



# BAXTER CITY COUNCIL AGENDA

Tuesday, April 5, 2016

The regular meeting of the Baxter City Council will be held on Tuesday, April 5, 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 March 15, 2016 (pp. 4-7).
- B. Approve City Council Work Session Minutes from March 15, 2016 (pp. 8-11).
- C. Approve City Council Special Meeting Minutes from March 29, 2016 (pp. 12).
- D. Approve City Council Special Meeting Minutes from March 31, 2016 (pp. 13).
- E. Approve the Payment of Bills and Finance Report (Addendum A).
- F. Approve Parks and Trails Commission Minutes from March 28, 2016 (pp. 14-16).
- G. Schedule the 9<sup>th</sup> Annual Stormwater Public Informational Meeting for Tuesday, May 17<sup>th</sup>, 2016 at 7:00 p.m. or shortly thereafter (pg. 17).
- H. Award contract to Anderson Brothers Construction for the bituminous paving of Whispering Woods Lane and Mertens Drive in the amount of \$67,432.10 (pg. 18-19).
- I. Approve the Special Event Application for the HART 5K/10K Walk at Whipple Beach to be held September 10<sup>th</sup>, 2016 (pg. 20).

- J. Adopt Resolution 2016-021, Authorizing an Interfund Loan for Advance of Certain Costs in Connection with the Avantech Economic Development Tax Increment Financing District (pp. 21-24).
- K. Approve the purchase of right-of-way from Jonathan and Heidi LeMieur located northeast of 5245 Joler Road at a cost of \$21,270.19 and authorize the City Attorney to complete the closing (pp. 25).
- L. Approve Amendment to the Excelsior Road, Fairview Road, and Edgewood Drive Feasibility Study in the not to exceed amount of \$7,500 for the amendment with a total not to exceed amount of \$24,200 for the feasibility study (pp. 26-32).
- M. Approve Resolution 2016-022 Ordering Preparation of Report for 2016 Mill and Overlay, Full Depth Reclamation and Turn Lane Improvement Project (pg. 33).
- N. Approve Resolution 2016-023 Receiving Feasibility Report and Calling Hearing on Improvement for the 2016 Mill and Overlay, Full Depth Reclamation and Turn Lake Improvement Project (pg. 34-35).
- O. Approve Resolution 2016-024 Ordering Improvement and Preparation of Plans for the 2016 North Dellwood Drive Improvement Project (pp. 36).
- P. Approve Resolution 2016-025 Approving State of Minnesota Joint Powers Agreements with the City of Baxter on Behalf of its City Attorney and Police Department (pp. 37-54).
- Q. Approve Resolution 2016-026 Approving Plans and Specifications and Ordering Advertisement for Bids for the 2016 Fairview Road Improvement Project (pp. 55-59 and Insert).
- R. Approve City of Baxter Tablet Computer Use Policy for City Council Members (pp. 60-62).
- S. Accept Special Utilities Commission Minutes from March 16, 2016 (pp. 63-68).
  - 1. Approve the Development Agreement for Baxter, MN (14230 Dellwood N) LLC (pp. 69-76).

**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

- a. Approve Mayoral Proclamation Proclaiming the week of April 25, 2016 as Support Citizens with Intellectual Disabilities Week (pp. 77).

**8. City Administrator's Report**

**9. City Attorney's Report**

- A. Closed Session, Attorney Client Privilege, Minnesota Statute 13D.05, subd. 3(b) (no attachments)
- B. Nonuser Connection Update (pp. 78-85).

**10. Adjourn** to the special council meeting on Monday, April 18, 2016 at 6:00 p.m.

**BAXTER CITY COUNCIL MINUTES**  
**March 15, 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, Todd Holman, and Mark Cross

COUNCIL MEMBERS ABSENT: None

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

**SPECIAL PRESENTATIONS**

**Colette Larson, Heart Safe Community Designation**

Ms. Larson explained she is the Take Heart Coordinator for Essentia Health, St. Joseph Medical Center. Essentia Health St. Joseph Medical Center has donated AEDs for use at City Hall, the Public Works Facility, and the Police Department. The Heart Safe community designation is from the American Heart Association, Minnesota Department of Health, and a team of statewide organizations. The program aims to increase survival rates of sudden cardiac arrest by helping communities assess their preparedness for cardiac emergencies and finding gaps where improvements can be made. Increasing survival rates can be achieved by training people how to operate an AED and placing them where people work, play, and live. The Take Heart Program at Essentia Health has donated over 100 AEDs to our community and has provided free training to more than 15,000 people since 2005. Ms. Larson presented the Council with a plaque and sign.

**Lydia Benson Miss Jr. Teen Minnesota, former Baxter Jr. Teen**

Ms. Benson explained she is the former 2015 Baxter Jr. Teen and current 2016 Miss Jr. Teen Minnesota. Ms. Benson will be representing Baxter at the Nationals pageant in Las Vegas on February 20, 2017. Ms. Benson will be competing against 56 other titleholders. Ms. Benson offered to attend events in Baxter.

**PUBLIC COMMENTS**

Randy Reeves, 5020 Fairview Road, explained he was informed there would not be pipes installed in his yard and his trees would not be removed, but now it appears this is not accurate. Mr. Reeves explained his trees act as a buffer to the noise from the highway and the trees cannot be replaced.

Chris Moran, Boomer Pizza, expressed concerns the proposed Excelsior Road roundabout would cause for deliveries and garbage collection at his restaurant. Mr. Moran asked how many new parking spaces would be created between Boomer Pizza and Holiday, if the six large trees between Boomer Pizza and Excelsior Road would be cut down, if his dumpsters would have to be screened,

and if businesses would be able to install signs. Mr. Moran explained he provided his questions to City Administrator Heitke.

Dave Schonrock, 6056 Fairview Road, explained he would like to continue discussing pedestrian safety. Mr. Schonrock clarified he never said the Baxter Police Department is not doing their job. Mr. Schonrock read Minnesota Statute 169.011 and explained the statute states police officers should issue tickets. Mr. Schonrock has spoken to other police officers and that safety starts with training people how to drive. Mr. Schonrock said he received a citywide traffic study from MnDOT and there has not been a traffic study conducted for Fairview Road. Mr. Schonrock said he has a copy of the speed study and Minnesota Statute 169.14 does provide for the City's ability to reduce speed limits.

### **CONSENT AGENDA**

- A. Approve City Council Minutes from February 16, 2016
- B. Approve City Council Work Session Minutes from February 16, 2016
- C. Approve City Council Special Minutes from February 24, 2016
- D. Approve the Payment of Bills and Finance Report
- E. Approve Parks and Trails Commission Minutes from February 22, 2016
- F. Approve Long Range Planning Commission Minutes from February 22, 2016
- G. Approve Architectural Review Commission Minutes from February 24, 2016
- H. Adopt Resolution No. 2016-016 approving the 2016 Pavement Management Program.
- 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
- J. Approve Permit for Retail Sales of Fireworks by B.J. Alan Company at Mills Fleet Farm and Menards
- K. Approve moving the Inglewood Drive Railroad Crossing Project from 2020 to 2021 in the City 5-Year CIP
- 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
- M. Approve the use of fiber cement as an external building material for Cub Foods located at 14133 Edgewood Drive
- N. Approve Lease Agreement with Baxter Snowmobile Club for Use of City Building
- 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

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

### **OTHER BUSINESS**

#### **Planning and Zoning Items**

#### **Adopt Resolution 2016-019 Approving a Conditional Use Permit to allow a drive through for Riverwood Bank located at 14540 Edgewood Drive**

Community Development Director Doty explained the applicant is requesting a conditional use permit for a drive through for a new bank to be constructed at the former Bonanza site. There would also be a coffee shop tenant in the bank building. The Bonanza building would be removed

to allow for the new bank building. Community Development Director Doty explained vehicle parking locations and traffic flow. Staff reviewed the project scope and found it to be in conformance with zoning code standards. The City has a goal to obtain seven feet of right-of-way on the south side of the property, but because there is not a plat application, the city cannot require this. Community Development Director Doty highlighted the results of the traffic study and explained the City would provide the turn lane as recommended in the traffic study. The Utilities Commission reviewed the application and recommended some conditions. The architectural review of the application required changes to the roof pitch and the east elevation in order to meet the standards. Staff is recommending approval, subject to conditions contained in the resolution. The Planning and Zoning Commission's recommendation included the condition of a sidewalk on the northeast corner of the site and to revise the plans to show a trail along Clearwater Road. The applicant would like to discuss the conditions recommended by the Planning and Zoning Commission with the Council. The recommended trail does not leave adequate space for a drive isle. Staff recommended a trail on the south side of the property along Clearwater Road due to the Parks and Trails section of the Comprehensive Plan. The property owner is not interested in providing the requested right of way.

Sean Raboin, HTG Architects, explained Riverwood Bank is very excited to complete this project. Because of the sites tightness on the south, the trail is a challenge. In the future, a pedestrian bridge is scheduled to be constructed near this site; the applicant is concerned how the trail would be affected by the bridge. If the bank adds the trail, would the trail have to be moved in the future due to the bridge placement. The bank would agree to put in the trail when the location of the bridge is decided. The applicant would like to eliminate the northeast sidewalk due of the grade, the requirement of having to install a retaining wall, and the cost.

The council discussed if the requested trail is necessary and if necessary, where is the correct location for the trial.

**MOTION** by Council Member Holman, seconded by Council Member Cross to approve the Conditional Use Permit and that a sidewalk on the north side be constructed from the drive lane all the way to the east to the intersection along the private road and that the City will not require the construction of the trail along the South property line along Clearwater Road until such time that the City determines what other type of connectivity is to be constructed and that staff develops a mechanism to secure the cost of the trail or that the City accepts a 7-foot road right-of-way dedication without the requirement to construct the trail or sidewalk as proposed and that at some point in the future that it would be a City responsibility.

**Adopt Resolution 2016-020 Approving a Conditional Use Permit to allow grading of a riparian lot for a new slab on grade home for property located within the shoreland overlay district at 13179 Homestead Drive**

Community Development Director Doty explained the application is to allow grading for the construction of a new home on Perch Lake. The home would be constructed on the northwest corner of the property. When reviewing the application, staff is looking for minimum lot size requirements, impervious surface, and erosion control standards are being achieved. The Planning and Zoning Commission recommends approval. The applicant has not submitted an application for the home at this time because they have decided to complete the conditional use process first.

The Council discussed if the applicant could submit a different style of home after approval of the conditional use permit. Community Development Director Doty explained if they changed the style of home they would have to go through the grading process again.

**COUNCIL COMMENTS**

**Steve Barrows:** Council Member Barrows reminded the council of the open house at Exit Realty on Wednesday.

**Darrel Olson:** Mayor Olson explained the council received a letter from City Administrator Heitke indicating he would be retiring. Mayor Olson wished City Administrator Heitke well and thanked him for his service to the City of Baxter. Mayor Olson explained the meeting on March 24, to conduct City Administrator Heitke's annual review, needs to be cancelled.

**CITY ADMINISTRATOR'S REPORT**

City Administrator Heitke explained the work session packet contained a memo from Administrative Assistant Mary Haugen explaining concerns identified by the Cemetery Board. It has been some time since the Board has met. The City is completing the monument project this year to make it faster to locate monuments. The Board expressed concern with the condition of the cemetery grass. Staff is inquiring if the Council would like to reconstitute the Cemetery Board of if the Council would like to take over the Board's functions and staff presents issues to the Council. The Council's consensus was to reconstitute the Cemetery Board. Staff will bring the item back at a future work session.

**ADJOURNMENT**

**MOTION** by Council Member Cross, seconded by Council Member Barrows to adjourn the meeting at 8:15 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**  
**March 15, 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, Community Development Director Josh Doty, Assistant City Administrator Kelly Steele, Finance Director Jeremy Vacinek, IT/GIS Director Todd DeBoer, and Public Works Director Trevor Walter.

**Excelsior Road, Fairview Road, and Edgewood Drive Improvements**

City Administrator Heike explained Chuck Rickart with WSB will review the original traffic study and Aric Welch with WSN will review the feasibility study as it relates to the layout of the improvements.

Mr. Rickart explained the results of the traffic study indicated alternative two with the extension of Fairview Road and realignment of Edgewood Drive to the west was the best alternative. The traffic study was initiated due to concerns with timing of anticipated development north and south of Excelsior Road. A supplemental traffic analysis was prepared to consider short-term improvement alternatives. The recommended short-term solution was alternative number four. This alternative would complete the Fairview Road connection with a roundabout and a  $\frac{3}{4}$  access at the existing Edgewood Drive.

The next step was to complete an Intersection Control Evaluation (ICE) Report to analyze and recommend a type of control at the future Excelsior Road at the Fairview Road and Edgewood Drive intersection. The report recommended a roundabout be installed at the intersection.

Mr. Rickart reviewed how each alternative would operate in both 2017 and 2035.

Mr. Welch explained a draft feasibility study has been prepared without assessment figures. Mr. Welch is seeking council input regarding the layout to incorporate into the study.

Council Member Nystrom questioned if the council is acting to soon with the scope of the project.

Mr. Rickart explained the layout works today but as the area develops, there will be traffic concerns. The proposal is to handle traffic into the future as the area develops.

Mayor Olson explained council is discussing the design portion of the project and has not reviewed the financial portion. The City was approached with development proposals to both the north and south. Mayor Olson asked for input from members of the audience.

Joe Brenny distributed a letter expressing his concerns regarding the project. Mr. Brenny explained the project would eliminate some parking, resulting in the need to fill the entire wetland for parking. Installing the proposed fence will not solve the problem of passing traffic seeing where the deceased are brought inside. If the city goes through with the project, the City will have to construct a four to six stall garage, move the crematory, and close the current entrance or the city may have to relocate the funeral home at a very significant cost. Mr. Brenny asked the council to leave current road where it is located. Down the road if the project is needed, the city will have a more accurate vehicle count. Mr. Brenny explained he is opposed to the project and would like to discuss it further in a work session to find a more agreeable solution. Mr. Brenny explained he conducted a traffic count analysis on Fairview Road and found low traffic amounts.

Chris Quisberg, Cub Foods, explained he was considering constructing a new store behind the current store. However, at this time he is not sure if this will happen.

City Administrator Heitke explained the council is not in any position to make a decision tonight and asked the council to reflect on tonight's discussion.

#### **Oscar Kristofferson Park Pavilion Budget Amendment**

Community Development Director Doty explained staff is requesting a budget amendment for the construction of the Oscar Kristofferson Park pavilion in the amount of \$82,570.34. The approval of the budget amendment and to award the contract to Baratto Brothers Construction, Inc. is on the regular agenda. The Baratto Brothers contract is for \$189,000. Additionally, the cost for city provided items is \$143,570 for a total project cost of \$332,570. The 2016 budget identified the estimated cost for the pavilion would be \$250,000 and would come out of the park dedication budget.

Community Development Director Doty explained there are several factors why the project cost came in over the 2015 estimated cost. The City's permit fees and WAC and SAC fees totaling approximately \$30,000 were not included in the project cost. The project also requires a re-route of the electrical and a new outdoor drinking fountain totaling \$11,000. The remaining cost increase of \$39,000 is related to an increase in bidding.

Community Development Director Doty explained the Parks and Trails Commission has not reviewed the budget amendment request because they typically do not focus on the financial part of projects.

The council consensus was to keeping the project moving forward and to review the amenities incorporated into future pavilion projects.

### **Dellwood Drive Improvement Project**

City Administrator Heitke explained there were questions posed during the annexation informational meeting held on March 7, 2016 that staff was unable to answer until reviewing other documents and talking to Crow Wing County.

A property owner asked what happens with the water and sanitary sewer connections that were stubbed out to his property during the 2015 Dellwood Drive and Novotny Road Improvements Project when the property was not in the city limits. The cost of the improvements related to his parcel was deferred as a future connection charge with the connection charge recorded against his property. Notices of improvement hearing and assessment hearing were sent to the property owner, similar to other property owners on the project and the deferment was presented at the public hearings. Staff recommends providing the property owner one year to connect at the time the annexation is ordered.

It is recommended, upon completion of the annexation, to notify affected property owners with abutting city water and sewer services of the one year requirement to connect, similar to other non-users in the city's current ordinance. Upon connection, the connection charge will be due in full. In lieu of paying the connection charge in full, it is recommended to provide the property owner the option of entering into a special assessment agreement with the city to convert the outstanding connection charge and water and sewer availability charges due to a special assessment under the same terms as the original project was assessed. This provides payment flexibility to the property owner by extending the repayment period at the city's favorable financing terms. Language to convert a connection charge to a special assessment with an assessment agreement already exists in the city's assessment policy.

The property owners asked if the City of Baxter honor a Crow Wing County permit for a pole shed and lean to onto the pole shed. The property owner obtained a permit from Crow Wing County on November 3, 2015 to build a 40-foot by 60-foot addition onto the existing 40-foot by 40 foot pole shed. The permit also allowed a 14-foot by 100-foot lean to on one side. The pole shed addition was constructed in 2015 but the lean to has not been constructed yet and property owner plans to finish the lean to addition in 2016. The owner paid a \$500 permit fee and the permit was issued by Crow Wing County. The County permit expires two years from November 3, 2015. Staff contacted Crow Wing County staff and learned that no inspections would be required for this County permit. Staff finds that the permit should be honored, as allowed by Crow Wing County without a separate permit from the City, provided that the construction is completed according to the permit by November 3, 2017.

The property owner asked if he needs to obtain and pay for a City fence permit in the amount of \$35.00 to reinstall the fence along Dellwood Drive. The County purchased an additional 7 feet of right of way for the project and the fence needed to be moved back 7 feet. The County paid for the right of way and for the property owner to take down and reinstall the fence on the new right of way line. The fence was torn down by the property owner in 2015 and is supposed to be reinstalled by the property owner after the Crow Wing County 2016 Dellwood Drive Improvement Project is completed in 2016. On past public initiated construction projects in Baxter, the City has not charged permit fees to relocate or reinstall such things as private utilities in the road right of way or things such as fences, landscaping, lawn irrigation, etc. that were close to or in the right of way

before the project started. All private property items must be reinstalled on the right of way line or on private property. The project is a public initiated project by Crow Wing County, City of Baxter and City of Brainerd, therefore the City will not charge the property owner to reinstall the fence on the new right of way or property line. Staff will follow up with the County to make sure the fence is properly reinstalled on the new property line at the end of the project.

