asked if it is truly consistent with the comprehensive plan to sell land for a person/business to place a sign on it. CD Director Doty that in this case yes, as there is a page in the parks portion of the comprehensive plan talking about the city's commitment to the sustainability of the Arboretum, making this a unique situation.

Commissioner Ylimeini stated that it is similar to the Ingelwood Dr. situation, as there are different land owners and a property owner wants to add improvements to the land.

Commissioner Cross still had concern about the utilities and storm water outlet being sold. Council Liaison Holman stated that this is a component of the storm water plan and the City has easements in place. He indicated that this Commission is only here to decide if the land sale is consistent with the comprehensive plan, the other items should be handled at the Council level. Commissioner Ryan agreed, but asked if this is setting precedence for others to come and ask for the same request. Chair Donnay stated that he was informed it is a park and not a commercial land owner asking for additional land for signage. He agreed that there was enough leverage within the comprehensive parks plan to support the decision. Chair Donnay asked if this approval would be going in front of the Utilities Commission. CD Director Doty indicated that it could, this piece was needed first being the comprehensive plan needs to be consistent. Commissioner Cross stated that it should go to Utilities Commission to make sure the easements are in place, being the City owns that land, the easements may not be in place at this time. The Commission went back to the focus of their duties to ensure the sale is compatible with the comprehensive plan.

Chair Donnay asked that CD Director Doty pull up the page regarding the Arboretum in the comprehensive plan (page 4-7) so the Commission could read the wording. The Commission discussed the page at length and the points for and against the sale of the land.

**Motion** by Commissioner Ryan, seconded by Commissioner Ylimeini to recommend the City Council approve the land transfer to Crow Wing County for the purpose of placing a sign at the entrance of the Arboretum as

recommended by staff. Motion carried with Commission Cross opposed (4-1)

**Wildlife Management Areas**

CD Director Doty gave a brief update to the Commission, the DNR is taking a step back regarding this item due to the funding source time frame. He indicated that the DNR is still very interested in this area for a WMA however, they did not want the city to feel pressured at this time.

**Other Business**

Council Liaison Holman stated that this Commission did a great job tonight and has a tough job. He stated that Commissioner Ryan nailed his assessment of Inglewood and Commissioner Cross stating that the City was rushed into this annexation. However, the City did bring some of this on themselves with wanting parallel corridors and the county has their way of doing things. The county was supposed to do its own county transportation plan and did not complete it for two years and ended up handing it over to the City. He indicated that the Council needs to give staff direction on these items in the future as Dellwood Dr. is next.

The next meeting is scheduled for March 28, 2016 at 6:00 p.m.

**Adjournment**

Motion by Commissioner Ryan, second by Commissioner Y to adjourn the meeting at 7:44 p.m.

Approved By:

Submitted By:

\_\_\_\_\_  
Chair Kevin Donnay

\_\_\_\_\_  
Shanna Newman  
CD Administrative Assistant

**ARCHITECTURAL REVIEW COMMISSION MINUTES**  
**February 24, 2016**

-21-

The Architectural Review Commission (ARC) meeting was called to order at 4:30 p.m. by Chair Donnay.

COMMISSIONERS PRESENT: Chair Kevin Donnay, Commissioners Bob Ryan, Gary Handlos and Council Liaison Mark Cross

COMMISSIONERS ABSENT: None

STAFF PRESENT: CD Director Doty and Planner Matthew Gindele

OTHERS PRESENT: Chris Quisberg and Doug Paquay

**APPROVAL OF MINUTES**

**MOTION** made by Commissioner Ryan, seconded by Commissioner Handlos to approve the August 6, 2015 meeting minutes. Motion carried unanimously.

**Review of Exterior Materials for Cub Foods**

Chair Donnay asked Planner Gindele to explain the proposed Cub Foods project. Planner Gindele reviewed the staff report with the Commission. He explained that the exterior portion of the remodel has several new materials including natural stone, architectural precast and fiber cement paneling. They do plan to keep the existing precast concrete masonry units and re-paint them. The applicant is requesting approval of the alternative exterior fiber cement material that is currently not listed in the architectural ordinance.

The other item that does not meet the ordinance is the articulation on the front façade of the building. Planner Gindele reviewed the first submittal and the revised submittal showing more articulation on the second rendering.

Council Liaison Cross asked which rendering is being proposed and the depth of the parapet. Mr. Doug Paquay of Supervalu stated that they will be adding to the existing canopy and will project out further with a different depth in the front door area and pharmacy area. Chair Donnay asked how the alternative material would be fastened to the building. Mr. Paquay indicated that it will be a shiplap system where it is screwed in and sealed.

Council Liaison Cross asked for the height of the canopy and how the material is going to be laying and joined. Mr. Paquay indicated that the height is 37'-8" tall, the material will look like strips of wood and has a shiplap seal at the end of the joint.

Commissioner Ryan stated that the materials are changing so fast it's hard to keep up with new products, however that is a conversation to take place after this agenda item.

**MOTION** by Commission Ryan, seconded by Commissioner Handlos recommending City Council approve the exterior materials for the proposed Cub Foods remodel as seen in the revised elevations and rendering as presented by staff with findings listed in the staff report. Motion carried unanimously.

The Commission agreed that this is going to be a nice project.

CD Director Doty stated that the next approval will be City Council on March 3, 2016.

The applicant asked if he could take the material samples, CD Director Doty stated he would like to keep the materials until the project receives Council approval, just in case they wish to look at the materials.

**OTHER BUSINESS**

Commissioner Ryan asked if there was a way to get a running tally on the different materials this Commission has approved as alternate, to simplify the process later down the road. Council Liaison Cross stated that an amendment would be needed, CD Director Doty agreed an amendment would need to go to Planning and Zoning and City Council. Chair Donnay asked if staff had a list, CD Director Doty stated that they know what the materials are and could put a list together. Council Liaison Cross asked if Section G could be modified to state that once the Commission and Council approve an alternate material, that it is considered approved for use on other buildings, using caution of course. Commissioner Ryan agreed with Council Liaison Cross's idea. Council Liaison Cross stated then the list could be posted on the website for the next applicant looking to use that material. CD Director Doty and Planner Gindele agreed that this would make staff's work load easier in the long run.

**NEXT MEETING**

The next regular scheduled meeting is March 3, 2016 at 7:30 a.m.

**ADJOURNMENT**

**MOTION** by Council Liaison Cross, seconded by Commissioner Handlos to adjourn. Motion carried unanimously. The meeting adjourned at 4:50 p.m.

Approved by:

Submitted By:

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Chair Kevin Donnay

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Shanna Newman  
CD Administrative Assistant

REQUEST FOR COUNCIL ACTION

03.03.2016

**Department Origination:**  
Public Works

**Agenda Section:**  
Consent

**Agenda Item:** Adopt Resolution 2016-016 approving the 2016 Pavement Management Program

**Approval Required:** Simple Majority Vote of the Council

**BACKGROUND**

At the February 3, 2016 Utilities Commission meeting Bolton & Menk (BMI) Consulting Engineer Michael Rardin presented the commission with the 2016 Pavement Management Plan. BMI Consulting Engineer Michael Rardin informed the Commission that the pavement management program was setup to provide a street pavement management program consisting of seven areas in the City based on a seven year chip seal and sealcoat cycle or rotation for ongoing street maintenance.

During 2013 an engineering inspection and evaluation of each street, based on the PASER methodology, was completed by Bolton & Menk, Inc. Based on that study, BMI produced the "Comprehensive Pavement Management System" report, dated July 16, 2013, which identified a maintenance and rehabilitation strategy with associated costs for every City owned paved street. Street segments were prioritized based on their condition ratings providing the City a "guide" to future road maintenance / rehabilitation needs and costs.

Based on the proposed program and City staff input, BMI has developed a long term pavement management plan beginning in 2016 with rehabilitation projects in Area 6 and maintenance projects in Area 3. The City 5-Year CIP provides for planned pavement management activities as well as other previously planned street projects being considered by the City.