The council consensus was to agree with the recommendation presented by staff.

**Fixed Network Water Meter Reading System Project**

IT/GIS Director DeBoer explained in February the City advertised for bids for a fixed network water meter reading system. Two vendors submitted proposals, which were reviewed and analyzed by City and TKDA staff. After analyzing the initial project costs, 25-year lift cycle costs, and contacting references, City and TKDA staff recommends awarding a contract to Dakota Supply Group. Awarding the contract is on the regular Council agenda.

**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**  
**March 29, 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 and Steve Barrows.

**COUNCIL MEMBERS ABSENT:** Council Members Todd Holman and Mark Cross

**STAFF PRESENT:** City Administrator Gordon Heitke, and Assistant City Administrator Kelly Steele, and Public Works Director Trevor Walter.

Assistant City Administrator Steele met with Melvin and Linda Bjornson to discuss the project earlier in the day. Staff has not heard from the other property owners.

Public Works Director Walter explained Anderson Brothers was the low bidder.

Mayor Olson opened the public hearing at 6:16 p.m.

No members from the public attended the public hearing.

**MOTION** by Council Member Barrows, seconded by Council Member Nystrom to close the public hearing at 6:17 p.m. Motion carries unanimously.

During the regular council meeting on April 5, 2016, the council will consider ordering the Dellwood Drive improvement project.

**MOTION** by Council Member Barrows, seconded by Council Member Nystrom to adjourn at 6:18 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

**BAXTER CITY COUNCIL MINUTES**  
**Special Meeting**  
**March 31, 2016**

Mayor Darrel Olson called the Special City Council Meeting to order at 6:01 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:** Assistant City Administrator Kelly Steele

Mayor Olson explained the history of hiring city administrators for Baxter has included assistance by two local businesspersons. Finance Director Vacinek has also prepared a brochure that was a very useful tool. Former City Clerk Beva Olson did a very good job with the hiring process. Current city staff is very busy completing major projects and does not have time to assist with the hiring process. The Joint Powers has offered to pay approximately half of the cost to hire a consultant. The City's cost would be \$8,500. Mayor Olson has spoken to the consultant and found he is familiar with our area. Mayor Olson has contacted the consultant's references and received very positive comments. Mayor Olson explained the consultant would contact council members and department heads to discuss the qualities they are seeking in the next city administrator. The consultant will provide weekly email updates on the progress of the search.

**MOTION** by Council Member Cross, seconded by Council Member Barrows to enter into a contract with the consultant to conduct the city administrator hiring process. Motion carries unanimously.

Mayor Olson explained he would inform the consultant the council has approved his contract.

**MOTION** by Council Member Barrows, seconded by Council Member Nystrom to adjourn at 6:23 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

**PARKS & TRAILS COMMISSION MINUTES**

**March 28, 2016**

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

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

MEMBERS ABSENT: 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 Barrick to approve the regular meeting minutes of February 22, 2016 as presented. Motion carried unanimously.

**OK PARK**

**Pavilion**

CD Director Doty stated that in the packet is a memo addressed to City Council regarding the bids that were received for the new pavilion. The lowest bid received was for \$189,000.00 by Baratto Brothers. He indicated that this would appear to be within budget until additional city items were added to that number. The final number ended up being a lot higher than expected, totaling \$332,570.00 putting the project over by \$82,570.00. The differences were SAC/WAC charges and the way the project was bid. CD Director Doty stated that in order for the project to stay on schedule, staff had no choice but to move the project forward for Council approval prior to bringing the cost overage back to this Commission, therefore Council did award the contract to Baratto Brothers at their March 15, 2016 meeting. CD Director Doty stated that, with the extra cost of the OK Park pavilion, there will now be less money than previously thought in the parks dedication fund. He then asked if there were any questions of staff.

Commissioner Brecht asked what the additional \$39,000.00 was for when indicated "increase in bidding". CD Director Doty stated that there isn't a breakdown, just that businesses are busier than when Whipple Beach was constructed causing the cost of construction to rise. CD Director Doty reviewed the other bids with the Commission and stated that the costs could have been quite a bit higher. Chair Kalkofen asked what the \$80,000.00 towards picnic shelter materials were. CD Director Doty stated that it was likely for the cost of materials for the shelter.

Commissioner Barrick asked about the SAC/WAC charges, why they were charged out, being this is a city project. CD Director Doty indicated that the city does have to follow its own regulations regarding SAC/WAC because we will be using water and sewer and it is a state mandated regulation. Basically the fees are paid and allocated to the City like any other building project.

Chair Kalkofen asked how much was left in the parks dedication fund. CD Director Doty stated that there is less than \$100,000.00 in the fund when all of the 2016 items are complete. Chair Kalkofen asked if there are any big projects coming forth, CD Director Doty stated there was a lot of talk, however nothing that would generate a lot of money at one time.

**Soccer Nets Cart**

CD Director Doty stated that there is a picture in the packet and the cart has been purchased and on site. Commissioner Holderness asked if the school district was paying anything towards the cart. CD Director Doty

stated that the City was asked to purchase the cart and Council approved the purchase. It is part of the joint powers agreement that the City contribute some funding to the programs.

### **Safety Netting-Phase 2**

CD Director Doty stated that the first week in April the second phase of netting will be going up on the field closest to Art Ward parking. Staff is working on this project earlier to accommodate the upcoming softball/baseball season and is coordinating the pavilion concrete work to be completed to allow for safe access to the existing restrooms. He indicated that staff put a lot of time into this schedule to accommodate the busy schedule of the park.

### **Score Board**

CD Director Doty stated that the new score board is in the process of going up and should be close to completion by now. This was also a 2016 budgeted item.

### **Oakwood Trail Update**

Planner Gindele stated that previously staff had been suggested to meet with Camp Vanasek to address any concerns regarding this trail. Staff has a meeting scheduled for April 5, 2016 with the camp's director and board members. Chair Kalkofen asked what side the trail was presented on to the camp; Planner Gindele indicated the lakeside of Oakwood Dr. Planner Gindele indicated that everyone is trying to be open minded regarding this trail so that the City can work well together with the Camp and the County on a trail that will benefit everyone.

Chair Kalkofen asked if there was an update on the grant funding. Staff indicated that they are still waiting to hear back.

CD Director Doty gave a brief explanation as to the safety concerns around this trail and the reasons for wanting the trail on the lake side of the road.

### **Whipple Beach ADA Observation Deck**

No discussion

### **Riverview Park Boardwalk**

CD Director Doty stated that the boardwalk is in and provided pictures in the packet. Chair Kalkofen asked if staff had built the boardwalk, CD Director Doty stated he was not sure but could report back at the next meeting. Chair Kalkofen stated that was not necessary and just want to let those responsible know that it looked good.

### **Draft 5 Year CIP**

CD Director Doty indicated that he placed this item on the agenda just as an update to the pavilion costs and to see if there were any additional comments. He further stated that if the Commission is ready, they adopt the plan and move it forward for Council approval. Chair Kalkofen would like to see the Commission review this and respond at the next meeting.

### **Parks Opening Early**

CD Director Doty stated that the parks usually open the first week in May, this year they will be opening around April 15, 2016. CD Director Doty stated that they have already seen people in the parks on nice days. Commissioner Brecht asked if the parks staff was going to place a plastic recycling can in the basketball court; she further stated that it seems like the basketball players won't often walk outside of the court to throw away their plastic bottles and just leave them on the court instead. CD Director Doty stated he can ask, Commissioner Brecht stated she could also ask when she sees the parks workers in the park.

The Commission noted that they have seen children playing and utilizing the parks.

**Thoughts from the Chair**

Chair Kalkofen stated that he is officially retiring from his job, for the second time. With retirement, his wife and he are going to be moving to Montana to be closer to their children and grandchildren. The Commission and staff indicated that they are sad to see him leaving but also understand the exciting news he has shared.

**Other Business**

The next scheduled meeting is April 25, 2016 at 4:00 pm.

**Adjournment**

**MOTION** by Commissioner Brecht, seconded by Commissioner Barrick to adjourn the meeting at 4:42 p.m. Motion carried unanimously.

Approved by:

Respectfully submitted,

\_\_\_\_\_  
Chair Kalkofen

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Shanna Newman, CD Administrative Assistant

REQUEST FOR COUNCIL ACTION

04.05.2016

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**Department Origination:**  
Public Works Department

**Agenda Section:**  
Consent

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**Agenda Item:** Schedule the 9<sup>th</sup> Annual Storm Water Public Informational Meeting for Tuesday, May 17<sup>th</sup>, 2016 at 7:00 p.m. or shortly thereafter.

---

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

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**BACKGROUND**

Each year the City is required to conduct the annual storm water public informational meeting as defined within the MS4 permit, Part V, Par G, sec 1e. There will be a short presentation and a chance for the public to provide feedback on the Municipal Separate Storm Sewer System (MS4) permit and the Storm Water Pollution Prevention Program (SWPPP). The goal of the meeting is to receive feedback from the public on the importance of stormwater management. The City will use the information gathered and will make revisions to the SWPPP as appropriate.

**FINANCIAL IMPLICATIONS**

None.

**STAFF RECOMMENDATION**

Staff recommends setting the annual storm water informational meeting on May 17<sup>th</sup>, 2016 at 7:00 p.m. or shortly thereafter in order to meet the public notification requirements, as defined within the MS4 permit guidelines, staff needs City Council approval at this meeting.

**COUNCIL ACTION REQUESTED**

**MOTION** to approve setting the annual storm water public informational meeting on May 17<sup>th</sup>, 2016 at 7:15 p.m. or shortly thereafter.

REQUEST FOR COUNCIL ACTION

04.05.2016

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**Department Origination:**  
Public Works

T.W.

**Agenda Section:**  
Consent

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**Agenda Item:** Award contract to Anderson Brothers Construction for the bituminous paving of Whispering Woods Lane and Mertens Drive in the amount of \$67,432.10

---

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

---

**BACKGROUND**

Solicited quotes from Tri City Paving and Anderson Brothers Construction as per state statutes. Low quote was from Anderson Brothers Construction in the amount of \$67,432.10.

**FINANCIAL IMPLICATIONS**

The City received \$67,432.10 from County as part of the annexation agreement to pay the entire cost of the construction. The contract is estimated quantities and if there are any over runs the City would be responsible for any costs above the \$67,432.10. Staff will monitor project and minimize any cost overruns if there would be any on the project.

**STAFF RECOMMENDATION**

Staff recommends awarding the contract to Anderson Brothers Construction for the bituminous paving of Whispering Woods Lane and Mertens Drive in the amount of \$67,432.10.

**COUNCIL ACTION REQUESTED**

**MOTION** to award the contract to Anderson Brothers Construction for the bituminous paving of Whispering Woods Lane and Mertens Drive in the amount of \$67,432.10.

Attachment:

- Bid Summary Sheet

Project: Whispering Wood Lane and Mertens Drive Improvements

Date: February 12, 2016

Time: 1:00 pm

Location: Baxter, MN

Name Of Bidder	Bid Bond	Amount
Anderson brothers	YES	\$67,432.10
Tri-City	YES	\$82,362.00
Engineer Estimate		\$71,661.72

## REQUEST FOR COUNCIL ACTION

April 5, 2016

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**Department Origination:** Police

**Agenda Section:** Consent

---

**Agenda Item: Approve the Special Event Application for the HART 5K/10K Walk at Whipple Beach to be held September 10, 2016**

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

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### **BACKGROUND**

The City of Baxter has received a special event application from HART for a 5K/10K Walk and Run to be held on September 10<sup>th</sup>, 2016. The event will be held at Whipple Beach with activities during the morning hours.

The police department has reviewed the route with event organizers and the department is comfortable with the route chosen. The organizers plan to have sufficient volunteers on site the day of the event to cover any safety issues. On-duty staff from the police department will assist if necessary.

Attendance for the event is planned to be around 150 participants.

The 2015 event occurred without incident.

### **FINANCIAL IMPLICATIONS**

No financial implications

### **STAFF RECOMMENDATION**

Staff is recommending approval for the special event application request.

### **COUNCIL ACTION REQUESTED**

Motion to approve the special event application for the HART 5K/10K Walk at Whipple Beach on Saturday, September 10<sup>th</sup>, 2016.

## REQUEST FOR COUNCIL ACTION

04/05/16

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**Department Approval:** Finance Director Vacinek 

**Agenda Section:** Consent

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

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**Items Description:** Adopt Resolution 2016-021, Authorizing an Interfund Loan for Advance of Certain Costs in Connection with the Avantech Economic Development Tax Increment Financing District

---

### **BACKGROUND**

Attached is a resolution authorizing an interfund loan to one of the city's existing tax increment financing districts, the Avantech Economic Development TIF District Number 13. In 2015, the city council approved the Avantech Economic Development Tax Increment Financing (TIF) District. The TIF district was created to facilitate the construction of the Avantech manufacturing development in the city's industrial park. As part of the initial approval, a \$55,000 interfund loan was adopted to finance \$50,880 of the purchase price, along with TIF district administration costs and interest on the interfund loan. To the extent increment generated by the TIF district in the future is available, the city will utilize the increment to reimburse itself for these expenditures.

The attached resolution provides up to an additional \$15,000 of interfund loan authorization for the anticipated remaining eligible costs projected to be incurred in 2016 and later. The short-term loan will cover the projected administrative and interfund loan interest costs of the district until sufficient increment is generated in the district to repay the loan. The first installment of tax increment is anticipated to be collected in July 2017.

### **FINANCIAL IMPLICATIONS**

Project eligible costs and TIF district administrative costs will be recouped from the TIF district. Interfund loans from the Economic Development (EDA) Fund with interest will initially finance these expenditures until sufficient increment is generated to repay the interfund loans.

### **STAFF RECOMMENDATIONS**

Finance Director and TIF Administrator Vacinek recommends adopting the attached resolution authorizing an interfund loan to finance the additional eligible upfront costs and interfund loan interest prior to tax increment being available. To the extent increment is available, these costs will ultimately be reimbursed with tax increment when it is generated. State tax increment laws require an interfund loan resolution prior to incurring any costs for which the city wishes to be reimbursed.

### **COUNCIL ACTION REQUESTED**

Adopt Resolution 2016-021, authorizing an interfund loan for advance of certain costs in connection with the Avantech Economic Development Tax Increment Financing District

EXTRACT OF MINUTES OF A MEETING OF THE  
CITY COUNCIL OF THE  
CITY OF BAXTER, MINNESOTA

HELD: April 5, 2016

Pursuant to due call and notice thereof, a regular meeting of the City Council of the City of Baxter, Crow Wing County, Minnesota, was duly held at the City Hall on April 5, 2016, at 7:00 P.M.

The following members were present: \_\_\_\_\_

and the following were absent: \_\_\_\_\_.

Member \_\_\_\_\_ introduced the following resolution, and moved its adoption:

**RESOLUTION NO. 2016-021**

**A RESOLUTION AUTHORIZING AN INTERFUND LOAN FOR ADVANCE  
OF CERTAIN COSTS IN CONNECTION WITH TAX INCREMENT  
FINANCING DISTRICT NO. 13: AVANTECH**

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

Section 1. Background.

1.01. The City has heretofore approved the establishment of Tax Increment Financing District No. 13: Avantech (the "TIF District") within Development District No. 1 (the "Project"), and has adopted a Tax Increment Financing Plan (the "TIF Plan") for the purpose of financing certain improvements within the Project.

1.02. The City has determined to pay for certain costs identified in the TIF Plan consisting of the "Interfund Loan Portion", as identified in the August 18, 2015 resolution approving the tax increment assistance for the Avantech Expansion project and related agreements, other qualifying improvements, interest and administrative costs (collectively, the "Qualified Costs"), which costs may be financed on a temporary basis from City funds available for such purposes.

1.03. Under Minnesota Statutes, Section 469.178, Subd. 7, the City is authorized to advance or loan money from the City's general fund or any other fund from which such advances may be legally authorized, in order to finance the Qualified Costs.

1.04. The City intends to reimburse itself for the Qualified Costs from tax increments derived from the TIF District in accordance with the terms of this resolution (which terms are referred to collectively as the "Interfund Loan").

1.05. The City initially approved an Interfund Loan in the amount of \$55,000 on August 18, 2015 for a portion of the Qualified Costs.

Section 2. Terms of Interfund Loan.

2.01. The City hereby authorizes the advance of up to an additional \$15,000 from the Economic Development Fund or so much thereof as may be paid as Qualified Costs. The City shall reimburse itself for such advances together with interest at the rate stated below. Interest accrues on the principal amount from the date of each advance. The maximum rate of interest permitted to be charged is limited to the greater of the rates specified under Minnesota Statutes, Section 270C.40 or Section 549.09 as of the date the loan or advance is authorized, unless the written agreement states that the maximum interest rate will fluctuate as the interest rates specified under Minnesota Statutes, Section 270C.40 or Section 549.09 are from time to time adjusted. The interest rate shall be 4% and will not fluctuate.

2.02. Principal and interest ("Payments") on the Interfund Loan shall be paid semi-annually on each August 1 and February 1 (each a "Payment Date"), commencing on the first Payment Date on which the Authority has Available Tax Increment (defined below), or on any other dates determined by the Finance Director, through the date of last receipt of tax increment from the TIF District.

2.03. Payments on this Interfund Loan are payable solely from "Available Tax Increment," which shall mean, on each Payment Date, tax increment available after other obligations have been paid, or as determined by the Finance Director, generated in the preceding six (6) months with respect to the property within the TIF District and remitted to the City by Crow Wing County, all in accordance with Minnesota Statutes, Sections 469.174 to 469.1794, all inclusive, as amended. Payments on this Interfund Loan may be subordinated to any outstanding or future bonds, notes or contracts secured in whole or in part with Available Tax Increment, and are on parity with any other outstanding or future interfund loans secured in whole or in part with Available Tax Increment.

2.04. The principal sum and all accrued interest payable under this Interfund Loan are pre-payable in whole or in part at any time by the City without premium or penalty. No partial prepayment shall affect the amount or timing of any other regular payment otherwise required to be made under this Interfund Loan.

2.05. This Interfund Loan is evidence of an internal borrowing by the City in accordance with Minnesota Statutes, Section 469.178, Subd. 7, and is a limited obligation payable solely from Available Tax Increment pledged to the payment hereof under this resolution. This Interfund Loan and the interest hereon shall not be deemed to constitute a general obligation of the State of Minnesota or any political subdivision thereof, including, without limitation, the City. Neither the State of Minnesota, nor any political subdivision thereof shall be obligated to pay the principal of or interest on this Interfund Loan or other costs incident hereto except out of Available Tax Increment, and neither the full faith and credit nor the taxing power of the State of

Minnesota or any political subdivision thereof is pledged to the payment of the principal of or interest on this Interfund Loan or other costs incident hereto. The City shall have no obligation to pay any principal amount of the Interfund Loan or accrued interest thereon, which may remain unpaid after the final Payment Date.

2.06. The City may amend the terms of this Interfund Loan at any time by resolution of the City Council, including a determination to forgive the outstanding principal amount and accrued interest to the extent permissible under law.

Section 3. Effective Date. This resolution is effective upon the date of its approval.

The motion for the adoption of the foregoing resolution was duly seconded by Councilmember \_\_\_\_\_, and upon a vote being taken thereon, the following voted in favor thereof: \_\_\_\_\_;

and the following voted against the same: \_\_\_\_\_.

Whereupon said resolution was declared to have been duly passed and adopted.

STATE OF MINNESOTA  
COUNTY OF CROW WING  
CITY OF BAXTER

I, the undersigned, being the duly qualified and acting City Clerk of the City of Baxter, Minnesota, DO HEREBY CERTIFY that I have compared the attached and foregoing extract of minutes with the original thereof on file in my office, and that the same is a full, true and complete transcript of the minutes of a meeting of the Council duly called and held on the date therein indicated, insofar as such minutes relate to the adoption of an interfund loan for certain costs in connection with the Avantech Economic Development Tax Increment Financing District.

WITNESS my hand on this 5<sup>th</sup> day of April, 2016.

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

REQUEST FOR COUNCIL ACTION

March 31, 2016

Department Origination: Community Development

Agenda Section: Consent

Agenda Item: Approve the Purchase of Right-of-Way from Jonathan and Heidi LeMieur Located northeast of 5245 Joler Road at a Cost of \$21,270.19 and Authorize the City Attorney to Complete the Closing

Approval Required: Simple Majority of Vote of the Council

**BACKGROUND**

At the February 2, 2016 City Council work session, the City Council identified consensus support to consider a purchase of Joler Road right-of-way on the North side of Jonathan and Heidi LeMieur’s property located south of Second Street. Staff subsequently determined the amount of land that has been maintained by the City for over six years (area in green below). The City Council directed staff to make an offer of \$1 a square foot for the right-of-way less the area that the City had maintained for over six years. On Tuesday, March 29, 2016, Jonathan and Heidi LeMieur notified City staff that they accept the City’s offer. City attorney Person has drafted a purchase agreement for the transaction.



**FINANCIAL IMPLICATIONS**

The agreement is to obtain the entire 80-foot right of way, but to purchase 20,724.19 square feet, the square footage not currently maintained by the City. At the agreed purchase price of \$1 per square foot plus \$546 of closing costs, the total capital outlay is \$21,270.19. Finance Director Vacinek recommends funding the acquisition from the city’s collector street fund.

**RECOMMENDATION**

Staff recommends approving the purchase of right-of-way from Jonathan and Heidi LeMieur at a cost of \$21,270.19 and authorizing the city attorney to complete the closing.

**COUNCIL ACTION REQUESTED**

Motion to approve the purchase of right-of-way from Jonathan and Heidi LeMieur located Northeast of 5245 Joler Road at a cost of \$21,270.19 and authorize the City Attorney to complete the closing.

## REQUEST FOR COUNCIL ACTION

April 5, 2016

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**Department Approval:** Community Development  
Public Works

**Agenda Section:** Consent

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**Item Description:** Approve Amendment to the Excelsior Road, Fairview Road, and Edgewood Drive Feasibility Study in the Amount Not to Exceed \$7,500 for the Amendment with a Total Not to Exceed Amount of \$24,200 for the Feasibility Study

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

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### **BACKGROUND**

The City currently has an agreement with WSN to complete a feasibility study for Excelsior Road, Fairview Road and Edgewood Drive in the amount not to exceed \$16,700. At the March 15, 2016 City Council meeting, the City Council requested changes that require an amendment to the scope of services. The attached WSN proposal includes three primary tasks as follows:

- 1) To provide a detailed traffic analysis of the Fruth site to determine what minimum improvements are needed to provide acceptable access if a development request was received.
- 2) Move the roundabout as far South and East as possible to minimize impacts to private improvements.
- 3) A stormwater analysis of the development area related to the Bolton Menk storm water capacity analysis to address stormwater questions related to the project. This scope would include the delineation of existing drainage ways and modifications needed for the project.

### **FINANCIAL IMPLICATIONS**

Attached is a proposal from WSN to complete the feasibility study amendment in the not to exceed amount of \$7,500 for a total not to exceed amount \$24,200 for the feasibility study.

### **STAFF RECOMMENDATIONS**

Staff recommends that the City Council approve the WSN feasibility study amendment in the not to exceed amount of \$7,500 for a total not to exceed amount of \$24,200.

### **COUNCIL ACTION REQUESTED**

Approve Amendment to the Excelsior Road, Fairview Road, and Edgewood Drive Feasibility Study in the not to exceed amount of \$7,500 for the amendment with a total not to exceed amount of \$24,200 for the feasibility study.

Attachment:

1. WSN Feasibility Study Amendment Proposal



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

March 30, 2016

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

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

Dear Mayor and City Council:

We are currently under contract with the City of Baxter for preliminary engineering services related to improvements to Excelsior Road, Fairview Road and Edgewood Drive. Our existing agreement for the "Not To Exceed" amount of \$16,700 is based on the original agreement for \$12,500 approved December 15, 2015 and an amendment for \$4,200 approved on February 2, 2016.

At our meeting with City staff on Tuesday March 22, 2016 we identified additional study tasks to aid the City through the decision making process and development of the feasibility report. A description of the additional tasks and associated costs are as follows:

Task 1

Complete a traffic analysis assuming the Fruth property were to develop with a private access on Excelsior Road. The traffic study will determine the extent of development, if any, that could reasonable be allowed before the recommended roundabout would be required. WSB will complete the traffic analysis and WSN will prepare an exhibit showing the potential access and required improvements to Excelsior Road. The estimated cost for this task is \$2,500. It is assumed the developer of the Fruth property would be responsible for all costs associated with this option so we are not proposing to analyze the cost. However, a cost estimate could be developed for another \$700, if requested.

Task 2

Move the roundabout as far south and east as possible within the constraints of the surrounding developments (mainly Frandsen Bank & Trust). This will require a complete geometric revision of the roundabout and approaching legs. The layout will show the roundabout as a three legged intersection with the north leg (Edgewood Drive) shaded out and shown as a future improvement. We will also show the roadway improvements west of the roundabout as future. The intent of this layout will be to show the minimum improvements necessary to accommodate the recommended roundabout intersection. The cost estimate and associated assessments will also be updated so the option can be analyzed by City staff. WSB will revise the geometric layouts and WSN will update the exhibit, costs and assessment calculations. The total estimate cost for this task is \$3,500.

Task 3

A stormwater analysis of the proposed improvements is necessary to provide information for the Bolton Menk Golf Course Drive stormwater capacity analysis and to address concerns to adjacent developments. Work associated with this task would include adding additional detail to the drawings (existing ground contours derived from LiDAR and Section 6 Stormwater outlet information), delineation of the existing



# WIDSETH SMITH NOLTING



## 2016 FEE SCHEDULE

CLASSIFICATION	HOURLY RATE
<b><u>Engineer/Architect/Surveyor/Scientist/Wetland Specialist/Geographer</u></b>	
Level I	\$ 92.00
Level II	\$110.00
Level III	\$135.00
Level IV	\$145.00
Level V	\$160.00
<b><u>Technician</u></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.

# ~~20~~ General Provisions of Professional Services Agreement

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

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

## ARTICLE 1. PERIOD OF SERVICE

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

## ARTICLE 2. SCOPE OF SERVICES

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

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

## ARTICLE 3. COMPENSATION TO WSN

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

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

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



## ARTICLE 4. ABANDONMENT, CHANGE OF PLAN AND TERMINATION

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

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

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

## ARTICLE 5. DISPOSITION OF PLANS, REPORTS AND OTHER DATA

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

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

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

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

**ARTICLE 7. CLIENT'S RESPONSIBILITIES**

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

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

10. Provide "record" drawings and specifications for all existing physical features, structures, equipment, utilities, or facilities which are pertinent to the Project, to the extent available.

11. Provide other services, materials, or data as may be set forth in the Letter Agreement or any Exhibits attached hereto.

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

**ARTICLE 8. OPINIONS OF COST**

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

**ARTICLE 9. CONSTRUCTION PHASE SERVICES**

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

**ARTICLE 10. REVIEW OF SHOP DRAWINGS AND SUBMITTALS**

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

**ARTICLE 11. REVIEW OF PAY APPLICATIONS**

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

## **ARTICLE 12. REQUESTS FOR INFORMATION (RFI)**

If included in the scope of services, WSN will provide, with reasonable promptness, written responses to requests from any contractor for clarification, interpretation or information on the requirements of the Contract Documents. If Contractor's RFIs 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.

**CITY OF BAXTER MINNESOTA  
RESOLUTION 2016-022**

**RESOLUTION ORDERING PREPARATION OF REPORT ON 2016 MILL AND  
OVERLAY, FULL DEPTH RECLAMATION AND TURN LANE IMPROVEMENT  
PROJECT**

WHEREAS, it is proposed to improve and to assess benefited property for all or a portion of the cost of the improvement, pursuant to Minnesota Statutes, Chapter 429,

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

That the proposed improvement, called Improvement No. 4416, 2016 Mill and Overlay, Full Depth Reclamation and Turn Lane Improvement Project, be referred to Widseth Smith Nolting (WSN) for study and WSN is instructed to report to the council with all convenient speed advising the council in a preliminary way as to whether the proposed improvement is necessary, cost-effective, and feasible; whether it should best be made as proposed or in connection some other improvement; the estimated cost of the improvement as recommended; and a description of the methodology used to calculate individual assessments for affected parcels.

**Whereupon, said Resolution is hereby declared adopted on this 5<sup>th</sup> day of April, 2016.**

\_\_\_\_\_  
**Darrel Olson, Mayor**

**ATTEST:**

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

*City Seal*

**CITY OF BAXTER MINNESOTA  
RESOLUTION 2016-023**

**RESOLUTION RECEIVING FEASIBILITY REPORT AND CALLING HEARING ON  
IMPROVEMENT FOR THE 2016 MILL AND OVERLAY, FULL DEPTH  
RECLAMATION AND TURN LANE IMPROVEMENT PROJECT**

WHEREAS, pursuant to a resolution the council adopted April 5, 2016 a report has been prepared by Widseth Smith Nolting (WSN) with reference to Improvement No. 4416, the improvement of the following project areas:

**Mill and Overlay**

Cedardale Lane between north terminus and Highland Scenic Road (CSAH 48)  
Brentwood Road between Briarwood Lane and Cedardale Lane  
Briarwood Lane between Brentwood Road and Brentwood Road  
Birchdale Lane between west terminus and First Street  
Ashdale Lane between Cedardale Lane and Highland Scenic Road (CSAH 48)  
Second Street between Cedardale Lane and Ashdale Lane  
First Street between Cedardale Lane and Ashdale Lane  
Maplewood Drive between Fairview Road and east terminus  
Kenwood Drive between Sandstone Road and north terminus  
Kenwood Court between west terminus and Kenwood Drive  
Glenwood Drive between Madeline Drive and Excelsior Road  
Madeline Drive between Fairview Road and Mary Street  
John Street between Inglewood Drive and Madeline Drive  
Mary Street between Inglewood Drive and Glenwood Drive

**Full Depth Reclamation**

Clearwater Road between Dellwood Drive and Golf Course Drive  
Woida Road between TH 371 and Golf Course Drive

**Turn Lane Improvements**

College Drive from

and this report was received by the council on April 5, 2016; and

WHEREAS, the report provides information regarding whether the proposed improvement is necessary, cost-effective, and feasible; whether it should best be made as proposed or in connection with some other improvement; the estimated cost of the improvement as recommended; and a description of the methodology used to calculate individual assessments for affected parcels.

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

1. The council will consider the improvement of such streets in accordance with the report and the assessment of abutting property for all or a portion of the cost of the improvement pursuant to Minnesota Statutes, Chapter 429 at an estimated total cost of the improvement of \$1,348,470.

2. A public hearing shall be held on such proposed improvement on Monday, April 18, 2016 in the council chambers of the city hall at 6:00 p.m. and the clerk shall give mailed and published notice of such hearing and improvement as required by law.

**Whereupon, said Resolution is hereby declared adopted on this 5<sup>th</sup> day of April, 2016.**

\_\_\_\_\_  
**Darrel Olson, Mayor**

**ATTEST:**

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

*City Seal*

**CITY OF BAXTER MINNESOTA  
RESOLUTION 2016-024**

**RESOLUTION ORDERING IMPROVEMENT AND PREPARATION OF PLANS FOR  
THE 2016 NORTH DELLWOOD DRIVE IMPROVEMENT PROJECT**

WHEREAS, pursuant to a resolution the council adopted March 15, 2016, a fixed date for a council hearing on Improvement No. 4115, the proposed improvement of Dellwood Drive between Novotny Road and CSAH 49 (Wise Road); and

WHEREAS, ten days' mailed notice and two weeks' published notice of the hearing was given, and the hearing was held thereon the 29th day of March, 2016, at which all persons desiring to be heard were given an opportunity to be heard thereon,

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

1. Such improvement is necessary, cost-effective, and feasible as detailed in the feasibility report.
2. Such improvement is hereby ordered as proposed in the council resolution adopted 15<sup>th</sup> day of March, 2016.
3. Such improvement has no relationship to the comprehensive municipal plan.
4. The improvement is being completed in cooperation with and under the direction of Crow Wing County. Crow Wing County is hereby designated as the engineer for this improvement. The engineer shall prepare plans and specifications for the making of such improvement.
5. The city council declares its official intent to reimburse itself for the costs of the improvement from the proceeds of tax exempt bonds.

**Whereupon, said Resolution is hereby declared adopted on this 5th day of April, 2016.**

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**Darrel Olson, Mayor**

**ATTEST:**

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**Kelly Steele, Assistant City Administrator/Clerk**

*City Seal*

## REQUEST FOR COUNCIL ACTION

April 5, 2016

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**Department Origination:** Police

**Agenda Section:** Consent

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**Agenda Item: Approving Resolution 2016-025 Approving State of Minnesota Joint Powers Agreements with the City of Baxter on Behalf of its City Attorney and Police Department**

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

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### **BACKGROUND**

The criminal justice data communications network is the backbone of the systems of information that the Baxter Police Department utilizes to obtain and access criminal justice data from the state and federal agencies.

The system is an important tool in our conducting effective and efficient law enforcement duties. These agreements are already in place and this is an extension of those for an additional 5 years.

### **FINANCIAL IMPLICATIONS**

There is an annual cost for this access which totals \$1080.00. This is an annual fee that we incorporate into our budget on a yearly basis.

### **STAFF RECOMMENDATION**

Staff recommends the approval of the resolution and subsequent signing of the JPA's by the appropriate staff and/or elected officials.

### **COUNCIL ACTION REQUESTED**

**Request a motion to approve Resolution 2016-025 and the signing of the related joint power agreements with the State of Minnesota.**

#### Attachments:

1. Resolution 2016-025 Approving State of Minnesota Joint Powers Agreements with the City of Baxter on Behalf of its City Attorney and Police Department.
2. Court Data Services Subscriber Amendment to CJDN Subscriber Agreement.
3. State of Minnesota Joint Powers Agreement Authorized Agency.

**CITY OF BAXTER MINNESOTA  
RESOLUTION 2016-025**

**RESOLUTION APPROVING STATE OF MINNESOTA JOINT POWERS AGREEMENTS  
WITH THE CITY OF BAXTER ON BEHALF OF ITS CITY ATTORNEY AND POLICE  
DEPARTMENT**

WHEREAS, the City of Baxter on behalf of its Prosecuting Attorney and Police Department desires to enter into Joint Powers Agreements with the State of Minnesota, Department of Public Safety, Bureau of Criminal Apprehension to use systems and tools available over the State's criminal justice data communications network for which the City is eligible. The Joint Powers Agreements further provide the City with the ability to add, modify and delete connectivity, systems and tools over the five year life of the agreement and obligates the City to pay the costs for the network connection.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Baxter, Minnesota as follows:

1. That the State of Minnesota Joint Powers Agreements by and between the State of Minnesota acting through its Department of Public Safety, Bureau of Criminal Apprehension and the City of Baxter on behalf of its Prosecuting Attorney and Police Department, are hereby approved. Copies of the two Joint Powers Agreements are attached to this Resolution and made a part of it.
2. That the Chief of Police, James Exsted, or his or her successor, is designated the Authorized Representative for the Police Department. The Authorized Representative is also authorized to sign any subsequent amendment or agreement that may be required by the State of Minnesota to maintain the City's connection to the systems and tools offered by the State.