Based on the proposed Pavement Management Plan and long term management activities, the pavement management program cost is currently estimated at \$2,010,000.00 per year. This cost is comprised of two categories - maintenance (chip sealing/sealcoating) currently estimated to cost \$370,000.00 per year and rehabilitation (mill & overlays, full depth reclamation, and reconstruction) currently estimated to cost \$1,640,000.00 per year.

The program is intended to establish a formal practice/policy and funding to preserve existing City (local and MSA) street pavements. Funding for new street projects due to utility and development needs are not provided for in this program and should be addressed separately outside this program when being proposed.

After a very long and detailed presentation by BMI Consulting Engineer Michael Rardin the Commission made the following motion:

**MOTION** by Commissioner Wolf, seconded by Commissioner Christofferson to recommend City Council adopt Resolution No. 2016-XX approving the 2016 Pavement Management Program. Motion carried unanimously.

**FINANCIAL IMPLICATIONS**

The financial costs for 2016 Pavement Management Plan have been accounted for in the 2016 City approved budget with funding coming from several funding sources.

**STAFF RECOMMENDATION**

Utilities Commission recommends adopting Resolution 2016-016 approving the 2016 Pavement Management Program.

**COUNCIL ACTION REQUESTED**

Motion to adopt Resolution 2016-016 approving the 2016 Pavement Management Program.

Attached:

1. Resolution 2016-016
2. 2016 Pavement Management Program

**CITY OF BAXTER, MINNESOTA  
RESOLUTION 2016-016**

**A RESOLUTION ADOPTING THE CITY'S STREET PAVEMENT  
MANAGEMENT PROGRAM**

WHEREAS, the City wishes to maintain its streets in a cost-effective and responsible manner; and

WHEREAS, in the past minimal street maintenance has been completed on City streets after initial construction to City standards; and

WHEREAS, more extensive maintenance and rehabilitation strategies are needed to maintain the City street network to its existing condition; and

WHEREAS, the Street Pavement Management Program has been developed to address the needs of City streets.

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

That the City hereby adopts the Street Pavement Management Program dated January 22, 2016.

Whereupon, said Resolution is hereby declared adopted on this 16<sup>th</sup> day of February, 2016.

**CITY OF BAXTER, MINNESOTA**

By \_\_\_\_\_  
Darrel Olson, Mayor

**ATTEST:**

\_\_\_\_\_  
Kelly Steele, Assistant City Administrator/ Clerk

City Seal

## REQUEST FOR COUNCIL ACTION

03.03.2016

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**Department Origination:**  
Public Works

**Agenda Section:**  
Consent

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**Agenda Item:** Bolton & Menk Proposal for Engineering Services for the 2016 Pavement Management Program Implementation

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**Approval Required:** Simple Majority Vote of the Council

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### **BACKGROUND**

At the February 3, 2016 Utilities Commission meeting Bolton & Menk (BMI) Consulting Engineer Rardin reviewed the 2016 Pavement Management Engineering Contract. BMI has already completed the following tasks with the 2016 Pavement Management Engineering Contract:

1. Updated the street Pavement Evaluation reflecting street improvements and sealcoat projects performed through 2015.
2. Reorganized the database into seven zones in the City and created a long term Capital Improvement Plan based on seven zone pavement management program
3. Created a Pavement Management Program document

The proposal submitted to the Utilities Commission for consideration is for additional Engineering Services for the Pavement Management Program Implementation which will provide the following services:

1. Update the street Pavement Evaluation database and GIS layer
2. Revise the long term management plan CIP to reflect the City's 2017 – 2021 CIP
3. Provide maps for the proposed 2016 and 2017 sealcoats
4. Update the City's map book identifying all streets and street segments
5. Provide PASER evaluations for select City streets

After further detailed discussion by the Commission the following motion was made and passed:

**MOTION** by Commissioner Wolf, seconded by Commissioner Christofferson to recommend City Council approve the Bolton & Menk Proposal for Engineering Services for the 2016 Pavement Management Program Implementation in the estimated cost of \$14,700.00 depending on the number of meetings and number of maps required at the end of the implementation process. Motion carried unanimously.

### **FINANCIAL IMPLICATIONS**

The financial costs for 2016 Pavement Management Plan Implementation would come out of the 2016 City approved Pavement Management Budget (\$200,000.00) with funding coming from several funding sources.

**STAFF RECOMMENDATION**

Staff recommends approving the Bolton & Menk, Inc. Proposal for Engineering Services for the 2016 Pavement Management Program Implementation in the estimated amount of \$14,700.00 depending on the number of meetings and number of maps required at the end of the project.

**COUNCIL ACTION REQUESTED**

Motion to approve the Bolton & Menk, Inc. Proposal for Engineering Services for the 2016 Pavement Management Program Implementation in the estimated amount of \$14,700.00 depending on the number of meetings and number of maps required at the end of the project.

Enclosed in packet:

1. Bolton & Menk Proposal for Engineering Services for 2016 Pavement Management Program Implementation



# 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 15, 2016

Mr. Trevor Walter, Public Works Director/City Engineer  
City of Baxter  
13190 Memorywood Drive  
PO Box 2626  
Baxter, MN 56425

RE: Proposal for Engineering Services  
Pavement Management Program Implementation  
City of Baxter, Minnesota

Dear Mr. Walter,

Last year the City desired to update their street pavement database and consider development of a long term pavement management program. In April the City authorized BMI to provide services for this work. As per our agreement, we have completed that work as follows:

- Updated the street Pavement Evaluation (database) to reflect street improvement and sealcoat projects performed through 2015; this utilized past PASER evaluations; new evaluations were not included in this effort
  - a draft database was provided during June 2015
  - a final database was provided during December 2015
- Reorganized the database into seven zones (areas) in the City and created a long term street Capital Improvement Plan (CIP) based on a seven zone (sealcoat cycle) pavement management program; the CIP consists of proposed sealcoat, rehabilitation, and reconstruction projects - estimated project costs and construction years were included; based on a variety of items, future project mapping was eliminated from this effort
  - the long term CIP was provided during December 2015
  - the PMP area map was provided during July
- Created a Pavement Management Program document, based on the above documents, which the City could adopt to formalize pavement management in the City
  - the Street Pavement Management Program document was provided during December 2015

Based on our discussion on January 8<sup>th</sup>, I understand you would like additional updates and revisions made to the database, the management document, and the long term CIP that we have provided. You would like BMI to present the proposed pavement management plan and participate in Commission and Council discussions associated with adoption of this plan. Finally, you felt that street pavement PASER evaluations (ratings) should be obtained during 2016.



Proposal for Engineering Services  
Pavement Management Program Implementation  
January 15, 2016  
Page 2

As a result, you requested BMI to submit a proposal which would provide services for the work generally described above. Some of the work desired is straight forward and easy to estimate while some is difficult to quantify due to unknown Commission and Council needs associated with this type of policy discussion. The following scope and costs are offered for your consideration:

Scope of Services:

1. Update the street Pavement Evaluation (database) with the most current City CIP reflecting programmed projects from 2016 through 2020. This utilizes past PASER evaluations; new evaluations are not included in this effort.
  - a. Deliverables - Street Pavement Evaluation database (spreadsheet and GIS layer)
2. Revise the long term management plan CIP to reflect the City's 2016 - 2020 CIP using sealcoat budgets of \$200,000 for 2016 and \$500,000 per year thereafter. The CIP will include proposed sealcoat, rehabilitation, reconstruction projects, and respective estimated project costs, along with currently programmed projects
  - a. Deliverable - Long term CIP (incorporated into the street pavement database spreadsheet)
3. Map streets proposed for 2016 and 2017 sealcoating illustrating the preventive maintenance projects proposed under the management plan and the revised long term CIP
  - a. Deliverables - Proposed 2016 and 2017 Sealcoat Maps
4. Update the City map book identifying all (existing and non-existing) streets and street segments in the City
  - a. Deliverables - Map Book (PDF and GIS layer)
5. Attend Commission and Council Meetings to present the proposed management plan and CIP for adoption purposes
6. Provide various maps, as requested, to aid in staff, Commission, and Council discussions and to document final CIP projects
7. Provide PASER evaluations (ratings) for select City streets
  - a. Deliverable - PASER ratings incorporated into street Pavement Evaluation database (spreadsheet and GIS layer)

City Obligations: To complete this work, BMI will need the City to:

1. Provide a "gator" vehicle with safety equipment to be used for PASER street evaluations; one 40 hour week is expected for this

Estimated Costs: We propose to provide the above described services at the following estimated costs:

1. Update the street Pavement Evaluation (database and GIS Layer) - \$3,300
2. Revise the long term management plan CIP - \$3,300
3. Provide maps (PDF) for the proposed 2016 and 2017 sealcoats - \$800
4. Update the City map book (PDF) - \$1,500



REQUEST FOR COUNCIL ACTION

03.03.2016

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

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**Agenda Item:** Approve Permit for Retail Sales of Fireworks by B.J. Alan Company at Mills Fleet Farm and Menards

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**Approval Required:** Simple Majority of Vote of the Council

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**BACKGROUND**

The businesses listed below have submitted a fireworks license application and a certificate of insurance. Staff has reviewed the applications and found they are eligible for a license.

**FINANCIAL IMPLICATIONS**

The cost of administering the issuance of the firework license is offset by the application fee.

**STAFF RECOMMENDATIONS**

Staff recommends Council approve the issuance of fireworks licenses to the following businesses and location of sale:

1. B.J. Alan Company for indoor sales at Mills Fleet Farm
2. B.J. Alan Company for indoor sales at Menards

**COUNCIL ACTION REQUESTED**

Motion to approve fireworks licenses for the following businesses and location of sale:

1. B.J. Alan Company for indoor sales at Mills Fleet Farm
2. B.J. Alan Company for indoor sales at Menards

## REQUEST FOR COUNCIL ACTION

03.03.2016

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**Department Origination:**  
Public Works

**Agenda Section:**  
Consent

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**Agenda Item:** Approve Moving the Inglewood Drive Railroad Crossing Project from 2020 to 2022 in the City 5-Year CIP

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**Approval Required:** Simple Majority Vote of the Council

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### **BACKGROUND**

The Public Works Director/City Engineer attended the Region 5 TAC meeting on Wednesday, February 17, 2016. The City of Baxter was very successful with receiving additional points on the Oakwood Drive Trail grant application at the meeting. Baxter City Planner, Matthew Gindele did an excellent presentation for the City of Baxter on the grant application.

The trail grant application is now in the hands of the MnDOT District 3 ATP. The City should receive notice by the end of March if the grant application was successful or not. The City of Baxter was not successful with the Inglewood Drive Railroad Crossing Project grant application. Even though the project ranked very high among all the Region 5 projects submitted the City project could not be funded due to the regional inequity issue outstanding with Crow Wing County.

The majority of the Region 5 grant funds went to a Crow Wing County and a Morrison County project for construction in 2020. The TAC committee asked if the City of Baxter was willing to move the project one year in order to reapply for the grant funding next year (2017) for 2021 construction. The TAC Committee felt the project was a good project and very warranted; it's just that there is not enough funds allocated to Region 5 in order to fund all the projects. Public Works Director told the group the City would probably be willing to move the project from 2020 if the grant will be funded next year (2017) for construction in 2021.

The Committee felt that the project will rank very high again next year and even though they cannot guarantee the project to be funded in 2017 for 2021 construction due to federal allocated funds for 2021 the committee will consider Baxter's grant application a the top of the list in 2017. Public Works Director/City Engineer is requesting the Council move the project in the City 5-Year CIP from 2020 to 2021 in order to reapply for grant funding in 2017 and construction in 2021.

### **FINANCIAL IMPLICATIONS**

If successful with obtaining federal funding in 2017 for construction in 2021 the grant would pay for 80% of the project costs estimated at \$628,210. The City would be responsible for the remaining 20% of the project costs estimated at \$157,050.

**STAFF RECOMMENDATION**

Staff recommends moving the Inglewood Drive Railroad Crossing Project from 2020 to 2021 in the City 5-Year CIP in order to reapply for a federal grant in 2017.

**COUNCIL ACTION REQUESTED**

Motion to approve moving the Inglewood Drive Railroad Crossing Project from 2020 to 2021 in the City 5-Year CIP.

## REQUEST FOR COUNCIL ACTION

March 3, 2016

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**Department Origination:** Community Development

**Agenda Section:** Consent

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**Agenda Item:** Approve a 2016 budget amendment for the purchase of an athletic field cart for use at Oscar Kristofferson Park in the amount of \$2,169.

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**Approval Required:** Simple Majority of Vote of the Council

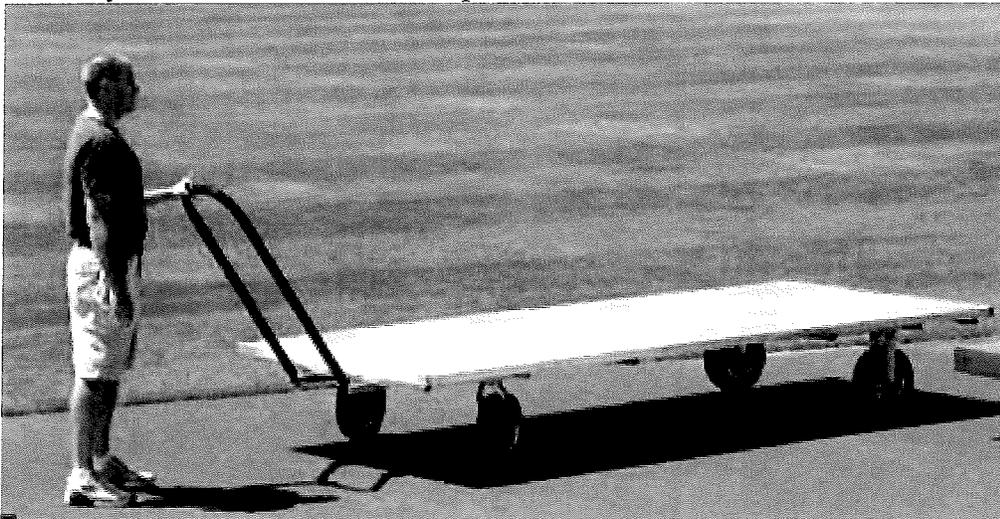
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### **BACKGROUND**

In December, 2015, City and School District representatives heled the most recent Joint Powers meeting. At the meeting, the School District requested that the City purchase a cart for use at Oscar Kristofferson Park. Specifically, the cart would allow transport of soccer nets from the maintenance garage to the fields. School staff indicated that there are many nets to set out with the soccer recreation program and that there is not typically help to set up the nets before soccer games. The cart would also be used by other athletic programs at the park.

#### Parks and Trails Commission

At the January 25, 2016, Parks and Trails Commission meeting, staff and Commissioner Brecht provided an update from the December, 2015 Joint Powers meeting and held a brief discussion about the cart. At that time, staff indicated that they would research carts and would follow up. At the February 22, 2016 Parks and Trails Commission meeting Staff provided an updated regarding the cart that staff is proposing for purchase. The Commission indicated support of the 5-foot by 10-foot all aluminum cart pictured below.



Staff has been in contact with the School District and they are supportive of this cart.

**FINANCIAL IMPLICATIONS**

The purchase of the cart is not in the 2016 budget and therefore, requires a budget amendment. The low quote is from a company called MF Athletic with a price of: \$2,034 for one cart + \$135 shipping for a total price of \$2,169.

**RECOMMENDATION**

Staff recommends approval of a budget amendment for the purchase of a cart for use at Oscar Kristofferson Park in the amount of \$2,169.