To assist the Authorized Representative with the administration of the agreement, Assistant Chief is appointed as the Authorized Representative's designee.

3. That the Chief of Police, James Exsted, or his or her successor, is designated the Authorized Representative for the Prosecuting Attorney. The Authorized Representative is also authorized to sign any subsequent amendment or agreement that may be required by the State of Minnesota to maintain the City's connection to the systems and tools offered by the State.

To assist the Authorized Representative with the administration of the agreement, Assistant Chief is appointed as the Authorized Representative's designee.

4. That Darrel Olson, the Mayor for the City of Baxter; and Kelly Steele, the Assistant City Administrator, are authorized to sign the State of Minnesota Joint Powers Agreements.

**Whereupon, said Resolution is hereby declared adopted on this 5th day of April 2016.**

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

ATTEST:

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

*City Seal*

## COURT DATA SERVICES SUBSCRIBER AMENDMENT TO CJDN SUBSCRIBER AGREEMENT

This Court Data Services Subscriber Amendment ("Subscriber Amendment") is entered into by the State of Minnesota, acting through its Department of Public Safety, Bureau of Criminal Apprehension, ("BCA") and the City of Baxter on behalf of its Police Department ("Agency"), and by and for the benefit of the State of Minnesota acting through its State Court Administrator's Office ("Court") who shall be entitled to enforce any provisions hereof through any legal action against any party.

### Recitals

This Subscriber Amendment modifies and supplements the Agreement between the BCA and Agency, SWIFT Contract number 106715, of even or prior date, for Agency use of BCA systems and tools (referred to herein as "the CJDN Subscriber Agreement"). Certain BCA systems and tools that include access to and/or submission of Court Records may only be utilized by the Agency if the Agency completes this Subscriber Amendment. The Agency desires to use one or more BCA systems and tools to access and/or submit Court Records to assist the Agency in the efficient performance of its duties as required or authorized by law or court rule. Court desires to permit such access and/or submission. This Subscriber Amendment is intended to add Court as a party to the CJDN Subscriber Agreement and to create obligations by the Agency to the Court that can be enforced by the Court. It is also understood that, pursuant to the Master Joint Powers Agreement for Delivery of Court Data Services to CJDN Subscribers ("Master Authorization Agreement") between the Court and the BCA, the BCA is authorized to sign this Subscriber Amendment on behalf of Court. Upon execution the Subscriber Amendment will be incorporated into the CJDN Subscriber Agreement by reference. The BCA, the Agency and the Court desire to amend the CJDN Subscriber Agreement as stated below.

The CJDN Subscriber Agreement is amended by the addition of the following provisions:

1. **TERM; TERMINATION; ONGOING OBLIGATIONS.** This Subscriber Amendment shall be effective on the date finally executed by all parties and shall remain in effect until expiration or termination of the CJDN Subscriber Agreement unless terminated earlier as provided in this Subscriber Amendment. Any party may terminate this Subscriber Amendment with or without cause by giving written notice to all other parties. The effective date of the termination shall be thirty days after the other party's receipt of the notice of termination, unless a later date is specified in the notice. The provisions of sections 5 through 9, 12.b., 12.c., and 15 through 24 shall survive any termination of this Subscriber Amendment as shall any other provisions which by their nature are intended or expected to survive such termination. Upon termination, the Subscriber shall perform the responsibilities set forth in paragraph 7(f) hereof.
  
2. **Definitions.** Unless otherwise specifically defined, each term used herein shall have the meaning assigned to such term in the CJDN Subscriber Agreement.

a. **“Authorized Court Data Services”** means Court Data Services that have been authorized for delivery to CJDN Subscribers via BCA systems and tools pursuant to an Authorization Amendment to the Joint Powers Agreement for Delivery of Court Data Services to CJDN Subscribers (“Master Authorization Agreement”) between the Court and the BCA.

b. **“Court Data Services”** means one or more of the services set forth on the Justice Agency Resource webpage of the Minnesota Judicial Branch website (for which the current address is [www.courts.state.mn.us](http://www.courts.state.mn.us)) or other location designated by the Court, as the same may be amended from time to time by the Court.

c. **“Court Records”** means all information in any form made available by the Court to Subscriber through the BCA for the purposes of carrying out this Subscriber Amendment, including:

- i. **“Court Case Information”** means any information in the Court Records that conveys information about a particular case or controversy, including without limitation Court Confidential Case Information, as defined herein.
- ii. **“Court Confidential Case Information”** means any information in the Court Records that is inaccessible to the public pursuant to the Rules of Public Access and that conveys information about a particular case or controversy.
- iii. **“Court Confidential Security and Activation Information”** means any information in the Court Records that is inaccessible to the public pursuant to the Rules of Public Access and that explains how to use or gain access to Court Data Services, including but not limited to login account names, passwords, TCP/IP addresses, Court Data Services user manuals, Court Data Services Programs, Court Data Services Databases, and other technical information.
- iv. **“Court Confidential Information”** means any information in the Court Records that is inaccessible to the public pursuant to the Rules of Public Access, including without limitation both i) Court Confidential Case Information; and ii) Court Confidential Security and Activation Information.

d. **“DCA”** shall mean the district courts of the state of Minnesota and their respective staff.

e. **“Policies & Notices”** means the policies and notices published by the Court in connection with each of its Court Data Services, on a website or other location designated by the Court, as the same may be amended from time to time by the Court. Policies & Notices for each Authorized Court Data Service identified in an approved request form under section 3, below, are hereby made part of this Subscriber Amendment by this reference and provide additional terms and conditions that govern Subscriber’s use of Court Records accessed through such services, including but not limited to provisions on access and use limitations.

f. **“Rules of Public Access”** means the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court, as the same may be amended from time to time, including without limitation lists or tables published from time to time by the Court entitled *Limits on Public Access to Case Records* or *Limits on Public Access to Administrative Records*, all of which by this reference are made a part of this Subscriber Amendment. It is the obligation of Subscriber to check from time to time for updated rules, lists, and tables and be familiar with the contents thereof. It is contemplated that such rules, lists, and tables will be posted on the Minnesota Judicial Branch website, for which the current address is [www.courts.state.mn.us](http://www.courts.state.mn.us).

g. **“Court”** shall mean the State of Minnesota, State Court Administrator's Office.

h. **“Subscriber”** shall mean the Agency.

i. **“Subscriber Records”** means any information in any form made available by the Subscriber to the Court for the purposes of carrying out this Subscriber Amendment.

3. **REQUESTS FOR AUTHORIZED COURT DATA SERVICES.** Following execution of this Subscriber Amendment by all parties, Subscriber may submit to the BCA one or more separate requests for Authorized Court Data Services. The BCA is authorized in the Master Authorization Agreement to process, credential and approve such requests on behalf of Court and all such requests approved by the BCA are adopted and incorporated herein by this reference the same as if set forth verbatim herein.

a. **Activation.** Activation of the requested Authorized Court Data Service(s) shall occur promptly following approval.

b. **Rejection.** Requests may be rejected for any reason, at the discretion of the BCA and/or the Court.

c. **Requests for Termination of One or More Authorized Court Data Services.** The Subscriber may request the termination of an Authorized Court Data Services previously requested by submitting a notice to Court with a copy to the BCA. Promptly upon receipt of a request for termination of an Authorized Court Data Service, the BCA will deactivate the service requested. The termination of one or more Authorized Court Data Services does not terminate this Subscriber Amendment. Provisions for termination of this Subscriber Amendment are set forth in section 1. Upon termination of Authorized Court Data Services, the Subscriber shall perform the responsibilities set forth in paragraph 7(f) hereof.

4. **SCOPE OF ACCESS TO COURT RECORDS LIMITED.** Subscriber's access to and/or submission of the Court Records shall be limited to Authorized Court Data Services identified in an approved request form under section 3, above, and other Court Records necessary for Subscriber to use Authorized Court Data Services. Authorized Court Data Services shall only be used according to the instructions provided in corresponding Policies & Notices or other materials and only as necessary to assist Subscriber in the efficient performance of Subscriber's duties

required or authorized by law or court rule in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body. Subscriber's access to the Court Records for personal or non-official use is prohibited. Subscriber will not use or attempt to use Authorized Court Data Services in any manner not set forth in this Subscriber Amendment, Policies & Notices, or other Authorized Court Data Services documentation, and upon any such unauthorized use or attempted use the Court may immediately terminate this Subscriber Amendment without prior notice to Subscriber.

**5. GUARANTEES OF CONFIDENTIALITY.** Subscriber agrees:

a. To not disclose Court Confidential Information to any third party except where necessary to carry out the Subscriber's duties as required or authorized by law or court rule in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body.

b. To take all appropriate action, whether by instruction, agreement, or otherwise, to insure the protection, confidentiality and security of Court Confidential Information and to satisfy Subscriber's obligations under this Subscriber Amendment.

c. To limit the use of and access to Court Confidential Information to Subscriber's bona fide personnel whose use or access is necessary to effect the purposes of this Subscriber Amendment, and to advise each individual who is permitted use of and/or access to any Court Confidential Information of the restrictions upon disclosure and use contained in this Subscriber Amendment, requiring each individual who is permitted use of and/or access to Court Confidential Information to acknowledge in writing that the individual has read and understands such restrictions. Subscriber shall keep such acknowledgements on file for one year following termination of the Subscriber Amendment and/or CJDN Subscriber Agreement, whichever is longer, and shall provide the Court with access to, and copies of, such acknowledgements upon request. For purposes of this Subscriber Amendment, Subscriber's bona fide personnel shall mean individuals who are employees of Subscriber or provide services to Subscriber either on a voluntary basis or as independent contractors with Subscriber.

d. That, without limiting section 1 of this Subscriber Amendment, the obligations of Subscriber and its bona fide personnel with respect to the confidentiality and security of Court Confidential Information shall survive the termination of this Subscriber Amendment and the CJDN Subscriber Agreement and the termination of their relationship with Subscriber.

e. That, notwithstanding any federal or state law applicable to the nondisclosure obligations of Subscriber and Subscriber's bona fide personnel under this Subscriber Amendment, such obligations of Subscriber and Subscriber's bona fide personnel are founded independently on the provisions of this Subscriber Amendment.

**6. APPLICABILITY TO PREVIOUSLY DISCLOSED COURT RECORDS.**

Subscriber acknowledges and agrees that all Authorized Court Data Services and related Court Records disclosed to Subscriber prior to the effective date of this Subscriber Amendment shall be subject to the provisions of this Subscriber Amendment.

7. **LICENSE AND PROTECTION OF PROPRIETARY RIGHTS.** During the term of this Subscriber Amendment, subject to the terms and conditions hereof, the Court hereby grants to Subscriber a nonexclusive, nontransferable, limited license to use Court Data Services Programs and Court Data Services Databases to access or receive the Authorized Court Data Services identified in an approved request form under section 3, above, and related Court Records. Court reserves the right to make modifications to the Authorized Court Data Services, Court Data Services Programs, and Court Data Services Databases, and related materials without notice to Subscriber. These modifications shall be treated in all respects as their previous counterparts.

a. **Court Data Services Programs.** Court is the copyright owner and licensor of the Court Data Services Programs. The combination of ideas, procedures, processes, systems, logic, coherence and methods of operation embodied within the Court Data Services Programs, and all information contained in documentation pertaining to the Court Data Services Programs, including but not limited to manuals, user documentation, and passwords, are trade secret information of Court and its licensors.

b. **Court Data Services Databases.** Court is the copyright owner and licensor of the Court Data Services Databases and of all copyrightable aspects and components thereof. All specifications and information pertaining to the Court Data Services Databases and their structure, sequence and organization, including without limitation data schemas such as the Court XML Schema, are trade secret information of Court and its licensors.

c. **Marks.** Subscriber shall neither have nor claim any right, title, or interest in or use of any trademark used in connection with Authorized Court Data Services, including but not limited to the marks "MNCIS" and "Odyssey."

d. **Restrictions on Duplication, Disclosure, and Use.** Trade secret information of Court and its licensors will be treated by Subscriber in the same manner as Court Confidential Information. In addition, Subscriber will not copy any part of the Court Data Services Programs or Court Data Services Databases, or reverse engineer or otherwise attempt to discern the source code of the Court Data Services Programs or Court Data Services Databases, or use any trademark of Court or its licensors, in any way or for any purpose not specifically and expressly authorized by this Subscriber Amendment. As used herein, "trade secret information of Court and its licensors" means any information possessed by Court which derives independent economic value from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. "Trade secret information of Court and its licensors" does not, however, include information which was known to Subscriber prior to Subscriber's receipt thereof, either directly or indirectly, from Court or its licensors, information which is independently developed by Subscriber without reference to or use of information received from Court or its licensors, or information which would not qualify as a trade secret under Minnesota law. It will not be a violation of this section 7, sub-section d, for Subscriber to make up to one copy of training materials and configuration documentation, if any, for each individual authorized to access, use, or configure Authorized Court Data Services, solely for its own use in connection with this Subscriber Amendment. Subscriber will take all steps reasonably necessary to protect the copyright, trade secret, and trademark rights of Court and its licensors and Subscriber will advise its bona fide personnel who are permitted access to any of the Court Data Services Programs and Court Data Services Databases, and trade secret information of Court and its licensors, of the restrictions upon duplication, disclosure and use contained in this Subscriber Amendment.

e. **Proprietary Notices.** Subscriber will not remove any copyright or proprietary notices included in and/or on the Court Data Services Programs or Court Data Services Databases, related documentation, or trade secret information of Court and its licensors, or any part thereof, made available by Court directly or through the BCA, if any, and Subscriber will include in and/or on any copy of the Court Data Services Programs or Court Data Services Databases, or trade secret information of Court and its licensors and any documents pertaining thereto, the same copyright and other proprietary notices as appear on the copies made available to Subscriber by Court directly or through the BCA, except that copyright notices shall be updated and other proprietary notices added as may be appropriate.

f. **Title; Return.** The Court Data Services Programs and Court Data Services Databases, and related documentation, including but not limited to training and configuration material, if any, and logon account information and passwords, if any, made available by the Court to Subscriber directly or through the BCA and all copies, including partial copies, thereof are and remain the property of the respective licensor. Except as expressly provided in section 12.b., within ten days of the effective date of termination of this Subscriber Amendment or the CJDN Subscriber Agreement or within ten days of a request for termination of Authorized Court Data Service as described in section 4, Subscriber shall either: (i) uninstall and return any and all copies of the applicable Court Data Services Programs and Court Data Services Databases, and related documentation, including but not limited to training and configuration materials, if any, and logon account information, if any; or (2) destroy the same and certify in writing to the Court that the same have been destroyed.

8. **INJUNCTIVE RELIEF.** Subscriber acknowledges that the Court, Court's licensors, and DCA will be irreparably harmed if Subscriber's obligations under this Subscriber Amendment are not specifically enforced and that the Court, Court's licensors, and DCA would not have an adequate remedy at law in the event of an actual or threatened violation by Subscriber of its obligations. Therefore, Subscriber agrees that the Court, Court's licensors, and DCA shall be entitled to an injunction or any appropriate decree of specific performance for any actual or threatened violations or breaches by Subscriber or its bona fide personnel without the necessity of the Court, Court's licensors, or DCA showing actual damages or that monetary damages would not afford an adequate remedy. Unless Subscriber is an office, officer, agency, department, division, or bureau of the state of Minnesota, Subscriber shall be liable to the Court, Court's licensors, and DCA for reasonable attorneys fees incurred by the Court, Court's licensors, and DCA in obtaining any relief pursuant to this Subscriber Amendment.

9. **LIABILITY.** Subscriber and the Court agree that, except as otherwise expressly provided herein, each party will be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of any others and the results thereof. Liability shall be governed by applicable law. Without limiting the foregoing, liability of the Court and any Subscriber that is an office, officer, agency, department, division, or bureau of the state of Minnesota shall be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes, section 3.376, and other applicable law. Without limiting the foregoing, if Subscriber is a political subdivision of the state of Minnesota, liability of the Subscriber shall be governed by the provisions of Minn. Stat. Ch. 466 (Tort Liability, Political Subdivisions) or other applicable law. Subscriber and Court further acknowledge that the liability, if any, of the BCA is governed by a separate agreement between the Court and the BCA dated December 13, 2010 with DPS-M -0958.

**10. AVAILABILITY.** Specific terms of availability shall be established by the Court and communicated to Subscriber by the Court and/or the BCA. The Court reserves the right to terminate this Subscriber Amendment immediately and/or temporarily suspend Subscriber's Authorized Court Data Services in the event the capacity of any host computer system or legislative appropriation of funds is determined solely by the Court to be insufficient to meet the computer needs of the courts served by the host computer system.

**11.** [reserved]

**12. ADDITIONAL USER OBLIGATIONS.** The obligations of the Subscriber set forth in this section are in addition to the other obligations of the Subscriber set forth elsewhere in this Subscriber Amendment.

**a. Judicial Policy Statement.** Subscriber agrees to comply with all policies identified in Policies & Notices applicable to Court Records accessed by Subscriber using Authorized Court Data Services. Upon failure of the Subscriber to comply with such policies, the Court shall have the option of immediately suspending the Subscriber's Authorized Court Data Services on a temporary basis and/or immediately terminating this Subscriber Amendment.

**b. Access and Use; Log.** Subscriber shall be responsible for all access to and use of Authorized Court Data Services and Court Records by Subscriber's bona fide personnel or by means of Subscriber's equipment or passwords, whether or not Subscriber has knowledge of or authorizes such access and use. Subscriber shall also maintain a log identifying all persons to whom Subscriber has disclosed its Court Confidential Security and Activation Information, such as user ID(s) and password(s), including the date of such disclosure. Subscriber shall maintain such logs for a minimum period of six years from the date of disclosure, and shall provide the Court with access to, and copies of, such logs upon request. The Court may conduct audits of Subscriber's logs and use of Authorized Court Data Services and Court Records from time to time. Upon Subscriber's failure to maintain such logs, to maintain accurate logs, or to promptly provide access by the Court to such logs, the Court may terminate this Subscriber Amendment without prior notice to Subscriber.

**c. Personnel.** Subscriber agrees to investigate, at the request of the Court and/or the BCA, allegations of misconduct pertaining to Subscriber's bona fide personnel having access to or use of Authorized Court Data Services, Court Confidential Information, or trade secret information of the Court and its licensors where such persons are alleged to have violated the provisions of this Subscriber Amendment, Policies & Notices, Judicial Branch policies, or other security requirements or laws regulating access to the Court Records.

**d. Minnesota Data Practices Act Applicability.** If Subscriber is a Minnesota Government entity that is subject to the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, Subscriber acknowledges and agrees that: (1) the Court is not subject to Minn. Stat. Ch. 13 (see section 13.90) but is subject to the Rules of Public Access and other rules promulgated by the Minnesota Supreme Court; (2) Minn. Stat. section 13.03, subdivision 4(e) requires that Subscriber comply with the Rules of Public Access and other rules promulgated by the Minnesota Supreme Court for access to Court Records provided via the

BCA systems and tools under this Subscriber Amendment; (3) the use of and access to Court Records may be restricted by rules promulgated by the Minnesota Supreme Court, applicable state statute or federal law; and (4) these applicable restrictions must be followed in the appropriate circumstances.

**13. FEES; INVOICES.** Unless the Subscriber is an office, officer, department, division, agency, or bureau of the state of Minnesota, Subscriber shall pay the fees, if any, set forth in applicable Policies & Notices, together with applicable sales, use or other taxes. Applicable monthly fees commence ten (10) days after notice of approval of the request pursuant to section 3 of this Subscriber Amendment or upon the initial Subscriber transaction as defined in the Policies & Notices, whichever occurs earlier. When fees apply, the Court shall invoice Subscriber on a monthly basis for charges incurred in the preceding month and applicable taxes, if any, and payment of all amounts shall be due upon receipt of invoice. If all amounts are not paid within 30 days of the date of the invoice, the Court may immediately cancel this Subscriber Amendment without notice to Subscriber and pursue all available legal remedies. Subscriber certifies that funds have been appropriated for the payment of charges under this Subscriber Amendment for the current fiscal year, if applicable.

**14. MODIFICATION OF FEES.** Court may modify the fees by amending the Policies & Notices as provided herein, and the modified fees shall be effective on the date specified in the Policies & Notices, which shall not be less than thirty days from the publication of the Policies & Notices. Subscriber shall have the option of accepting such changes or terminating this Subscriber Amendment as provided in section 1 hereof.

**15. WARRANTY DISCLAIMERS.**

**a. WARRANTY EXCLUSIONS.** EXCEPT AS SPECIFICALLY AND EXPRESSLY PROVIDED HEREIN, COURT, COURT'S LICENSORS, AND DCA MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, NOR ARE ANY WARRANTIES TO BE IMPLIED, WITH RESPECT TO THE INFORMATION, SERVICES OR COMPUTER PROGRAMS MADE AVAILABLE UNDER THIS AGREEMENT.

**b. ACCURACY AND COMPLETENESS OF INFORMATION.** WITHOUT LIMITING THE GENERALITY OF THE PRECEDING PARAGRAPH, COURT, COURT'S LICENSORS, AND DCA MAKE NO WARRANTIES AS TO THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED IN THE COURT RECORDS.

**16. RELATIONSHIP OF THE PARTIES.** Subscriber is an independent contractor and shall not be deemed for any purpose to be an employee, partner, agent or franchisee of the Court, Court's licensors, or DCA. Neither Subscriber nor the Court, Court's licensors, or DCA shall have the right nor the authority to assume, create or incur any liability or obligation of any kind, express or implied, against or in the name of or on behalf of the other.

**17. NOTICE.** Except as provided in section 2 regarding notices of or modifications to Authorized Court Data Services and Policies & Notices, any notice to Court or Subscriber

hereunder shall be deemed to have been received when personally delivered in writing or seventy-two (72) hours after it has been deposited in the United States mail, first class, proper postage prepaid, addressed to the party to whom it is intended at the address set forth on page one of this Agreement or at such other address of which notice has been given in accordance herewith.

**18. NON-WAIVER.** The failure by any party at any time to enforce any of the provisions of this Subscriber Amendment or any right or remedy available hereunder or at law or in equity, or to exercise any option herein provided, shall not constitute a waiver of such provision, remedy or option or in any way affect the validity of this Subscriber Amendment. The waiver of any default by either Party shall not be deemed a continuing waiver, but shall apply solely to the instance to which such waiver is directed.

**19. FORCE MAJEURE.** Neither Subscriber nor Court shall be responsible for failure or delay in the performance of their respective obligations hereunder caused by acts beyond their reasonable control.

**20. SEVERABILITY.** Every provision of this Subscriber Amendment shall be construed, to the extent possible, so as to be valid and enforceable. If any provision of this Subscriber Amendment so construed is held by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, such provision shall be deemed severed from this Subscriber Amendment, and all other provisions shall remain in full force and effect.

**21. ASSIGNMENT AND BINDING EFFECT.** Except as otherwise expressly permitted herein, neither Subscriber nor Court may assign, delegate and/or otherwise transfer this Subscriber Amendment or any of its rights or obligations hereunder without the prior written consent of the other. This Subscriber Amendment shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns, including any other legal entity into, by or with which Subscriber may be merged, acquired or consolidated.

**22. GOVERNING LAW.** This Subscriber Amendment shall in all respects be governed by and interpreted, construed and enforced in accordance with the laws of the United States and of the State of Minnesota.

**23. VENUE AND JURISDICTION.** Any action arising out of or relating to this Subscriber Amendment, its performance, enforcement or breach will be venued in a state or federal court situated within the State of Minnesota. Subscriber hereby irrevocably consents and submits itself to the personal jurisdiction of said courts for that purpose.

**24. INTEGRATION.** This Subscriber Amendment contains all negotiations and agreements between the parties. No other understanding regarding this Subscriber Amendment, whether written or oral, may be used to bind either party, provided that all terms and conditions of the CJDN Subscriber Agreement and all previous amendments remain in full force and effect except as supplemented or modified by this Subscriber Amendment.

IN WITNESS WHEREOF, the Parties have, by their duly authorized officers, executed this Subscriber Amendment in duplicate, intending to be bound thereby.

**1. SUBSCRIBER (AGENCY)**

Subscriber must attach written verification of authority to sign on behalf of and bind the entity, such as an opinion of counsel or resolution.

Name: \_\_\_\_\_  
(PRINTED)

Signed: \_\_\_\_\_

Title: \_\_\_\_\_  
(with delegated authority)

Date: \_\_\_\_\_

Name: \_\_\_\_\_  
(PRINTED)

Signed: \_\_\_\_\_

Title: \_\_\_\_\_  
(with delegated authority)

Date: \_\_\_\_\_

**2. DEPARTMENT OF PUBLIC SAFETY,  
BUREAU OF CRIMINAL APPREHENSION**

Name: \_\_\_\_\_  
(PRINTED)

Signed: \_\_\_\_\_

Title: \_\_\_\_\_  
(with delegated authority)

Date: \_\_\_\_\_

**3. COMMISSIONER OF ADMINISTRATION**  
delegated to Materials Management Division

By: \_\_\_\_\_

Date: \_\_\_\_\_

**4. COURTS**

Authority granted to Bureau of Criminal Apprehension

Name: \_\_\_\_\_  
(PRINTED)

Signed: \_\_\_\_\_

Title: \_\_\_\_\_  
(with authorized authority)

Date: \_\_\_\_\_

**STATE OF MINNESOTA  
JOINT POWERS AGREEMENT  
AUTHORIZED AGENCY**

This agreement is between the State of Minnesota, acting through its Department of Public Safety, Bureau of Criminal Apprehension ("BCA") and the City of Baxter on behalf of its Police Department ("Agency").

**Recitals**

Under Minn. Stat. § 471.59, the BCA and the Agency are empowered to engage in those agreements that are necessary to exercise their powers. Under Minn. Stat. § 299C.46 the BCA must provide a criminal justice data communications network to benefit authorized agencies in Minnesota. The Agency is authorized by law to utilize the criminal justice data communications network pursuant to the terms set out in this agreement. In addition, BCA either maintains repositories of data or has access to repositories of data that benefit authorized agencies in performing their duties. Agency wants to access these data in support of its official duties.

The purpose of this Agreement is to create a method by which the Agency has access to those systems and tools for which it has eligibility, and to memorialize the requirements to obtain access and the limitations on the access.

**Agreement**

**1 Term of Agreement**

- 1.1 **Effective date:** This Agreement is effective on the date the BCA obtains all required signatures under Minn. Stat. § 16C.05, subdivision 2.
- 1.2 **Expiration date:** This Agreement expires five years from the date it is effective.

**2 Agreement between the Parties**

**2.1 General access.** BCA agrees to provide Agency with access to the Minnesota Criminal Justice Data Communications Network (CJDN) and those systems and tools which the Agency is authorized by law to access via the CJDN for the purposes outlined in Minn. Stat. § 299C.46.

**2.2 Methods of access.**

The BCA offers three (3) methods of access to its systems and tools. The methods of access are:

A. **Direct access** occurs when individual users at the Agency use Agency's equipment to access the BCA's systems and tools. This is generally accomplished by an individual user entering a query into one of BCA's systems or tools.

B. **Indirect access** occurs when individual users at the Agency go to another Agency to obtain data and information from BCA's systems and tools. This method of access generally results in the Agency with indirect access obtaining the needed data and information in a physical format like a paper report.

C. **Computer-to-computer system interface** occurs when Agency's computer exchanges data and information with BCA's computer systems and tools using an interface. Without limitation, interface types include: state message switch, web services, enterprise service bus and message queuing.

For purposes of this Agreement, Agency employees or contractors may use any of these methods to use BCA's systems and tools as described in this Agreement. Agency will select a method of access and can change the methodology following the process in Clause 2.10.

**2.3 Federal systems access.** In addition, pursuant to 28 CFR §20.30-38 and Minn. Stat. §299C.58, BCA may provide Agency with access to the Federal Bureau of Investigation (FBI) National Crime Information Center.

**2.4 Agency policies.** Both the BCA and the FBI's Criminal Justice Information Systems (FBI-CJIS) have policies, regulations and laws on access, use, audit, dissemination, hit confirmation, logging, quality assurance, screening (pre-employment), security, timeliness, training, use of the system, and validation. Agency has created its own policies to ensure that Agency's employees and contractors comply with all applicable requirements. Agency ensures this compliance through appropriate enforcement. These BCA and FBI-CJIS policies and regulations, as amended and updated from time to time, are incorporated into this Agreement by reference. The policies are available at <https://app.dps.mn.gov/cjdn>.

**2.5 Agency resources.** To assist Agency in complying with the federal and state requirements on access to and use of the various systems and tools, information is available at <https://sps.x.state.mn.us/sites/bcaservicecatalog/default.aspx>. Additional information on appropriate use is found in the Minnesota Bureau of Criminal Apprehension Policy on Appropriate Use of Systems and Data available at <https://dps.mn.gov/divisions/bca/bca-divisions/mnjis/Documents/BCA-Policy-on-Appropriate-Use-of-Systems-and-Data.pdf>.

**2.6 Access granted.**

A. Agency is granted permission to use all current and future BCA systems and tools for which Agency is eligible. Eligibility is dependent on Agency (i) satisfying all applicable federal or state statutory requirements; (ii) complying with the terms of this Agreement; and (iii) acceptance by BCA of Agency's written request for use of a specific system or tool.

B. To facilitate changes in systems and tools, Agency grants its Authorized Representative authority to make written requests for those systems and tools provided by BCA that the Agency needs to meet its criminal justice obligations and for which Agency is eligible.

**2.7 Future access.** On written request by Agency, BCA also may provide Agency with access to those systems or tools which may become available after the signing of this Agreement, to the extent that the access is authorized by applicable state and federal law. Agency agrees to be bound by the terms and conditions contained in this Agreement that when utilizing new systems or tools provided under this Agreement.

**2.8 Limitations on access.** BCA agrees that it will comply with applicable state and federal laws when making information accessible. Agency agrees that it will comply with applicable state and federal laws when accessing, entering, using, disseminating, and storing data. Each party is responsible for its own compliance with the most current applicable state and federal laws.

**2.9 Supersedes prior agreements.** This Agreement supersedes any and all prior agreements between the BCA and the Agency regarding access to and use of systems and tools provided by BCA.

**2.10 Requirement to update information.** The parties agree that if there is a change to any of the information whether required by law or this Agreement, the party will send the new information to the other party in writing within 30 days of the change. This clause does not apply to changes in systems or tools provided under this Agreement.

This requirement to give notice additionally applies to changes in the individual or organization serving a city as its prosecutor. Any change in performance of the prosecutorial function must be provided to the BCA in writing by giving notice to the Service Desk, [BCA.ServiceDesk@state.mn.us](mailto:BCA.ServiceDesk@state.mn.us).

**2.11 Transaction record.** The BCA creates and maintains a transaction record for each exchange of data utilizing its systems and tools. In order to meet FBI-CJIS requirements and to perform the audits described in Clause 7, there must be a method of identifying which individual users at the Agency conducted a particular transaction.

If Agency uses either direct access as described in Clause 2.2A or indirect access as described in Clause 2.2B, BCA's transaction record meets FBI-CJIS requirements.

When Agency's method of access is a computer to computer interface as described in Clause 2.2C, the Agency must

keep a transaction record sufficient to satisfy FBI-CJIS requirements and permit the audits described in Clause 7 to occur.

If an Agency accesses data from the Driver and Vehicle Services Division in the Minnesota Department of Public Safety and keeps a copy of the data, Agency must have a transaction record of all subsequent access to the data that are kept by the Agency. The transaction record must include the individual user who requested access, and the date, time and content of the request. The transaction record must also include the date, time and content of the response along with the destination to which the data were sent. The transaction record must be maintained for a minimum of six (6) years from the date the transaction occurred and must be made available to the BCA within one (1) business day of the BCA's request.

**2.12 Court information access.** Certain BCA systems and tools that include access to and/or submission of Court Records may only be utilized by the Agency if the Agency completes the Court Data Services Subscriber Amendment, which upon execution will be incorporated into this Agreement by reference. These BCA systems and tools are identified in the written request made by Agency under Clause 2.6 above. The Court Data Services Subscriber Amendment provides important additional terms, including but not limited to privacy (see Clause 8.2, below), fees (see Clause 3 below), and transaction records or logs, that govern Agency's access to and/or submission of the Court Records delivered through the BCA systems and tools.

**2.13 Vendor personnel screening.** The BCA will conduct all vendor personnel screening on behalf of Agency as is required by the FBI CJIS Security Policy. The BCA will maintain records of the federal, fingerprint-based background check on each vendor employee as well as records of the completion of the security awareness training that may be relied on by the Agency.

### 3 Payment

The Agency agrees to pay BCA for access to the criminal justice data communications network described in Minn. Stat. § 299C.46 as specified in this Agreement. The bills are sent quarterly for the amount of Two Hundred Seventy Dollars (\$270.00) or a total annual cost of One Thousand Eighty Dollars (\$1,080.00).

Agency will identify its contact person for billing purposes, and will provide updated information to BCA's Authorized Representative within ten business days when this information changes.

If Agency chooses to execute the Court Data Services Subscriber Amendment referred to in Clause 2.12 in order to access and/or submit Court Records via BCA's systems, additional fees, if any, are addressed in that amendment.

### 4 Authorized Representatives

The BCA's Authorized Representative is Dana Gotz, Department of Public Safety, Bureau of Criminal Apprehension, Minnesota Justice Information Services, 1430 Maryland Avenue, St. Paul, MN 55106, 651-793-1007, or her successor.

The Agency's Authorized Representative is Chief James Exsted, 13190 Memorywood Drive, PO Box 2626, Baxter, MN 56425, (218) 454-5090, or his/her successor.

### 5 Assignment, Amendments, Waiver, and Contract Complete

**5.1 Assignment.** Neither party may assign nor transfer any rights or obligations under this Agreement.

**5.2 Amendments.** Any amendment to this Agreement, except those described in Clauses 2.6 and 2.7 above must be in writing and will not be effective until it has been signed and approved by the same parties who signed and approved the original agreement, their successors in office, or another individual duly authorized.

**5.3 Waiver.** If either party fails to enforce any provision of this Agreement, that failure does not waive the provision or the right to enforce it.

**5.4 Contract Complete.** This Agreement contains all negotiations and agreements between the BCA and the Agency. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

**6 Liability**

Each party will be responsible for its own acts and behavior and the results thereof and shall not be responsible or liable for the other party's actions and consequences of those actions. The Minnesota Torts Claims Act, Minn. Stat. § 3.736 and other applicable laws govern the BCA's liability. The Minnesota Municipal Tort Claims Act, Minn. Stat. Ch. 466, governs the Agency's liability.

**7 Audits**

**7.1** Under Minn. Stat. § 16C.05, subd. 5, the Agency's books, records, documents, internal policies and accounting procedures and practices relevant to this Agreement are subject to examination by the BCA, the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Agreement. Under Minn. Stat. § 6.551, the State Auditor may examine the books, records, documents, and accounting procedures and practices of BCA. The examination shall be limited to the books, records, documents, and accounting procedures and practices that are relevant to this Agreement.

**7.2** Under applicable state and federal law, the Agency's records are subject to examination by the BCA to ensure compliance with laws, regulations and policies about access, use, and dissemination of data.

**7.3** If Agency accesses federal databases, the Agency's records are subject to examination by the FBI and Agency will cooperate with FBI examiners and make any requested data available for review and audit.

**7.4** To facilitate the audits required by state and federal law, Agency is required to have an inventory of the equipment used to access the data covered by this Agreement and the physical location of each.