**COUNCIL ACTION REQUESTED**

Motion to approve a budget amendment for the purchase of a cart for use at Oscar Kristofferson Park in the amount of \$2,169.

## REQUEST FOR COUNCIL ACTION

March 3, 2016

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**Department Origination:** Community Development

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**Agenda Item:** Approve the use of fiber cement as an external building material for Cub Foods, 14133 Edgewood Drive.

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**Approval Required:** Simple Majority of Vote of the Commission

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### **BACKGROUND**

SEH has submitted an application for architectural review of exterior alterations to Cub Foods located at 14133 Edgewood Drive. The plan proposes several new materials including cultured natural stone, architectural precast cement and fiber cement paneling. The applicant is also keeping and re-painting existing precast concrete masonry units. The applicant is requesting approval of an alternative exterior fiber cement material that is not expressly listed as an allowed material in the architectural ordinance. The architectural ordinance allows other materials to be approved by the Architectural Commission and the City Council based on the following factors:

- 1) The color, shape, and texture of the proposed exterior materials meet the purpose and intent set forth in this title.
- 2) The character and exterior materials of the surrounding area.
- 3) Whether the proposed exterior material is appropriate, proportional, and not varied
- 4) The proposed exterior materials or architectural features are LEED compatible or is another innovative material from new technology.

Staff finds that the proposed alternative material meets the criteria for approval.

The architectural ordinance requires articulation incorporating visible changes in the façade through the use of wall plane projections, piers, columns, colonnades, arcades or similar architectural features for unbroken expanses of building facades that are 50 feet in length or greater. Staff has identified two expanses of the front façade that are over 50 feet in length and do not incorporate the required articulation; the applicant will be required to submit revised elevations showing compliance with this ordinance.

A complete review of the proposed design and materials as they relate to the architectural ordinance is included in the table below.

ARC Standard	Required	Proposed	Comments
<b>Exterior Materials</b>	See allowed C-1 and C-2 materials	Natural Stone	OK
		Architectural Precast Cement	OK
		Concrete Masonry Units (49%)	OK, max 50% allowed on front face and 100% allowed on side and rear faces
		Other materials- Fiber Cement	ARC/Council approval required
<b>Size/Mass</b>	Proportional	Comparable to adjacent buildings	OK
<b>Articulation - Front</b>	Max 50' Unbroken Expanse	Does not meet - over 50'	Must bring into compliance
<b>Articulation - N. Side</b>	Max 50' Unbroken Expanse	N/A	OK
<b>Articulation - S. Side</b>	Max 50' Unbroken Expanse	N/A	OK*
<b>Articulation - Rear</b>	Max 50' Unbroken Expanse	N/A	OK
<b>Accessory Structures</b>	Existing building coordinated color	Coordinated	OK
<b>Color</b>	Earth tone	Beige & Gray	OK
<b>Height/Roof Design</b>	Flat or 6:12+	Flat	OK

\*The south facing elevation does not currently face a street and therefore, does not require articulation. However, a planned future street project would create street frontage along the south façade of this building. The applicant may, by their own decision, choose to include articulation and less than 50 percent concrete masonry units on the south façade to be in compliance with the architectural ordinance after completion of the street project. If improvements are not included on the south façade at this time, it will become legally nonconforming after the planned future street project is completed.

**FINANCIAL IMPLICATIONS**

There are no financial implications to the city with this application.

**STAFF RECOMMENDATION**

Staff recommends approval of the fiber cement as an external building material for Cub Foods.

**COMMISSION ACTION REQUESTED**

**MOTION** to approve the use of fiber cement as an external building material for Cub Foods located at 14133 Edgewood Drive.

Attachments

Exterior Elevations and Sample materials



CUB



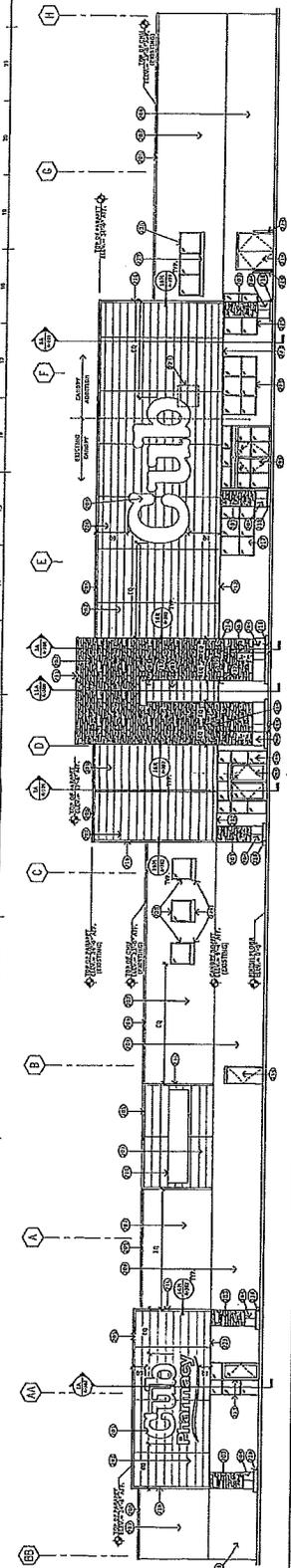


SEH  
SHORT EIGHT HOLDINGS INC.  
1000 WEST 10TH AVENUE  
DENVER, CO 80202  
303.733.1111

PROJECT: CUB FOODS  
DATE: 02/15/18  
DRAWN BY: [Redacted]  
CHECKED BY: [Redacted]

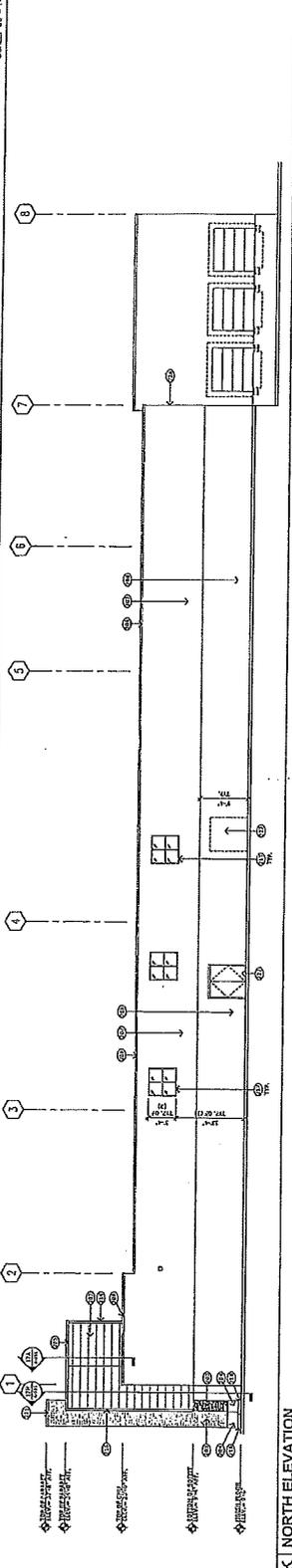
11133 CUB FOODS  
CUB FOODS  
11133 CUB FOODS

### 1Q EAST ELEVATION



SCALE: 1/8" = 1'-0"