**8 Government Data Practices**

**8.1 BCA and Agency.** The Agency and BCA must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data accessible under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Agency under this Agreement. The remedies of Minn. Stat. §§ 13.08 and 13.09 apply to the release of the data referred to in this clause by either the Agency or the BCA.

**8.2 Court Records.** If Agency chooses to execute the Court Data Services Subscriber Amendment referred to in Clause 2.12 in order to access and/or submit Court Records via BCA's systems, the following provisions regarding data practices also apply. The Court is not subject to Minn. Stat. Ch. 13 (see section 13.90) but is subject to the *Rules of Public Access to Records of the Judicial Branch* promulgated by the Minnesota Supreme Court. All parties acknowledge and agree that Minn. Stat. § 13.03, subdivision 4(e) requires that the BCA and the Agency comply with the *Rules of Public Access* for those data received from Court under the Court Data Services Subscriber Amendment. All parties also acknowledge and agree that the use of, access to or submission of Court Records, as that term is defined in the Court Data Services Subscriber Amendment, may be restricted by rules promulgated by the Minnesota Supreme Court, applicable state statute or federal law. All parties acknowledge and agree that these applicable restrictions must be followed in the appropriate circumstances.

**9 Investigation of alleged violations; sanctions**

For purposes of this clause, "Individual User" means an employee or contractor of Agency.

**9.1 Investigation.** Agency and BCA agree to cooperate in the investigation and possible prosecution of suspected violations of federal and state law referenced in this Agreement. Agency and BCA agree to cooperate in the investigation of suspected violations of the policies and procedures referenced in this Agreement. When BCA becomes aware that a violation may have occurred, BCA will inform Agency of the suspected violation, subject to any restrictions in applicable law. When Agency becomes aware that a violation has occurred, Agency will inform BCA subject to any restrictions in applicable law.

**9.2 Sanctions Involving Only BCA Systems and Tools.**

The following provisions apply to BCA systems and tools not covered by the Court Data Services Subscriber

Amendment. None of these provisions alter the Agency's internal discipline processes, including those governed by a collective bargaining agreement.

**9.2.1** For BCA systems and tools that are not covered by the Court Data Services Subscriber Amendment, Agency must determine if and when an involved Individual User's access to systems or tools is to be temporarily or permanently eliminated. The decision to suspend or terminate access may be made as soon as alleged violation is discovered, after notice of an alleged violation is received, or after an investigation has occurred. Agency must report the status of the Individual User's access to BCA without delay. BCA reserves the right to make a different determination concerning an Individual User's access to systems or tools than that made by Agency and BCA's determination controls.

**9.2.2** If BCA determines that Agency has jeopardized the integrity of the systems or tools covered in this Clause 9.2, BCA may temporarily stop providing some or all the systems or tools under this Agreement until the failure is remedied to the BCA's satisfaction. If Agency's failure is continuing or repeated, Clause 11.1 does not apply and BCA may terminate this Agreement immediately.

### **9.3 Sanctions Involving Only Court Data Services**

The following provisions apply to those systems and tools covered by the Court Data Services Subscriber Amendment, if it has been signed by Agency. As part of the agreement between the Court and the BCA for the delivery of the systems and tools that are covered by the Court Data Services Subscriber Amendment, BCA is required to suspend or terminate access to or use of the systems and tools either on its own initiative or when directed by the Court. The decision to suspend or terminate access may be made as soon as an alleged violation is discovered, after notice of an alleged violation is received, or after an investigation has occurred. The decision to suspend or terminate may also be made based on a request from the Authorized Representative of Agency. The agreement further provides that only the Court has the authority to reinstate access and use.

**9.3.1** Agency understands that if it has signed the Court Data Services Subscriber Amendment and if Agency's Individual Users violate the provisions of that Amendment, access and use will be suspended by BCA or Court. Agency also understands that reinstatement is only at the direction of the Court.

**9.3.2** Agency further agrees that if Agency believes that one or more of its Individual Users have violated the terms of the Amendment, it will notify BCA and Court so that an investigation as described in Clause 9.1 may occur.

## **10 Venue**

Venue for all legal proceedings involving this Agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

## **11 Termination**

**11.1 Termination.** The BCA or the Agency may terminate this Agreement at any time, with or without cause, upon 30 days' written notice to the other party's Authorized Representative.

**11.2 Termination for Insufficient Funding.** Either party may immediately terminate this Agreement if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written notice to the other party's authorized representative. The Agency is not obligated to pay for any services that are provided after notice and effective date of termination. However, the BCA will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. Neither party will be assessed any penalty if the agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. Notice of the lack of funding must be provided within a reasonable time of the affected party receiving that notice.

## **12 Continuing obligations**

The following clauses survive the expiration or cancellation of this Agreement: 6. Liability; 7. Audits; 8. Government Data Practices; 9. Investigation of alleged violations; sanctions; and 10. Venue.

*The parties indicate their agreement and authority to execute this Agreement by signing below.*

**1. AGENCY**

Name: \_\_\_\_\_  
(PRINTED)

Signed: \_\_\_\_\_

Title: \_\_\_\_\_  
(with delegated authority)

Date: \_\_\_\_\_

Name: \_\_\_\_\_  
(PRINTED)

Signed: \_\_\_\_\_

Title: \_\_\_\_\_  
(with delegated authority)

Date: \_\_\_\_\_

**2. DEPARTMENT OF PUBLIC SAFETY, BUREAU OF  
CRIMINAL APPREHENSION**

Name: \_\_\_\_\_  
(PRINTED)

Signed: \_\_\_\_\_

Title: \_\_\_\_\_  
(with delegated authority)

Date: \_\_\_\_\_

**3. COMMISSIONER OF ADMINISTRATION  
delegated to Materials Management Division**

By: \_\_\_\_\_

Date: \_\_\_\_\_

## REQUEST FOR COUNCIL ACTION

04.05.2016

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**Department Origination:**  
Public Works

**Agenda Section:**  
Consent

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**Agenda Item:** Approve Resolution 2016-026 Approving Plans and Specifications and Ordering Advertisement for Bids for the 2016 Fairview Road Improvement Project.

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

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### **BACKGROUND**

The recommendations and motions were made from the special Utilities Commission meeting on March 16, 2016. Please see the March 16, 2016 minutes in the City Council packet.

### **FINANCIAL IMPLICATIONS**

2016 Capital improvement project that is being assessed and the City will sell bonds to pay for project.

### **STAFF RECOMMENDATION**

Staff recommends making a motion to approve Resolution 2016-026 Approving Plans and Specifications and Ordering Advertisement for Bids for the 2016 Fairview Road Improvement Project.

### **COUNCIL ACTION REQUESTED**

**MOTION** to Approve Resolution 2016-026 Approving Plans and Specifications and Ordering Advertisement for Bids for the 2016 Fairview Road Improvement Project.

Attached:

1. Resolution 2016-026
2. Fairview Road Schedule
3. Fairview Road Plans and Specifications

**CITY OF BAXTER MINNESOTA  
RESOLUTION 2016-026**

**RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND ORDERING  
ADVERTISEMENT FOR BIDS FOR THE 2016 FAIRVIEW ROAD IMPROVEMENT  
PROJECT**

WHEREAS, pursuant to a resolution passed by the council on November 17, 2015, the consulting city engineer has prepared plans and specifications for Improvement No. 4113, the improvement of Fairview Road from approximately 300 feet west of Memorywood Drive to Inglewood Drive and has presented such plans and specifications to the council for approval;

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

1. Such plans and specifications, a copy of which is attached hereto and made a part hereof, are hereby approved.
2. The city clerk shall prepare and cause to be inserted in the official paper an advertisement for bids upon the making of such improvement under such approved plans and specifications. The advertisement shall be published for three weeks, shall specify the work to be done, shall state that bids will be received by the clerk until 11:00 a.m. on Tuesday, May 3, 2016, at which time they will be publicly opened in the council chambers of the city hall by the city clerk and consulting city engineer, will then be tabulated, and will be considered by the council at 7:00 p.m. on Tuesday, June 7, 2016, in the council chambers of city hall. Any bidder whose responsibility is questioned during consideration of the bid will be given an opportunity to address the council on the issue of responsibility. No bids will be considered unless sealed and filed with the clerk and accompanied by a cash deposit, cashier's check, bid bond or certified check payable to the City of Baxter for 5% of the amount of such bid.

**Whereupon, said Resolution is hereby declared adopted on this 5th day of April 2016.**

\_\_\_\_\_  
**Darrel Olson, Mayor**

**ATTEST:**

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

*City Seal*

<b>Project Schedule</b> (schedule assumes no RFP for construction engineering services) City Council Meetings Held: 1st & 3rd Tuesday @ 7:00 p.m. (work session 5:30 p.m.) Utilities Commission Meetings Held: 1 <sup>st</sup> Wednesday @ 5:00 p.m.	
Preliminary Utility Design Meeting #1 (for Fairview Road only)	Thursday, September 10, 2015
Review Draft Feasibility Report	Wednesday, November 4, 2015, Utilities Commission Meeting
Review Draft Feasibility Report	Tuesday, November 17, 2015, City Council Workshop Meeting
Resolution Ordering Feasibility Report (resolution)	Tuesday, November 17, 2015, Regular City Council Meeting
Authorize Design Topo Survey for Trail corridor	Tuesday, November 17, 2015, Regular City Council Meeting
Mail Neighborhood Meeting #1 Notice	Friday, November 20, 2015
Neighborhood Meeting #1	Wednesday, December 2, 2015, 7:00 PM, Special City Council Meeting
Preliminary Utility Design Meeting #2	Tuesday, December 22, 2015
Receive Feasibility Report & Order Improvement Hearing (resolution)	Tuesday, January 5, 2016, Regular City Council Meeting
Authorize Appraisals	Tuesday, January 5, 2016, Regular City Council Meeting
Coordination meeting with Crow Wing Power	Friday, January 15, 2016
Advertise Notice for Improvement Hearing (10 days prior to Improvement Hearing) (Brainerd Dispatch publication deadline 2 days prior)	Friday, January 22, 2016
Mail Notice for Improvement Hearing (10 days prior to Improvement Hearing)	Friday, January 22, 2016
Brainerd Daily Dispatch: Deadline: 2 Full Days by 4 pm Publish: Friday	Wednesday, January 20, 2016 January 22 and 29, 2016
Improvement Hearing	Monday, February 1, 2016, Special City Council Meeting
Order Improvement (resolution)	Tuesday, February 2, 2016, Regular City Council Meeting
Appraisals Complete (approximately 45 days from notice to proceed)	February 12, 2016
City Council Approves Offers To Purchase Easements (Parcels 40 & 41 only)	Tuesday, February 16, 2016, Regular City Council Meeting (Closed Session)
SEH Mails Offer Letters (Start of 60- Day ROW negotiation period) Parcels 40 & 41 only	Wednesday, February 17, 2016
City Council Approves Offers To Purchase Easements (remaining parcels)	Thursday, March 3, 2016, Regular City Council Meeting (Closed Session)
SEH Mails Offer Letters (Start of 60- Day ROW negotiation period) remaining parcels	Friday, March 4, 2016

Request Tree Clearing Quotes (work to be completed before June 1, 2016 if possible)	TBD – April/May
City Council Approves Tree Clearing Contract (long eared bat avoidance – possible USACE permit condition)	TBD – April/May
Wetland permit submittal to TEP	Friday, March 4, 2016
TEP meeting (wetland permit)	Tuesday, April 5, 2016 (WCA and USACE permits anticipated to be secured by end of June 2016)
Utilities Commission Reviews Plans and Specifications	Wednesday, March 16, 2016, Special Utilities Commission Meeting ( <i>packet deadline, Wednesday, March 9, 2016</i> )
Approve Plans and Specifications and Authorize Advertisement for Bids (resolution)	Tuesday, April 5, 2016, Regular City Council Meeting
OPEN on Quest CDN Website Post on City Website?	Friday, April 8, 2016
Brainerd Daily Dispatch: Deadline: 2 Full Days by 4 pm Publish: Friday	April 6, 2016 April 8 and 15, 2016
Advertisement For Bids Publication Date (3 weeks prior to bid opening date) (Brainerd Dispatch publication deadline 2 days prior)	April 8, 2016
Submit permit applications	Friday, April 8, 2016
End of 60-Day ROW negotiation period (Parcels 40 & 41)	April 17, 2016
End of 60-Day ROW negotiation period (remaining Parcels)	May 2, 2016
Initiate 90-Day “Quick Take” process for condemnation of easements – if necessary (resolution) – Parcels 40 & 41	Tuesday, April 19, 2016, Regular City Council meeting (closed session)
City Attorney Mails “Quick Take” condemnation notices to affected property owners (Start of 90-Day Quick Take period) – Parcels 40 & 41	Wednesday, April 20, 2016
Initiate 90-Day “Quick Take” process for condemnation of easements – if necessary (resolution) – remaining Parcels	Tuesday, May 3, 2016, Regular City Council meeting (closed session)
City Attorney Mails “Quick Take” condemnation notices to affected property owners (Start of 90-Day Quick Take period) - remaining Parcels	Wednesday, May 4, 2016
Bid Opening Date	Tuesday, May 3, 2016, 11 am, City Hall
Order Assessment Hearing (resolution)	Tuesday, May 17, 2016, Regular City Council meeting
Published Notice for Assessment Hearing (minimum 2 weeks before Assessment Hearing)	Friday, May 20, 2016 (need to get notice to the paper on Wednesday, May 18, 2016)

(Brainerd Dispatch publication deadline 2 days prior) Mail Assessment Hearing Notices (minimum 2 weeks before Assessment Hearing)	Friday, May 20, 2016
Brainerd Daily Dispatch: Deadline: 2 Full Days by 4 pm Publish: Friday	Wednesday, May 18, 2016 May 20 and 27, 2016
Bid Review By Utilities Commission	Wednesday, June 1, 2016
Assessment Hearing Date	Wednesday, June 1, 2016, Special City Council Meeting
Adopt Assessments (resolution) and Award Construction Contract (resolution)	Tuesday, June 7, 2016, Regular City Council Meeting (assumes no condemnation or assessment challenges)
Preconstruction Conference	Thursday, June 16, 2016*
Neighborhood Meeting #2	Thursday, June 16, 2016*
Notice to Proceed	June 20, 2016*
Private Utility Relocations	June 27 – July 15, 2016 (need minimum 3 weeks)*
Start Construction	June 27, 2016 (early start) or July 18, 2016 (late start)*
Wetland permits secured	June 30, 2016 (anticipated)
End of 90-Day Quick Take Period – Parcels 40 & 41	Tuesday, July 19, 2016
Easements Secured (by eminent domain) – Parcels 40 & 41	Tuesday, July 19, 2016 (could possibly be moved up if all easements can be negotiated)
End of 90-Day Quick Take Period – remaining Parcels	Tuesday August 2, 2016
Easements Secured (by eminent domain) – remaining Parcels	Tuesday, August 2, 2016 (could possibly be moved up if all easements can be negotiated)
Substantial Completion	September 2, 2016*
Final Completion	September 30, 2016*

\*date dependent on date contract awarded, which could be affected by date easements are secured.

ABOVE DATES ARE SUBJECT TO CHANGE BY FACTORS BEYOND SEH'S CONTROL SUCH AS CONDEMNATION, PRIVATE UTILITIES RELOCATIONS, USACE WETLAND PERMIT

**PERMITS**

1. WCA and USACE (Wetland)
2. MPCA NPDES (Stormwater)
3. MnDOT (ROW)

MS KELLY STEELE  
 ASSISTANT CITY ADMINISTRATOR/CLERK  
 CITY OF BAXTER  
 13190 MEMORYWOOD DR  
 PO BOX 2626  
 BAXTER MN 56425-2626  
 218.454.5110 FAX 218.454.5103  
[ksteele@baxtermn.gov](mailto:ksteele@baxtermn.gov)

BRAINERD DAILY DISPATCH  
 506 JAMES ST  
 BRAINERD MN 56401-2942  
 218.829.4705 FAX 218.829.7735  
[ann.windorski@brainerddispatch.com](mailto:ann.windorski@brainerddispatch.com)  
 PUBL: 6 DAYS (NO SAT);  
 DEADLINE 2 FULL DAYS BY 4 PM  
 LEGAL NOTICES MONDAY - FRIDAY ONLY (NOT SAT OR SUNDAY)

**CITY OF BAXTER  
TABLET COMPUTER USE POLICY FOR CITY COUNCIL MEMBERS**

**PURPOSE**

Use of a tablet computer ("tablet") will assist the Council Members in the efficient performance of their duties as Council Members. The use of the tablet will also reduce paper and photocopying costs. This Policy is adopted by the City Council and constitutes its mutual statement of what are, and are not, appropriate uses for this important technology tool and its care and maintenance.

This Policy does not attempt to cover every situation that may arise in connection with the use of the tablet. The City Council acknowledges that the tablets are only to be used to conduct City business, and that a Council Member's use of the tablet for personal matters is prohibited. The City will no longer provide paper meeting packets to the Council. Qualifying productivity applications may be installed and used for processing City e-mail, file management (ie: Dropbox, OneDrive), and documents (ie: Microsoft Word, Adobe Acrobat).

**POLICY**

**Section 1. Receipt of Tablets**

The Assistant City Administrator or GIS/IT Director will issue each Council Member a tablet and charger, along with appropriate accessories, which may include a cover, case, keyboard, stylues, etc. Any additional tablet accessories not provided by the City, shall be at an individual Council Member's own expense and shall remain the property of the Council Member at the end of the Council Member's term and service. Council Members have already been issued separate City e-mail accounts. Applications for e-mail, file management and document processing will be installed by Information Technology on the tablet and shall be used to send Council Members official City documents, including, but not limited to, City Council agendas, staff reports, weekly reports and meeting packets. Council Members may also use the tablet to send e-mails relating to City business.