### 1K NORTH ELEVATION

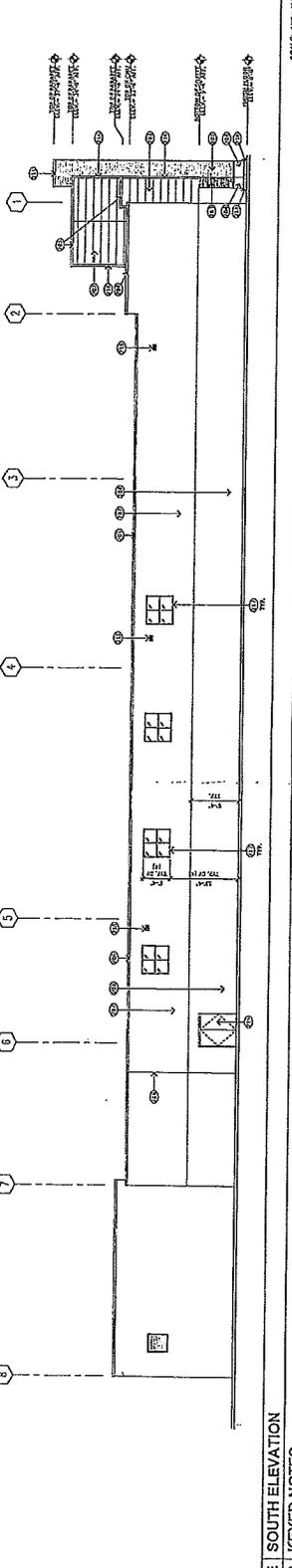


SCALE: 1/8" = 1'-0"

### 17D GENERAL NOTES

1. REFER TO ARCHITECTURAL DRAWINGS FOR ALL FINISHES AND MATERIALS.
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16. REFER TO ARCHITECTURAL DRAWINGS FOR ALL FINISHES AND MATERIALS.
17. REFER TO ARCHITECTURAL DRAWINGS FOR ALL FINISHES AND MATERIALS.
18. REFER TO ARCHITECTURAL DRAWINGS FOR ALL FINISHES AND MATERIALS.
19. REFER TO ARCHITECTURAL DRAWINGS FOR ALL FINISHES AND MATERIALS.
20. REFER TO ARCHITECTURAL DRAWINGS FOR ALL FINISHES AND MATERIALS.

### 1E SOUTH ELEVATION



SCALE: 1/8" = 1'-0"

### 11D EXTERIOR FINISH SCHEDULE

NO.	DESCRIPTION	FINISH
1	CONCRETE WALLS	CONCRETE
2	CONCRETE FLOORS	CONCRETE
3	CONCRETE CEILING	CONCRETE
4	WOOD PANELING	WOOD
5	GLASS CURTAIN WALL	GLASS
6	GLASS DOORS	GLASS
7	GLASS WINDOWS	GLASS
8	PAINT	PAINT
9	ROOFING	ROOFING
10	MECHANICAL	MECHANICAL
11	ELECTRICAL	ELECTRICAL
12	PLUMBING	PLUMBING
13	MECHANICAL	MECHANICAL
14	ELECTRICAL	ELECTRICAL
15	PLUMBING	PLUMBING
16	MECHANICAL	MECHANICAL
17	ELECTRICAL	ELECTRICAL
18	PLUMBING	PLUMBING
19	MECHANICAL	MECHANICAL
20	ELECTRICAL	ELECTRICAL

REQUEST FOR COUNCIL ACTION

03.03.2016

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**Department Origination:** Administration

**Agenda Section:** Consent

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**Agenda Item:** Approve Lease Agreement with Baxter Snowmobile Club for Use of City Building

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**Approval Required:** Simple Majority of Vote of the Council

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**BACKGROUND**

The Baxter Snowmobile Club has been leasing the former Public Works building in the industrial park since 2012. The current lease expires 4/1/16. The club has requested an additional two-year lease. The current lease provides for the termination of the lease upon a 30-day written notice by either party. As with the original lease, the club will continue to be responsible for utility, insurance, and all other costs associated with their use of the building.

**FINANCIAL IMPLICATIONS**

There is a positive financial impact to the City through the lease revenues. The lease establishes there will be no costs assumed by the City resulting from the use of the building.

**STAFF RECOMMENDATIONS**

Staff is recommending entering into this lease agreement as there is a positive financial impact to the City through lease revenues, the club's maintenance of trails provides recreational opportunities to the area residents, and the existence of the trail network established and maintained by the club helps support the local tourism industry.

**COUNCIL ACTION REQUESTED**

Motion to approve lease agreement with the Baxter Snowmobile Club for the use of the former public works building.

Attachment:

1. Lease between the City of Baxter and Baxter Snowmobile Club

## LEASE

This Lease is made as of March 3, 2016, by and between the City of Baxter, a municipal corporation under the laws of the State of Minnesota, ("Landlord") and Baxter Snowmobile Club, Inc., a Minnesota nonprofit corporation, ("Tenant").

### DATA SHEET

1. Premises.

7926 Industrial Park Road; Baxter, MN 56425  
Parcel Code 010082400BEC009

2. Term. 24 Months; commencement date 4/1/16. Either party can terminate this lease upon 30 day written notice to the other party.

3. Permitted Use. Baxter Snowmobile Club storage

4. Landlord Address. PO Box 2626, Baxter, MN 56425.

5. PREMISES:

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, for the term and upon the conditions hereinafter provided the Premises, which may also be called the Project.

6. TENANT'S LEASEHOLD IMPROVEMENTS: Tenant may make no improvements without Landlord's written consent. If any improvement are approved, the cost of these improvements shall be paid by Tenant.

7. Removed.

8. BASE RENT:

Tenant shall pay as monthly "Base Rent" for the Premises \$100. The Base Rent shall be paid in monthly installments, in advance, on the first day of each and every calendar month during the Term. Tenant will pay said Base Rent to Landlord at Landlord Address, or to such other party or to such other address as Landlord may designate from time to time by written notice to Tenant. Tenant's obligation to pay the Base Rent and other amounts due under this Lease is an independent covenant, and is and shall not be subject to any abatement, deduction, counterclaim, reduction, setoff or defense of any kind whatsoever.

9. MECHANICS' LIENS: Landlord and Tenant covenant, each to the other, not to permit any lien to be filed against the premises on account of non-payment for or disputes with respect to labor or materials furnished in connection with any construction, alterations,

improvements or repairs to any structure on the premises, nor shall the parties permit any judgment, lien or attachment to stand against the premises. Should any lien of any nature be filed against the premises, the party from whose debt or alleged debt such lien arises shall within thirty days cause said lien to be removed or shall post bond or other security satisfactory to and in favor of the other party, in an amount not to exceed one and one-half times the amount of the lien, to hold the other party harmless from liens and to pay from said bond or security the amount of said lien, together with all costs and fees chargeable against the leased premises, if a decree of foreclosure is entered in any court of record.

10. ASSIGNMENT AND SUBLETTING:

10.1 Tenant will not assign, transfer, mortgage or encumber this Lease or sublet or rent or franchise or permit occupancy or use of the Premises, or any part thereof by any third party; nor shall any assignment or transfer of this Lease be effectuated by operation of law or otherwise, (any of the foregoing being hereinafter referred to as an "Assignment") without in each such case obtaining the prior written consent of Landlord.

11. MAINTENANCE: Tenant shall keep the Premises in a clean, good and professional condition and shall not commit or permit any waste upon the leased premises. Repair and maintenance of any improvement upon the premises shall be the responsibility of Tenant.

12. removed.

13. RIGHT OF ENTRY:

13.1 Tenant will furnish to Landlord at all times a master key to the Premises and permit Landlord, or its representative, to enter the Premises, to examine, inspect and protect the Premises, and to make such alterations, renovations, restorations and/or repairs as in the judgment of Landlord may be deemed necessary or desirable for the Premises, for any other premises in the Project, or the Project itself (including access to distribution systems above the ceiling of the Premises), or to exhibit the same to prospective tenants during the last year of the Term of this Lease or during any period Tenant is in default hereunder, or to prospective purchasers or lenders at any time.

14. COSTS, SERVICES AND UTILITIES:

Tenant shall be responsible for procuring and paying for any and all utilities it needs to conduct its business, SAC and WAC fees, utility connection fees, real estate taxes, special assessments and any other expense that may be assessed to the premises. In the event that Tenant does not pay any of the above charges when due, Landlord may pay the same and any sums so paid shall be due from Tenant as additional rent with the next regularly schedule monthly rental payment. Any such payments by Landlord shall bear interest at the rate of 12% per annum computed from the date of payment.

15. WAIVER AND INDEMNITY:

15.1 Notwithstanding anything apparently to the contrary in this Lease, Landlord and Tenant hereby release one another and their respective partners, officers and employees and property manager from any and all liability (to the other or anyone claiming through or under them by way of subrogation or otherwise) for any loss or damage covered by fire, property or extended coverage insurance, even if such loss or damage shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible.

15.2 Notwithstanding anything apparently to the contrary in this Lease, Landlord and its partners, officers and employees and property manager shall not be liable to Tenant, and Tenant hereby releases such parties from all damage, compensation or claims from any cause other than the intentional misconduct of Landlord or its partners, officers or employees or property manager arising from: loss or damage to personal property or trade fixtures in the Premises including books, records, files, computer equipment, computer data, money, securities, negotiable instruments or other papers; lost business or other consequential damage arising out of interruption in the use of the Premises; and any criminal act by any person other than Landlord or its partners, officers or employees.

15.3 Tenant agrees to indemnify, defend and hold Landlord and its partners, officers and employees and property manager harmless from and against any claim, loss or expense arising out of injury, death or property loss or damage occurring in the Premises, except only to the extent caused by the negligent act or intentional misconduct of Landlord or its partners, officers or employees or property manager.

16. INSURANCE:

16.1 Tenant agrees to purchase, in advance, and to carry in full force and effect the following insurance:

(a) "All risk" property insurance covering the full replacement value of all of Tenant's leasehold improvements, trade fixtures and personal property within the Premises. Landlord shall be named as loss payee under all such policies.

(b) Commercial general liability insurance, providing coverage on an "occurrence" rather than a "claims made" basis, which policy shall include coverage for Bodily Injury, Property Damage, Personal Injury, Contractual Liability (applying to this Lease), and Independent Contractors, in current Insurance Services Office form or other form which provides coverage at least as broad. Tenant shall maintain a combined policy limit of at least \$1,000,000 applying to Bodily Injury, Property Damage and Personal Injury, which limit may be satisfied by Tenant's basic policy, or by the basic policy in combination with umbrella or excess policies so long as the coverage is at least as broad as that required herein. Such liability, umbrella and/or excess policies may be subject to aggregate limits so long as the aggregate limits have not at any pertinent time been reduced to less than the policy limit stated above, and provided further that any umbrella or excess policy provides coverage from the point that such aggregate limits in the

basic policy become reduced or exhausted. Landlord shall be named as additional insured under all such policies.

16.2 At least ten (10) days prior to entry by Tenant on the Premises, Tenant shall deliver to Landlord evidence that the insurance required by this Lease is in full force and effect. At least ten (10) days prior to expiration of any such coverage, Tenant shall deliver evidence that the coverage in question will be renewed or replaced upon expiration. Such evidence of insurance shall be in writing signed by a party authorized to bind the insurer, authorize Landlord to rely thereon, and shall contain sufficient information to enable Landlord to determine whether Tenant's insurance complies with the requirements of this Lease. Upon request, Tenant shall also furnish insurer-certified copies of all pertinent policies. All policies used to provide the coverage required by this Lease shall (i) be endorsed to require the insurer to provide at least ten (10) days notice to Landlord prior to cancellation or non-renewal, and (ii) be issued by financially sound companies having an A.M. Best Company rating of at least A:VII. Tenant may not maintain any insurance concurrent in form or contributing in the event of loss with that required by Landlord herein unless Landlord is named therein as loss payee or additional insured.

16.3 Landlord agrees to purchase in advance, and to carry in full force and effect the following insurance:

(a) "All risk" property insurance coverage on the Premises, exclusive of Tenant's leasehold improvements, in such amount as Landlord deems prudent.

(b) Commercial general public liability insurance covering the Project, in a combined single limit amount of at least \$1,000,000, and written on an "occurrence" basis.

#### 17. FIRE OR OTHER CASUALTY:

If the Premises or the Project shall be damaged by fire or other cause Landlord shall at its option either (a) undertake to restore such damage with all due diligence, or (b) in the event the Premises or the Project are damaged by fire or other cause to such extent that damage cannot, in Landlord's sole judgment, be economically repaired within 90 days after the date of such damage (taking into account the time necessary to effectuate a satisfactory settlement with any insurance company and using normal construction methods without overtime or other premium), terminate this Lease, by notice given to Tenant within 60 days after the date of the damage. Any termination hereunder by reason of damage to the Premises shall be effective as of the date of the damage. Any termination by reason of damage to the Project but not the Premises shall be effective as of the date notice is given. If Landlord elects to restore, Landlord shall not be obligated to restore any improvements in the Premises which were not owned and constructed by Landlord. Upon substantial completion by Landlord of its work, Tenant shall undertake to restore its leasehold improvements and trade fixtures with all due diligence. This Lease shall, unless terminated by Landlord pursuant to this Section or Tenant as set forth below, remain in full force and effect following such damage, and, in the case of damage to the Premises, the Base

Rent and additional rent, prorated to the extent that the Premises are rendered untenable, shall be equitably abated until such repairs are completed; provided, however, that if Tenant does not restore its leasehold improvements and trade fixtures with due diligence, abatement shall cease as of the date restoration could have been completed using due diligence. Tenant may give written notice to terminate the lease if the Project is untenable by reason of fire or other natural disaster for a period of more than 90 consecutive days.

18. CONDEMNATION:

If the whole or any substantial part of the Premises shall be taken or condemned or purchased under threat of condemnation by any governmental authority, then the Term of this Lease shall cease and terminate as of the date when the condemning authority takes possession of the Premises and Tenant shall have no claim against the condemning authority, Landlord or otherwise for any portion of the amount that may be awarded as damages as a result of such taking or condemnation or for the value of any unexpired term of this Lease; provided, however, that Landlord shall not be entitled to any separate award made to Tenant for loss of business or costs of relocation. In the event part of the Project, but not the Premises, is condemned to the extent that the Project cannot, in Landlord's sole judgment, be economically restored within a reasonable time, Landlord shall have the option by notice given to Tenant within 90 days after the date the condemning authority takes possession to terminate this Lease as of the date of such possession.

19. SECURITY INTEREST

Tenant hereby grants to Landlord a lien and security interest under the Uniform Commercial Code in all property of Tenant now or hereafter placed on the Premises, including but not limited to leasehold improvements, trade fixtures, furnishings and inventory. Tenant agrees to execute such financing statements and furnish such information as Landlord may from time to time request in order to perfect this security interest. Landlord may at its election file a copy of this Lease as a financing statement. Landlord, as secured party, shall be entitled to all of the rights and remedies available to a secured party under the Uniform Commercial Code.

Landlord's lien and security interest is and shall remain subject and subordinate to any lien securing bona fide purchase money financing of any of the property in question in favor of a party unaffiliated with Tenant.

20. DEFAULT:

20.1 Any one of the following events shall constitute an Event of Default:

(i) Tenant shall fail to pay any monthly installment of Base Rent or additional rent as herein provided, and such default shall continue for a period of 5 days after the due date therefor;

(ii) Tenant shall violate or fail to perform any of the other conditions, covenants or agreements herein made by Tenant and such default shall continue for 15

days after notice from Landlord; provided, however, that if the nature of such default is such that Tenant can cure the default, but not within fifteen (15) days, then the Event of Default shall be suspended for a period not in excess of thirty (30) additional days so long as Tenant commences cure within fifteen (15) days and thereafter diligently and continuously prosecutes the curing of the default, and so long as continuation of the default does not create material risk to the Project or to persons using the Project;

(iii) Tenant shall file or have filed against it or any guarantor of this Lease any bankruptcy or other creditor's action, or make an assignment for the benefit of its creditors.

20.2 If an Event of Default shall have occurred and be continuing, Landlord may at its sole option by written notice to Tenant terminate this Lease. Neither the passage of time after the occurrence of the Event of Default nor exercise by Landlord of any other remedy with regard to such Event of Default shall limit Landlord's rights under this Section.