**Section 2. Care of Tablets**

Each Council Member is responsible for the general care of the tablet that he or she has been issued. Tablets must remain free of any writing, drawing, stickers or labels that are not the property of the City. Only a clean, soft cloth should be used to clean the screen. Tablets that malfunction or are damaged must be reported to the GIS/IT Director or Assistant City Administrator. The City will be responsible for having the malfunctioning unit repaired. If, due to the Council Member's misuse or neglect, the tablet is stolen or lost, the Council Member shall pay the full replacement value.

Tablets that have been damaged from misuse, neglect or accidental damage, in the sole and exclusive judgment of the City Administrator, will be repaired by the City, with the cost borne by the Council Member. Damage includes, but is not limited to, broken screens, cracked plastic pieces, and inoperability. If the cost to repair the tablet exceeds the cost of purchasing a new device, the Council Member shall pay the full replacement value.

### **Section 3. Software on Tablets**

The software and applications installed by the City must remain on the tablets in usable condition and be readily accessible at all times. From time to time, the City may add or upgrade software applications for use by City Council such that City Council may be required to check in their tablets with the GIS/IT Director or Assistant City Administrator for periodic updates and synching. Council Members should report any malfunction in software and applications to the GIS/IT Director or Assistant City Administrator. Any software, e-mail messages or files downloaded via the Internet into the City systems become the property of the City and may only be used in ways that are consistent with applicable licenses, trademarks or copyrights. If technical difficulties occur or illegal software is discovered, the tablet computers will be remotely wiped clean and restored to factory default. The City does not accept responsibility for the loss of any software, electronic content or documents deleted due to a remote wipe and restore.

### **Section 4. Acceptable Use**

The tablets and e-mail access provided are tools for conducting City business. Thus, Council Members' use of such tools will be solely for City business related purposes. All of the City's computer systems, including the tablets, are considered to be public property. All documents, files and e-mail messages created, received, stored in, or sent from any City tablet are considered public records, subject to disclosure to the public.

The tablet and all data and applications contained on the tablet are intended for City business and are the property of the City, regardless of the content and including any personal communications or personal data. As a result, Council Members should be aware, and by signing this Policy and accepting a City tablet agree, that they understand that the tablet and all data and applications contained on the tablet are not private or confidential. The Council Members should have no expectation of privacy with respect to any use of the tablet or the applications installed on the tablet.

Council Members shall not use the tablets in any way as to violate federal, state, or local laws, including but not limited to open meeting laws. Council Members shall not use the tablets in any way that would violate a City Policy that applies to the City Council and/or to Council Members.

Council Members shall not use the tablets for personal business or any other purpose not related to City business.

Council Members shall not use the tablets to deliberately propagate any virus or other hostile computer program or file, to disable or overload any computer system or network, or to circumvent any system intended to protect the privacy or security of another user.

**Section 5. Return of Tablets**

Council Members shall return their tablet to the Assistant City Administrator when the Council Member's term and service on the City Council has ended. Upon return of the tablet to the City and following the preparation of any appropriate backup files, the tablet will be wiped clean of any and all information at the end of a Council Members term and service.

**Section 6. Compliance with Policy**

The City reserves the right to inspect any and all files stored on tablets that are the property of the City in order to ensure compliance with this Policy. Council Members do not have any personal privacy right in any matter created, received, stored in, or sent from any City issued tablet.

\*\*\*\*\*

***I, the undersigned City Council Member of the City of Baxter, have been provided a copy of the City of Baxter's Tablet Computer Use Policy for City Council Members and understand its contents fully. I understand and accept the terms of this Policy and agree to abide by all terms contained in it.***

\_\_\_\_\_  
City Council Member Name (please print)

\_\_\_\_\_  
City Council Member Signature

\_\_\_\_\_  
Date

**UTILITIES COMMISSION**  
**March 16, 2016**

The special meeting of the Baxter Utilities Commission was called to order at 5:30 p.m. by Chairman Rock Yliniemi.

**MEMBERS PRESENT:** Commissioners Shawn Crochet, Dave Franzen, Doug Wolf, Council Liaison Mark Cross and Chairman Rock Yliniemi.

**MEMBERS ABSENT:** Commissioner Jack Christofferson.

**STAFF PRESENT:** Public Works Director/City Engineer Trevor Walter and Engineering Technician Doug Schultz.

**OTHERS PRESENT:** InSite Project Manager Mark Rykovich, WSN Consulting Engineer Aric Welch and SEH Consulting Engineer Scott Hedlund.

**APPROVAL OF MINUTES**

**MOTION** by Commissioner Crochet, seconded by Commissioner Franzen to approve the Utilities Commission minutes of March 2, 2016. Motion carried unanimously.

**2016 MILL AND OVERLAY IMPROVEMENTS FEASIBILITY REPORT**

WSN Consulting Engineer Welch reviewed the 2016 Mill and Overlay Feasibility Report. The City is improving various roadway segments within the municipal limits as part of the City of Baxter's ongoing pavement management program. Both residential and commercial roadways are scheduled for maintenance improvements in 2016.

Commercial roadways being reviewed as part of this report include segments of Clearwater Road and Woida Road. Residential roadways being reviewed as part of this report include all or a part of Cedardale Lane, Brentwood Road, Briarwood Lane, Birchdale Lane, Ashdale Lane, Second Street, First Street, Maplewood Drive, Kenwood Drive, Kenwood Court, Glenwood Drive, Madeline Drive, John Street and Mary Street.

In addition to maintenance of existing roadways, construction of a right turn lane for eastbound traffic on College Road wishing to travel south on Cypress Drive is also being reviewed.

**Residential Area Improvements**

All residential roadway segments within the project area are currently rural sections with surface drainage swales or ditches along the roadway edges. Zoning in the residential project predominately Low Density Residential (R-1) with some parkland areas and school property zoned Public Benefit (PB) and the Baxter Cemetery zoned Memorial Park/Cemetery (MS). The majority of these residential roadways were constructed between 1989 and 1991, with the exception of Briarwood Lane that was constructed in 1993 and a segment of Brentwood Road that was constructed in 1998. All residential roadway sections in the project areas were considered to be in "good" condition in 2013.

Known bituminous surface problems or issues that need to be reviewed during design includes the following:

- Broken up pavement at the corner of Mapleton Road where the roadway turns from a north/south direction to east/west.
- Bituminous curbing on Ashdale Lane from First Street to Highland Scenic Road (CSAH 48).
- Drainage issue at 134113 Maplewood Drive.

The City of Baxter “Comprehensive Pavement Management System” conducted in 2013, recommended maintenance improvements to all roadways in the project areas to be done via milling and overlaying.

#### Commercial Area Improvements

The two commercial roadway segments, Woida Road and Clearwater Road, are currently urban sections with curb / gutter / storm sewer, located in busy commercially developed areas between TH 371 and Golf Course Drive. Zoning in the project area is Regional Commercial (C-2). Both roadways are currently on the State-Aid (MSAS) system. The segments of Clearwater Road and Woida Road in the project area were originally constructed between 20 and 25 years ago and considered to be in “fair” to “good” condition when reviewed in 2013. There are no known problems related to the storm water handling systems in the project areas.

Known problems or issues that need to be addressed during design includes the following:

- Storm Manhole on Clearwater Road has access number of adjusting rings.
- All storm sewer curb inlet casting need to be removed and replaced to prevent future roadway cave-ins due to water infiltration.
- Misc. cracked concrete curb & gutter needs to be replaced.
- Loop detectors on Woida Road need to be replaced.
- The upper sections of water valve boxes need to be replaced and adjusted.
- Sanitary sewer manhole castings and rings need to be reconstructed and sealed against water infiltration.
- Pavement markings on Clearwater Road need to be modified to accommodate proposed bank on the former Bonanza site.

In addition to the general maintenance recommendations provided with the 2013 Pavement Management Plan, Braun Intertec has been retained to conduct a pavement evaluation report for the existing pavement sections and subgrade immediately beneath the pavement. Ground Penetrating Radar (GPR) was utilized to determine thicknesses of the existing bituminous surfacing and supporting base layers. Pavement cores and auger borings were also used to verify pavement thicknesses and classify supporting base material.

#### Cypress Drive Turn Lane

College Road is currently a 5-lane urban roadway and is the busiest corridor in Baxter with a 2011 Average Daily Traffic (ADT) count of 9,600 vehicles per day. As part of the City's long-range transportation plan, Cypress Drive is being developed as a north-south collector. As the Cypress Drive corridor is constructed, the intersection with College Road will need to be upgraded. Recently the City acquired additional property on the southwest quadrant of the College Road / Cypress Drive intersection. The acquisition of this property provides an opportunity for construction of a southbound right-turn lane from College Road to Cypress Drive.

### **Proposed Improvements**

Proposed improvements include milling and overlaying all residential roadways within the project area. Milling is proposed to remove the top 1 ½" of existing bituminous surfacing and then overlaying with 2" of new bituminous surfacing. No options to complete FDR were considered for the residential roadways and the proposed improvements are as recommended by the 2015 Pavement Management Plan.

Other improvements in the mill and overlay area include the following:

- Reconstruct sanitary sewer manhole castings/rings and install water infiltration barrier.
- Replace and adjust the upper sections of water valve boxes.
- Full depth bituminous repair/reconstruction in the following locations:
  - Corner of Mapleton Road where the roadway turns from a north/south direction to east/west.
- Bituminous curbing on Ashdale Lane from First Street to Highland Scenic Road (CSAH 48).
- Ditching improvements at 13413 Maplewood Drive.
- Pavement markings in accordance with City standards for residential roadways.

### **Commercial Roadway Improvements**

Two options were considered for improvements to the segments of Woida Road and Clearwater Road located in the project areas.

Mill and Overlay - Milling and overlaying the existing bituminous surface, as recommended in the 2013 Pavement Management Plan, is an acceptable State-Aid maintenance activity. However, any future reconstruction of a State-Aid roadway like Woida Road and Clearwater Road would require the roadway be constructed to 10-ton design standards. In acknowledgement of these requirements, the City of Baxter has determined that commercial roadways should meet 10-ton design requirements to better handle heavy commercial traffic commonly associated with commercial development and provide long-term benefit to commercial area property owners. The mill and overlay process does not repair problems associated with the poor or failing aggregate base or subgrade materials and areas with these types of concerns would need to be dug up and repaired prior to milling and overlaying. It should also be noted that milling and overlaying does not prevent reflective cracking from appearing in the new surfacing within a

year or two of the overlay, creating negative public opinion and increased future maintenance costs. For these reasons, the mill and overlay process was not examined in any further detail.

Full Depth Reclamation – Full depth reclamation (FDR) uses a self-propelled pulverizing machine to grind the entire pavement section and a portion of the underlying gravel base material in place. This process destroys all existing pavement cracks and homogenizes the material into a useable aggregate base platform on which to pave a new bituminous surface. In an urban roadway section, it is necessary to remove and stockpile a portion of the material to make room for the bituminous pavement. Two lifts of bituminous totaling 4 ½ inches are then proposed to be placed on the reclaimed base material. The benefits of the FDR process include the elimination of reflective cracking, longer pavement life (typically 20 years with proper maintenance), improved ride, reduced maintenance costs and a resulting 10-ton design strength roadway meeting State-Aid and City requirements.

Other improvements in the full depth reclamation area include the following:

- Install a one foot manhole section on the storm sewer manhole on Clearwater Road.
- Replace all storm sewer curb inlet castings and install a water infiltration barrier.
- Replace misc. cracked concrete curb & gutter sections.
- Install new loop detectors on Woida Road.
- Replace and adjust the upper sections of water valve boxes.
- Reconstruct sanitary sewer manhole castings/rings and install water infiltration barrier.
- Install pavement markings on Clearwater Road in accordance with the WSB recommendation for the redevelopment of the former Bonanza site.
- Remove and replace entrance to former Bonanza site.

#### Cypress Drive Turn Lane

Proposed improvements to College Drive include removal of approximately 400' of the existing curb/gutter and trail along the south side of College Road and private parking lot pavement in the southwest quadrant of the College Road / Cypress Drive intersection. A new 12' wide right turn lane is proposed to be constructed with the 10' non-motorized trail relocated to accommodate the widened roadway section. Minor improvements to the existing storm sewer piping and structure geometry would be required to accommodate the widened road section. Two water services would also need to be extended to match the new configuration. Improvements to the private property would also be proposed to compensate for lost parking as a result of the proposed improvements.

#### Do Nothing Option

The do nothing option was considered as an option to all proposed improvements. Doing nothing does not promote preserving the existing roadway network via pavement management and does not prepare for future long-term transportation plans being considered by the City of Baxter.

**MOTION** by Commissioner Franzen, seconded by Commissioner Crochet to recommend City

Council adopt Resolution No. 2016-XX approving the 2016 Mill and Overlay Improvements Feasibility Report. Motion carried unanimously.

**2016 FAIRVIEW ROAD IMPROVEMENTS PLANS AND SPECIFICATIONS**

SEH Consulting Engineer Hedlund reviewed the 2016 Fairview Road Improvements Plans and Specifications. Public Works Director/City Engineer Walter stated one property owner had some concerns regarding the easement he received in the mail and the City Council requested Mr. Hedlund contact the resident. A memo to City Council was requested on the outcome of the meeting.

Public Works Director/City Engineer Walter had no concerns with the plans and specifications and recommended approval and advertise for bids.

**MOTION** by Commissioner Crochet, seconded by Commissioner Franzen to recommend City Council adopt Resolution No. 2016-XX Approving the 2016 Fairview Road Improvements Plans and Specifications and direct staff to advertise for bids. Motion carried unanimously.

**DEVELOPMENT AGREEMENT FOR 14230 DELLWOOD DRIVE**

Public Works Director /City Engineer Walter reviewed the Development Agreement for Baxter, MN (14230 Dellwood N) LLC. Fire protection lines will need to be extended across Dellwood Drive which will result in the pavement being torn up on Dellwood Drive. Pavement will be required to be cut completely across from side to side by approximately 100-feet long in an effort to get compaction back in the excavation trench. The same pavement used in the 2015 Full Depth Reclamation of Dellwood Drive will be required to repair the roadway.

This is the standard agreement the City uses for watermain and sanitary sewer extensions for private improvement projects. Public Works Director /City Engineer Walter has no concerns with the agreement and recommends approval.

**MOTION** by Commissioner Franzen, seconded by Commissioner Crochet to recommend City Council approve the Development Agreement for Baxter, MN (14230 Dellwood N) LLC. Motion carried unanimously.

**FIXED NETWORK WATER METER REPLACEMENT PROJECT**

Public Works Director/City Engineer Walter informed the commission that City Council awarded the Fixed Network Water Meter Reading System Project contract to Dakota Supply Group in the estimated amount of \$883,841.33 at the March 15, 2016 City Council meeting.

Funding for the project included \$1.1 million dollars for the fixed network water meter reading system project, with funding coming out of from local option sales tax collections. Total project costs will be determined by actual quantities used based on bid unit pricing at the completion of the project.

Public Works Director/City Engineer Walter stated the City will need to acquire some server infrastructure for storage of meter reading data, at a cost to be determined by the IT Director.

**ADJOURNMENT**

**MOTION** by Commissioner Crochet, seconded by Commissioner Franzen to adjourn the meeting at 7:00 p.m. Motion carried unanimously.

Approved by:

Submitted by,

\_\_\_\_\_  
Rock Yliniemi  
Chairman

\_\_\_\_\_  
Mary Haugen  
Administrative Assistant

**DEVELOPMENT AGREEMENT FOR BAXTER, MN (14230 DELLWOOD N) LLC**

**THIS AGREEMENT**, made this \_\_\_\_ day of \_\_\_\_\_, 2016, by Baxter, MN (14230 Dellwood N) LLC a Illinois Limited Liability Company, party of the first part, hereinafter referred to as "Developer", and City of Baxter, party of the second part, hereinafter referred to as "City".

**WITNESSETH:**

**WHEREAS**, The Developer is the owner of LOT 2, BLOCK ONE, CITIZEN'S ADDITION, in the City of Baxter, Crow Wing County, Minnesota according to the plat thereof on file with the Crow Wing County Recorder, a copy of which is attached hereto as **Attachment A**; and

**WHEREAS**, the proposed Development includes the construction and installation of municipal water lines, private drainage controls, private 5-year storm water design, private bituminous surfaced parking lot, and other private improvements (hereinafter referred to as "Improvements") hereinafter described; and

**WHEREAS**, the Developer will construct the Improvements pursuant to the terms of this Agreement and as described in Sheets CS1, C1-8, CL1 (10 sheets total), Construction Plans and Specifications for Sanitary Sewer, Water, Storm Sewer, Grading, Drainage, Erosion Control, landscaping, traffic control and detour plan for Insite Real Estate investment Properties, L.L.C. Retail Building (**See Attachment B**) dated January 26, 2016 and prepared by Brian Schultz, P.E of Schultz Engineering & Site Design; and sheet LS952-1867 Exhibit (1 sheet total) for Lighting plan for Insite Real Estate Investment Properties, L.L.C. Retail Building (**See Attachment C**) prepared by Steven Hahn of Luma Sales Associates Lighting and Controls dated December 17, 2015; and

**WHEREAS**, The water main is public up to the valve and domestic water line curb stop and/or valve; and

**WHEREAS**, Developer would like to dedicate said water utilities upon acceptance by the City; and

**WHEREAS**, the Developer will construct all proposed Private Improvements pursuant to the terms of this Agreement and pay for all related costs, including any costs incurred or to be

incurred by the City for engineering, legal and administrative services related to the Privately Installed Improvements; and

**WHEREAS**, the Developer shall provide a Performance Bond in the amount of \$42,112.50 (125% of the Construction Contract Amount of the "Municipal Portion") as detailed on **Attachment M** for the Improvements. No interest shall accrue on said deposit.