20.3 If an Event of Default shall have occurred and be continuing, whether or not Landlord elects to terminate this Lease, Landlord may enter upon and repossess the Premises (said repossession being hereinafter referred to as "Repossession") by force, summary proceedings, ejectment or otherwise, and may remove Tenant and all other persons and property therefrom.

20.4 From time to time after Repossession of the Premises, whether or not this Lease has been terminated, Landlord may, but shall not be obligated to, attempt to relet the Premises for the account of Tenant in the name of Landlord or otherwise, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term) and for such terms (which may include concessions or free rent) and for such uses as Landlord, in its uncontrolled discretion, may determine, and may collect and receive the rent therefor. Any rent received shall be applied against Tenant's obligations hereunder, but Landlord shall not be responsible or liable for any failure to collect any rent due upon any such reletting.

20.5 No termination of this Lease and no Repossession of the Premises or otherwise shall relieve Tenant of its liabilities and obligations under this Lease, all of which shall survive any such termination or Repossession. In the event of any such termination or Repossession, whether or not the Premises shall have been relet, Tenant shall pay to Landlord the Base Rent and other sums and charges to be paid by Tenant up to the time of such termination or Repossession, and thereafter Tenant, until the end of what would have been the Term in the absence of such termination or Repossession, shall pay to Landlord, as and for liquidated and agreed current damages for Tenant's default, the equivalent of the amount of the Base Rent and such other sums and charges which would be payable under this Lease by Tenant if this Lease were still in effect, less the net proceeds, if any, of any reletting after deducting all of Landlord's expenses in connection with such reletting, including, without limitation, all repossession costs, brokerage and management commissions, operating expenses, legal expenses, attorneys' fees, alteration costs, and expenses of preparation for such reletting. Tenant shall pay such current

damages to Landlord monthly on the days on which the Base Rent would have been payable under this Lease if this Lease were still in effect, and Landlord shall be entitled to recover the same from Tenant on each such day. At any time after such termination or Repossession, whether or not Landlord shall have collected any current damages as aforesaid, Landlord shall be entitled to recover from Tenant, and Tenant shall pay to Landlord on demand, as and for liquidated and agreed final damages for Tenant's default, an amount equal to the then present value of the excess of the Base Rent and other sums or charges reserved under this Lease from the day of such termination or Repossession for what would be the then unexpired term if the same had remained in effect, over the amount of rent Tenant demonstrates that Landlord could in all likelihood actually collect for the Premises for the same period, said present value to be arrived at on the basis of a discount of four percent (4%) per annum.

20.6 In addition to all other remedies of Landlord, Landlord shall be entitled to reimbursement upon demand of all reasonable attorneys fees incurred by Landlord in connection with any Event of Default.

20.7 Landlord shall in no event be considered to be in default of Landlord's obligations hereunder until the expiration of a reasonable time after notice of default from Tenant.

21. LANDLORD'S RIGHT TO CURE DEFAULT; LATE PAYMENT:

If Tenant commits an Event of Default (or if any default exists and Landlord has good cause for taking action prior to expiration of Tenant's grace period), then Landlord may, but shall not be required to, make such payment or do such act, or correct any damage caused by such prohibited act and to enter the Premises as appropriate in connection therewith, and the amount of the expense thereof, if made or done so by Landlord, with interest thereon at the Interest Rate (as hereinafter defined) from the date paid by Landlord, shall be paid by Tenant to Landlord and shall constitute additional rent hereunder due and payable with the next monthly installment of rent; but the making of such payment or the doing of such act by Landlord shall not operate to cure such default or to estop Landlord from the pursuit of any remedy of which Landlord would otherwise be entitled. If any installment of rent is not paid by Tenant within five days after the same becomes due and payable: (i) a one-time late charge in the amount of \$100.00 shall become immediately due and payable as compensation to Landlord for administrative costs; and (ii) the unpaid balance due Landlord shall bear interest at the Interest Rate from the date such installment became due and payable to the date of payment thereof by Tenant, and such interest shall constitute additional rent hereunder which shall be immediately due and payable. The "Interest Rate" as used herein means the lesser of: the maximum rate permitted by law; and four (4) points over the "prime rate", "base rate" or "reference rate", (or if more than one exist, whichever is highest) each change in the interest rate hereunder to become effective on the date the corresponding change in such prime rate becomes effective.

22. WAIVER:

No waiver by either party of any breach of any agreement herein contained shall operate as a waiver of such agreement itself, or of any subsequent breach thereof. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly installments of rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent nor shall any endorsement or statement on any check or letter accompanying a check for payment of rent be deemed an accord and satisfaction, nor shall acceptance of rent with knowledge of breach constitute a waiver of the breach, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent, to terminate this Lease, to Repossess the Premises or to pursue any other remedy provided in this Lease. No re-entry by Landlord, and no acceptance by Landlord of keys from Tenant, shall be considered an acceptance of a surrender of the Lease.

23. SUBORDINATION:

23.1 For the purposes of this Section, the term "Mortgage" shall mean at any time, any mortgage of record now or hereafter placed against the Project, any increase, amendment, extension, refinancing or recasting of a Mortgage and, in the case of a sale or lease and leaseback by Landlord of all or any part of the Project, the lease creating the leaseback. For the purposes hereof, a Mortgage shall be deemed to continue in effect after foreclosure thereof until expiration of the period of redemption therefrom.

23.2 This Lease is subject and subordinate to the lien of any Mortgage which may now or hereafter encumber the Project or any development of which the Project is a part. In confirmation of such subordination, Tenant shall, at Landlord's request from time to time, promptly execute any certificate or other document requested by the holder of the Mortgage. Tenant agrees that in the event that any proceedings are brought for the foreclosure of any Mortgage, Tenant shall immediately and automatically attorn to the purchaser at such foreclosure sale, as the landlord under this Lease, and Tenant waives the provisions of any statute or rule of law, now or hereafter in effect, which may give or purport to give Tenant any right to terminate or otherwise adversely affect this Lease or the obligations of Tenant hereunder in the event that any such foreclosure proceeding is prosecuted or completed. Neither the holder of the Mortgage (whether it acquires title by foreclosure or by deed in lieu thereof) nor any purchaser at foreclosure sale shall be liable for any act or omission of Landlord occurring prior to date of acquisition of title, nor subject to any offsets or defenses which Tenant might have against Landlord nor bound by any prepayment by Tenant of more than one month's installment of Base Rent and additional rent nor by any modification of this Lease made subsequent to the granting of the Mortgage unless consented to by the holder of the Mortgage. Notwithstanding anything to the contrary in this Section, so long as Tenant is not in default under this Lease, this Lease shall remain in full force and effect and the holder of the Mortgage and any purchaser at foreclosure sale thereof shall not disturb Tenant's possession hereunder.

24. COVENANT OF QUIET ENJOYMENT:

Landlord covenants that it has the right to make this Lease for the term aforesaid and covenants that if Tenant shall pay the rent and perform all of the covenants, terms and conditions of this Lease to be performed by Tenant, Tenant shall, during the Term hereby created, freely, peaceably and quietly occupy and enjoy the full possession of the Premises. The term "Landlord" as used in this Lease shall mean solely the owner of the Project and underlying land, or in the case of a sale-leaseback, the lessee of the underlying land, at the relevant time. The liability of the original Landlord and any successor Landlord under this Lease is limited to its interest in the Project and any insurance proceeds payable to Landlord with respect to the Project, and with respect to any liability accrued prior to a transfer, any net proceeds received by the transferor Landlord in consideration of the transfer.

25. NO REPRESENTATIONS BY LANDLORD:

Neither Landlord nor any agent or employee of Landlord has made any representations or promises with respect to the Premises or the Project except as herein expressly set forth, and no right, privileges, easements or licenses are acquired by Tenant except as herein expressly set forth. No exhibit attached to this Lease nor any other materials provided by Landlord shall constitute a warranty or agreement as to the configuration of the Project or the occupants thereof. Landlord reserves the right from time to time to modify the Project, including common areas, appurtenances and rentable areas, without in any case reducing the obligations of Tenant hereunder. Tenant has no right to light or air over any premises adjoining the Project. Tenant, by taking possession of the Premises, shall accept the same "as is" except as expressly provided in this Lease and such taking of possession shall be conclusive evidence that the Premises and the Project are in good and satisfactory condition at the time of such taking of possession. In addition to and without limitation of the immediately preceding sentence, Tenant agrees that it is leasing the Premises on an "AS IS", "WHERE IS" and "WITH ALL FAULTS" basis, based upon its own judgment, and hereby disclaims any reliance upon any statement or representation whatsoever made by Landlord. LANDLORD MAKES NO WARRANTY WITH RESPECT TO THE PREMISES, THE PROJECT OR ANY PART THEREOF, EXPRESS OR IMPLIED, AND LANDLORD SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE AND ANY LIABILITY FOR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OF OR THE INABILITY TO USE THE PREMISES, THE PROJECT OR ANY PART THEREOF.

26. NOTICES:

All notices or other communications hereunder shall be in writing and shall be effective if hand delivered or sent by registered or certified first-class mail, postage prepaid, or by overnight express service which maintains confirmation of delivery, (i) if to Landlord at Landlord Address set forth in the Data Sheet, and (ii) if to Tenant, at the Premises, unless notice of a change of address is given pursuant to the provisions of this Section. The day notice is given by mail shall be deemed to be the day following the day of mailing. If acceptance is refused, as evidenced by the records of the Postal Service or overnight delivery service, notice shall be

deemed given on the date acceptance is refused.

27. SURRENDER; HOLDING OVER:

Upon the expiration of this Lease or the earlier termination of Tenant's right to possession, Tenant shall immediately vacate the Premises, remove all of its property therefrom, remove any Hazardous Materials installed, used, generated, stored or disposed of by Tenant, and leave the Premises in the condition required by this Lease. Any property not removed shall be deemed abandoned, and Tenant shall be liable for all costs of removal and Tenant shall indemnify, defend and hold Landlord harmless from any cost or liability due to disposition of any property in the Premises in which a person other than Tenant has an interest. Should Tenant continue to occupy the Premises, or any part thereof, after the expiration or termination of the Term, whether with or without the consent of Landlord, such tenancy shall be from month to month and the monthly Base Rent shall be twice that which would otherwise be payable under this Lease. If Tenant's holdover is without the consent of Landlord, neither this Section nor the acceptance of any rent hereunder shall prevent Landlord from exercising any remedy to regain immediate possession of the Premises.

28. SHORT FORM LEASE: The parties will, at any time at the request of either party, promptly execute duplicate originals of an instrument in recordable form, which will constitute a short form of the Lease, setting forth a description of the leased premises, the terms of this Lease, and any other portions hereof, excepting the rental provisions, as either party may request.

29. MISCELLANEOUS:

(a) This is governed by and shall be construed according to the laws of the state of Minnesota.

(b) The captions in this Lease are for convenience only and are not a part of this Lease.

(c) If more than one person or entity shall sign this Lease as Tenant, the obligations set forth herein shall be deemed joint and several obligations of each such party.

(d) Time is of the essence.

(e) The provisions of this Lease which relate to periods subsequent to the expiration of the Term shall survive expiration.

(f) If any provision of this Lease is invalid or unenforceable to any extent, then such provision and the remainder of this Lease shall continue in effect and be enforceable to the fullest extent permitted by law.

(g) This Lease contains the entire agreement of the parties hereto with respect



## REQUEST FOR COUNCIL ACTION

03/03/2016

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**Department Origination:** Public Works Department      **Agenda Section:** Consent

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**Agenda Item:** WSN Agreement for Professional Engineering Services for the North Inglewood Drive Area Improvements Feasibility Report at a Not-to-Exceed Cost of \$5,000.

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**Approval Required:** Simple Majority of Vote of the Council

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### **BACKGROUND**

In July, 2015, the City of Baxter and Crow Wing County agreed to an orderly annexation of land to the City of Baxter. The annexed property includes land on the east and west sides of Inglewood Drive from Wolda Road to Pine Beach Road. Inglewood Drive was constructed with a 10-ton design but no municipal sewer or water utilities were constructed with the roadway improvements.

The City Zoning Ordinance requires the City to develop a long range plan and zoning for the annexed properties land within one year of the annexation. Staff has been working through a public process with the Long Range Planning Commission since October, 2015 to recommend a long range plan for this area to the City Council. Baxter has a long standing practice that commercial properties must have City services to develop. Owners of commercial property have inquired as to when services will be available. In order to determine the best means to extend services and the cost, a feasibility report needs to be prepared. Specifically, the Feasibility Report would study the construction of City Sewer and water service from the present ending point at Dellwood Drive and Pine Beach Road to serve properties to Peace Road.

### **FINANCIAL IMPLICATIONS**

The \$5,000 cost of the preparation of the report will be incorporated in the project cost and funding at whatever time the project is undertaken in the future.

### **STAFF RECOMMENDATIONS**

Staff recommends approval of the WSN engineering services proposal.

### **COUNCIL ACTION REQUESTED**

Motion to approve the WSN Agreement for Professional Engineering Services for the North Inglewood Drive Area Improvements Feasibility Report at a not-to-exceed cost of \$5,000.

Attachment:

Agreement for Professional Engineering Services for the North Inglewood Drive Area Improvements Feasibility Report



February 24, 2016

Mayor and 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: Agreement for Professional Engineering Services  
North Inglewood Drive Area Improvements  
Feasibility Report  
Baxter, MN**

Dear Mayor and City Council:

In response to staff request, we are pleased to submit a proposal to prepare a feasibility report for the North Inglewood Drive Area Improvements. The project area includes Inglewood Drive from Peace Road to CSAH 77 and Peace Road from Inglewood Drive to 1,100' west. We are familiar with the project area and have completed the preliminary sanitary sewer and water layouts.

It is our understanding the project will consist of the following improvements:

- Sanitary sewer lift station
- Gravity sanitary sewer collection system
- Sanitary sewer forcemain
- Water distribution system
- Roadway reconstruction

If our understanding of the project area and proposed improvements is not correct, please contact us immediately so we can modify this proposal.

Our proposed scope of services is as follows:

Feasibility Study

WSN proposes to complete a feasibility study meeting the requirements of the Minnesota Chapter 429 assessment process. Specific items included with this proposal are:

- Research of existing documents and studies
- Preparation of preliminary report exhibits
- Preparation of preliminary property acquisition exhibit
- Estimated preliminary quantities
- Preparation of preliminary cost estimates and assessment calculations.
- Preparation of draft feasibility report that includes a review of existing conditions, proposed improvements, estimated project costs, project implementation and discussion of conclusions and recommendations.

- Review of preliminary study with City staff, Utilities Commission and Council.
- Prepare final study based on City review comments.

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 \$5,000. We propose to have study completed within 30 days following receipt of the notice to proceed. If you are in agreement with our proposed scope of services, please sign and return one copy of this letter to us as our authorization to proceed.

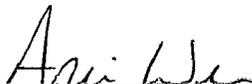
We realize this is an important project to the City and for that reason, we welcome the opportunity to sit down with you and your staff to go over this proposal and review the approach and work tasks we have listed. If necessary, we will revise the proposal to better conform to the needs of the City 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
<b>Engineer/Architect/Surveyor/Scientist/Wetland Specialist/Geographer</b>	
Level I	\$ 92.00
Level II	\$110.00
Level III	\$135.00
Level IV	\$145.00
Level V	\$160.00
<b>Technician</b>	
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
Waste Water Sampler	\$40.00/Day
ISCO Flow Recorder	\$60.00/Day
Photoionization 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	\$0.50
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 Plots: 42 x 48	\$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 Nolling, 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 or 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 Specifications 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.