**NOW, THEREFORE**, in consideration of the premises and the mutual obligations of the parties contained herein, it is agreed between the parties as follows:

1. The City shall accept the dedication of said water line as long as all conditions in this agreement are met by the Developer.
2. All material and construction shall conform to the City of Baxter standard specifications. When conflicts arise between the City specs, general notes and Developer specs, the more stringent shall take precedence.
3. The Developer shall construct said Utilities in accordance with city specifications as detailed in **Attachment D** Sanitary Sewer Standard Construction Drawings, **Attachment E** Sanitary Sewer Specifications, **Attachment F** Watermain Standard Construction Drawings, and **Attachment G** Watermain Specifications.
4. The Developer shall restore the Dellwood Drive right-of-way in accordance with city specifications as detailed in **Attachment H** Right-of-Way Restoration.
5. The Developer shall reimburse the City for GIS Incorporation costs related to said "Improvements" into the "City" GIS system. The City shall charge at an hourly rate of \$58.00. (The City will charge in one hour increments) The City's estimate for the total cost of these charges is **\$348.00** and is attached hereto as **Attachment I**.
6. The Developer shall reimburse the City for all inspection costs related to said "Improvements" ensuring that they are constructed to "City" specifications. The City shall inspect full time at an hourly rate of \$50.00. (The City will charge in one hour increments) The City's estimate for the total cost of these charges is **\$2,200.00** and is attached hereto as **Attachment J**.
7. The Developer shall complete as-built drawings and submit them in electronic format in ".dwg file form" at the Developer's expense. As-built plans shall include a complete set of plans depicting what was actually built. Plans shall include all valves, hydrants, curb stops, sewer manholes, sewer clean-outs, and sewer service ends with County Coordinates on each item. Further plans shall include all storm sewer manhole, inverts, overflows, outflows, catch basins, and storm water ponds with elevations and County Coordinates on each item. Entire parcel showing 1-foot contours, percentage of pervious, impervious, Class 5 surfaces and Bench Marks and control points within two months of

substantial completion of the Utilities.

8. The Developer shall prevent surface water and subsurface or groundwater from flowing into excavations and from flooding the project site and surrounding area. Dewatering may be required by the City for the following applications:
  - a. Connection to the new water services and mains.
  - b. Connection to the new sanitary sewer services and main.
  - c. Any other applications as deemed necessary by the city.

The Developer shall not allow water to accumulate in excavations. Dewater to prevent softening of foundation bottoms, under-cutting footings and any other detrimental to stability of subgrades and foundations.

Provide and maintain pumps, well points, sumps, suction and discharge lines, and other dewatering system components necessary to convey water away from excavation.

Establish and maintain temporary drainage ditches and other diversions outside excavation limits to convey rain water and water removed from excavations to collecting or run-off areas. Do not use trench excavation as temporary drainage ditches.

Whenever the bottom of the trench is soft and will not furnish suitable support for the pipe, the excavation shall be carried to 8 inches below the bottom of the pipe and refilled with crushed rock of 1½" inch washed concrete rock and well tamped in place to form a firm foundation for the pipe. The crushed rock used for this purpose shall be of the same size and quality as specified for coarse aggregate for concrete. The cost for crushed rock trench bottom stabilization shall be the full responsibility of the contractor.

The Developer shall obtain any permits to perform dewatering operations. The Developer is also responsible for any adverse effects on adjacent wells, water table levels, and surface water levels.

9. The City shall accept the dedication of these Public Utilities and thus accept further maintenance responsibilities upon providing a written letter of acceptance to the Developer.
10. The Developer shall be responsible for any sediment and erosion that is caused by the over land, over flow system from the 5-year storm water infiltration basins to the City or discharge to any public water way systems.
11. City agrees that all "Improvements", which are a part of the Development when fully constructed and approved for acceptance by the City Engineer, Baxter Utility Commission and City Council shall become part of the municipal utility system.

The City shall keep the Performance Bond of \$42,112.50 for one year after the acceptance of said improvements. If during construction these "Improvements" are moved from what is set forth on the plat, the Developer must execute new utility easements before this release is granted.

12. Developer shall be responsible for survey services to establish vertical and horizontal control and alignment points and staking for the placement of the main line sanitary sewer, storm sewer and water main.
13. The Developer understands that the following costs will also apply to the project:
  - a. Sewer Availability Charge (SAC) (\$3,400.00 per each unit in year 2016)
  - b. Water Availability Charge (WAC) (\$3,100.00 per each unit in year 2016)

The SAC and WAC fees will be payable at such time as a building permit is requested from the City. The fees are subject to an increase by the City Council. The City's total cost of SAC & WAC charges is **\$13,457.25** and is attached hereto as **Attachment K**.

14. Prior to execution of this document, all fees due the City set forth in this paragraph and paragraphs 5, 6, 13 and 14 above are due. Upon completion of construction, the City shall refund any remaining funds if the actual costs listed in this paragraph and paragraphs 5 and 6 were lower than estimated. All other fees due the City for any legal or administrative fees are estimated at **\$900.00** as shown on **Attachment L** attached hereto. If the actual costs exceed the estimates, the City shall bill developer for this surplus and the bill shall be paid within 30 days. No interest shall accrue on any monies held by the City pursuant to this paragraph. If any bill due the City is unpaid after 30 days, a late fee shall be assessed equaling 5% of the unpaid balance and this late fee shall be re-assessed at each 30 day interval thereafter. If after multiple attempts to collect any outstanding bill(s) remain unpaid, the developer agrees the City may collect the outstanding amount plus interest and other fees related to the collection, hereinafter referred to as "Total Bill", by any other means including, but not limited to, certification to the Crow Wing County Auditor of the Total Bill with accrued interest and a \$300.00 administrative fee. The Developer hereby authorizes the City to certify Total Bill to the following year's LOT 2, BLOCK ONE, CITIZEN'S ADDITION at eight percent interest. The developer agrees to waive any notice of hearing related to adopting said assessment and this certification may be done by the City without further notice or consent of the Developer or its successors.
15. Developer has provided from their engineer/contractor certified individual cost of the watermain components that will become part of the city's system "Municipal Portion" at completion of the project and is attached hereto as **Attachment M**.
16. This Agreement shall inure to the benefit of and shall be binding upon the

Developer and the City and their respective successors, agents and assignees, and shall be binding upon all future owners of all or any part of LOT 2, BLOCK ONE, CITIZEN'S ADDITION and shall be deemed covenants running with the land. However, nothing in this Agreement, expressed or implied, shall give to any other person or entity any benefit or legal or equitable right, remedy or claim under this Agreement. This Agreement, at the option of the City, may be placed on record with the County Recorder so as to give notice hereof to subsequent purchases and encumbrances.

IN TESTIMONY WHEREOF, the parties hereto have executed this Agreement as of the day and year set forth above.

*[SIGNATURES APPEAR ON PAGES 6 AND 7]*



CITY:

CITY OF BAXTER, MINNESOTA

By: \_\_\_\_\_  
Darrel L. Olson  
Its Mayor

Attest: \_\_\_\_\_  
Kelly Steele  
Its Assistant City Administrator/City Clerk

STATE OF MINNESOTA     )  
  ) ss.  
COUNTY OF CROW WING    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by Darrel L. Olson and Kelly Steele, the Mayor and Assistant City Administrator/City Clerk of the City of Baxter, a municipal corporation under the laws of Minnesota, on behalf of the corporation.

\_\_\_\_\_  
Notary Public

THIS INSTRUMENT WAS DRAFTED BY:  
City of Baxter  
13190 Memorywood Dr.  
P.O. Box 2626  
Baxter, Minnesota 56425  
218/454-5100

## SCHEDULE OF ATTACHMENTS

ATTACHMENT A	Plat – Lot2 Block 1, Citizen’s Addition
ATTACHMENT B	Construction Plans and Specifications for Insite Real Estate investment Properties Retail Building, Sanitary Sewer, Watermain, Storm Sewer, Grading, Drainage, Erosion Control, Landscape Plan, Traffic Control and Detour Plan.
ATTACHMENT C	Construction Plans and Specifications for Insite Real Estate investment Properties Retail Building, Lighting Plan
ATTACHMENT D	Sanitary Sewer Standard Construction Drawings.
ATTACHMENT E	Sanitary Sewer Specifications.
ATTACHMENT F	Watermain Standard Construction Drawings.
ATTACHMENT G	Watermain Specifications.
ATTACHMENT H	Right-of-way Restoration.
ATTACHMENT I	GIS Incorporation costs.
ATTACHMENT J	City estimated Inspection costs.
ATTACHMENT K	Detail of SAC/WAC Fees.
ATTACHMENT L	Detail of Legal, Administrative and Other Fees Due City.
ATTACHMENT M	Engineer’s Estimate from Exit Lakes Realty Office Buildings for Construction of Municipal Portion of Privately Installed Improvements.

## MAYORAL PROCLAMATION

**WHEREAS**, the equality of life is important to all members of our community, including children and adults with intellectual disabilities; and

**WHEREAS**, the Knights of Columbus is a charitable and fraternal organization that promotes the dignity and welfare of citizens with intellectual disabilities.

**NOW THEREFORE**, I, Mayor Darrel Olson, Mayor of the City of Baxter, do hereby proclaim the week of April 25, 2016 as Support Citizens with Intellectual Disabilities Week in our city, and call upon all of our citizens to support the Knights of Columbus in this most worthwhile and humanitarian effort for children and adults with intellectual disabilities and their families.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused to be affixed the Seal of the City.

Duly sworn and signed:

---

Mayor Darrel Olson  
City of Baxter

# BREEN & PERSONE

*Attorneys At Law*

March 28, 2016

Memo to Council re non-users:

Staff wanted to update you on the nonusers. For the pre-Woida Road project list, we are down to three non-users and we are working on coordinating access to those properties to get two quotes to complete the connection. We are still hopeful that a couple of these might connect on their own before we get to the actual connection.

For the Woida project, there are 6 homes that have not yet connected and it has now been over a year so we can start litigation at this point if you so choose. I've attached a draft complaint and cover letter for your review. I've also attached a draft settlement agreement so we can review costs/process before we move forward.

Sincerely,

Brad Person

April \_\_, 2016

Re: Baxter Utility Connection

To whom it may concern,

We have been instructed to commence litigation and you now have 20 days from being served to file answer if you choose to object. To avoid service costs which are eventually charged to you, please sign the enclosed acceptance of service – this simply confirms you have been served and does affect any rights you may have related to this issue.

If we can't work out some other arrangement as set forth below, we will get an order to authorize the City to enter your property and connect your home to city utilities. As part of that order, we would then assess all costs related to the connection, including attorneys fees, costs, connection costs, supervision costs or any other cost related to the project against your property to be paid with your property tax statement starting next year.

The City would much prefer that you simply complete the connection on your own. There are three options:

- 1) simply connect at your cost before we enter judgment and then no costs would charged to you.
- 2) Contact me right away and ask for a settlement agreement whereby you would complete the connection but we would pay for the cost and then assess it back against your property. The City would add some legal and administrative charges to this assessment, but these costs would be much lower than if we have to complete the connection. All such agreement are subject to final approve by the City Council.
- 3) Do nothing and we will connect but this will incur many more charges since the City would then have to do all the work and incur a liability risk which simply adds to the costs.

Sincerely,

J. Brad Person  
Baxter City Attorney

**SETTLEMENT AGREEMENT**

**THIS AGREEMENT**, made and entered into this \_\_\_ day of \_\_\_\_\_, 2016, by and between the City of Baxter, party of the first part, hereinafter referred to as the "City", and \_\_\_\_\_, party of the second part, hereinafter referred to as "Homeowner".

**WITNESSETH:**

**WHEREAS**, Homeowner is the owner of the residence located at \_\_\_\_\_ in the City of Baxter, Crow Wing County, Minnesota and legally described as:

\_\_\_\_\_

**WHEREAS**, Homeowner has failed to connect to city utilities as required by City Code. The Homeowner has obtained a bid from \_\_\_\_\_, hereinafter referred to as "Contractor", for \$\_\_\_\_\_ to complete this connection which includes any required permit fees and/or availability charges. In addition to this cost, or the actual final construction cost, the City shall require a \$550 legal and administrative fee and interest capitalized until this assessment is on the tax rolls in 2017; and

**WHEREAS**, the City has authorized the City Attorney to commence litigation to force a connection to city utilities regarding this and other similarly situated properties; and

**WHEREAS**, to avoid litigation, Homeowner has now agreed to connect to city utilities and agrees that the City shall pay the actual final construction cost and then assess this cost back against the property as set forth below.

**NOW, THEREFORE, IT IS HEREBY AGREED** by and between the parties hereto as follows:

1) Homeowner hereby agrees to hire the Contractor upon the terms set forth in the bid referenced above to hook-up to city water and sanitary sewer on or before December 1, 2016. Homeowner also acknowledges that any turf or landscaping restoration needed after this work is completed is not part of the bid and is the sole responsibility of the Homeowner. Homeowner also agrees to be responsible for the restoration, per city specifications, of any city right-of-way disturbed by the construction of this connection either through the Contractor's bid or directly by the Homeowner.

2) Homeowner hereby agrees to pay, in addition to the actual water and sanitary sewer bill or any other connection charges due upon connection, an assessment of approximately \$\_\_\_\_\_. The exact assessment shall be the sum of the actual construction cost (quoted amount set forth above), fees of \$550 (\$150 admin and \$400 legal fee), and capitalized interest as set forth above.

The Contractor shall not be paid nor this assessment processed until the City has inspected and approved the connection and the Homeowner has confirmed in writing that the work by

Contractor was completed in a satisfactory manner, the final bill was appropriate and that he/she consents to the City paying the Contractor directly in their behalf and assessing that cost as set forth herein. This assessment shall be amortized over five years with interest accruing at 5.25%, the payment being due with the Homeowner's first installment of real estate taxes in 2017.

3) The City is hereby authorized to certify the assessments to the County Auditor for collection against the real estate along with property taxes at the interest rates set forth in paragraph 2 above. This certification may be done by the City without further notice or consent of the Homeowner.

4) That in consideration of this Agreement, the City shall remove Homeowner as a named party regarding this pending litigation.

5) This Agreement is a covenant and agreement which shall run with the land and bind the heirs, successors and assigns of the parties hereto as fully as the parties themselves are bound.

**IN WITNESS WHEREOF**, the parties hereto have hereunto set their hands the day and year first written.

CITY OF BAXTER:

By: \_\_\_\_\_  
Darrel L. Olson  
Its Mayor

Attest: \_\_\_\_\_  
Kelly Steele  
Its Assistant City Administrator/Clerk

STATE OF MINNESOTA )  
 )ss.  
COUNTY OF CROW WING)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016 by Darrel Olson and Kelly Steele, the Mayor and Assistant City Administrator/Clerk of the City of Baxter, a municipal corporation under the laws of Minnesota, on behalf of the corporation.

\_\_\_\_\_  
Notary Public

HOMEOWNER:

By: \_\_\_\_\_

STATE OF MINNESOTA        )  
  )ss.  
COUNTY OF CROW WING     )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

THIS INSTRUMENT WAS DRAFTED BY:  
The City of Baxter  
13190 Memorywood Drive  
P. O. Box 2626  
Baxter, Minnesota 56425  
(218) 454-5100

STATE OF MINNESOTA

IN DISTRICT COURT

COUNTY OF CROW WING

NINTH JUDICIAL DISTRICT

City of Baxter,

Court File No. \_\_\_\_\_

Plaintiff,

vs.

**COMPLAINT**

Paul Larson and Kerri Larson,  
Joseph A. Wasnie, Federal National  
Mortgage Association, Capital One, NA,  
Richard D. Waldemarsen, Ryan  
Kukowski and Ivy Kukowski,

Defendants.

**COUNT ONE  
DECLARATORY RELIEF**

1. The City of Baxter, hereinafter "The City", is a municipal corporation and a statutory city under Minnesota Statutes Chapter 412.

2. Defendants are the owners of real property abutting on municipal utilities of The City, as set forth below:

Paul and Kerri Larson; 14981 Franklin Drive, Baxter, MN 56425;

Joseph Wasnie, 14882, Franklin Drive, Baxter, MN 56425;

Federal National Mortgage Association, 6646 Woida Road, Baxter, MN 56425;

Capital One; 14849 Franklin Drive, Baxter, MN 56425;

Richard Waldemarsen; 7111 Woida Road, Baxter, MN 56425

Tobie R. Hall; 6646 Clearwater Road, Baxter, MN 56425

Ryan and Ivy Kukowski, 6999 Woida Road, Baxter, MN 56425

3. That Minn. Stat. Sec. 412.321 authorizes The City to make all necessary rules and regulations for the construction, operation and maintenance of municipal utilities.

4. That Minn. Stat. Sec. 444.075 more specifically authorizes The City to provide for use, availability and connection charges for municipal water and sewer facilities and to levy assessments for these charges to be collected together with real estate taxes.

5. That pursuant to said statutory authority, The City duly adopted municipal Ordinance No. 8-1-10 on public water facilities and municipal Ordinance No. 8-2-3 on public sewer facilities, copies of which are attached hereto as Exhibits B and C, respectfully, and which are incorporated herein as if fully set forth.

6. That said ordinances require defendants, as owners of property abutting said facilities, to make connection thereto.

7. That The City has complied with the notice and other provisions of said ordinances but defendants have failed to make said connections.

8. That The City is entitled to declaratory relief under Minn. Stat. Chapter 555 as to the validity and enforceability of said ordinances.

COUNT TWO  
INJUNCTIVE RELIEF

1. The City re-alleges all allegations of Count One set forth above.

2. The City has no adequate remedy at law other than an injunction ordering defendants to comply with said ordinances and allowing The City access to each of defendant's respective properties to make said connections and to assess the costs thereof as provided for by law.

WHEREFORE, The City is entitled to the declaratory and injunctive relief hereinabove prayed for together with its costs and disbursements incurred herein, and for such other relief as to the court is just and equitable.

Dated: \_\_\_\_\_, 2016

BREEN AND PERSON, LTD.

By \_\_\_\_\_  
J. Brad Person, #0296302  
Attorneys for Plaintiff  
Box 472  
Brainerd, MN 56401  
Telephone (218) 828-1248

